28.07.2023.
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Ct.No.28
as
(Allowed)

**C.R.M. (DB) 190 of 2023**

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Shakespeare Sarani P. S. Case No.158 of 2021 dated 07.10.2021 under Sections 120B/418/420/406/506/34 of the Indian Penal Code read with Section 3(2) of the West Bengal Protection of Interest of Depositor in the Financial Establishment Act, 2013.

In the matter of : Prabha Surana.

…. Petitioner.

Mr. Ratnanko Banerjee, ld. Sr. Adv.,
Mr. Ayan Bhattacharyya,
Mr. Abhijit Chowdhury,
Mr. Aditya Ratan Tiwari.

…for the Petitioner.

Mr. Saswata Gopal Mukherji, ld. P.P.,
Mr. Neguive Ahmed, ld A.P.P.
Mr. Ranabir Roy Chowdhury,
Mr. Mainak Gupta.

…for the State.

Mr. Anirban Dutta,
Mr. Anurag Sarkar.

…for the De-facto complainant
Amita Dani & Vishal Agarwal

Ms. Samira Grewal

… for the De-facto complainant
Vikram Jairath, Harleen Jairath & Arjun Jairath

**<u>Genesis of the case</u>:-**

1. Petitioner is a lady and the wife of co-accused Shanti Kumar Surana. Shanti Kumar Surana and his associates had floated a number of business ventures which are commonly described as 'Surana Group of Companies'. The de-facto complainant is a business associate of 'Surana Group of Companies'. It is alleged in the FIR that the accused persons

had produced brochures of the Surana Group with the caption 'Fund Managers for Senior Citizens'. Upon being induced by their representation, the de-facto complainant made an investment between 2010-11 to 2017-18 in the following manner :-

> *"Payment of Rs.1,10,00,000/- in the financial year 2010-2011, Rs.1,20,00,000/- in the financial year 2011-2012, Rs.46,00,000/- in the financial year 2012-2013, Rs.43,00,000/- in the financial year 2013-2014, Rs.2,91,00,000/- in the financial year 2014-2015, Rs.2,52,00,000/- in the financial year 2015-2016, Rs.5,74,00,000/- in the financial year 2016-2017 and Rs.50,00,000/- in the financial year 2017-2018 respectively."*

A total sum of Rs.14.86 crores was deposited in Surana Group of Companies.

2. It is further alleged in the FIR inspite of repeated demands the accused persons failed and/or neglected to make the aforesaid payment. In 2021 FIR was registered.

3. In the course of investigation, petitioner was arrested and presently is in custody for over 300 days. It may not be out of place to mention a coordinate Bench of this Court granted bail to the petitioner.

4. The State challenged the order before the Hon'ble Apex Court being Criminal Appeal No.1121 of 2023. The Hon'ble Apex Court by order dated 13th April, 2023 quashed the bail order and remanded the matter to be disposed of in accordance with law and on merits after taking into consideration the materials collected in the course of investigation.

5. Pursuant to the order of remand, the matter was assigned before this Bench on 20th June, 2023.

**Arguments at the Bar:-**

6. We have heard the learned Senior Advocate for the petitioner, learned Public Prosecutor for the State and learned Advocate for the de-facto complainant.

7. Learned Senior Advocate for the petitioner submits petitioner is a housewife and a mere name lender in the business. Even in the charge sheet, no overt act is attributed to her. She is suffering from various ailments and required treatment while in custody. De-facto complainant had advanced a loan to the company in the ordinary course of business and cannot be treated as a depositor under the West Bengal Protection of Interest of Depositors in Financial Establishments Act, 2013 (hereinafter referred to as the Act of 2013).

8. He strenuously contends the prosecution case was induced to part with money on the strength of a scheme floated for investment as 'Fund Managers for Senior Citizens' is an afterthought. Civil suit was filed by the de-facto complainant wherein no such insinuation was made. On the contrary it was portrayed that the transaction was an accommodation loan which had not been refunded. Subsequently, suit was withdrawn and FIR came to be registered alleging inducement on the strength of so-called brochure.

9. It is also contended that the brochure is a fake and fabricated document. No such brochure was floated on behalf of the company. Criminal case was registered against the de-facto complainant on such score but has ended in final form. Petitioner has challenged the report in final form. De-facto complainant was not below 60 years between 2010 and 2017 when investments were made and it is unclear why he availed a scheme primarily for senior citizens.

10. It is also contended that part payment to the tune of Rs.6.79 crores has been made. It is argued investigation is complete and the petitioner has suffered incarceration for a considerate period of time. There is little possibility of trial commencing let alone concluding in the near future. Accordingly, petitioner may be enlarged on bail.

11. In response learned Public Prosecutor submits petitioner has been described as the Chief Investment Officer of the 'Surana Group Fund'. It cannot be said that she was a mere name lender. 'The Surana Group of Companies' under the leadership of Shanti Kumar Surana and his wife i.e. petitioner herein had created 'Surana Group Fund' and invited deposits from various unsuspecting investors. They were promised high return on investment and were assured that the principal sum would be refunded after a stipulated period. They misappropriated the funds. A number of persons have been affected. Enquiries made with the regulatory authorities i.e. SEBI and RBI show Surana Group of Companies did not have

requisite permission to invite deposits from members of the public. Nature of activities clearly depicts a collective investment scheme. Bail prayer may be rejected.

12. Learned Public Prosecutor drew our attention to the brochure wherein it is stated that the investments in 'The Surana Group of Companies' shall be deemed as loan for income-tax purposes. Hence, the deposits were described as loan in the civil suit.

13. Learned Advocate for the de-facto complainant opposes the bail application. He submits that the petitioner is a principal player and had defrauded his client. Bail prayer may be refused.

**Decision with reasons:-**

14. In the order of remand the Apex Court observed, this Court while granting bail to the petitioner had not adverted to relevant matters. In one of the remand matters involving the same batch of cases the Apex Court had clarified the relevant parameters to be considered while considering the prayer for regular bail as follows[1]:-

i) Nature and gravity of offence;

ii) Role of the petitioner in the crime;

iii) Materials collected in the course of investigation and;

iv) 'Triple Test' theory.

[1] Criminal Appeal No. 966 of 2023

We have examined the bail prayer in the light of the aforesaid parameters:-

**(i) Nature and gravity of offence**:-

15. Allegations in the First Information Report show that the de-facto complainant had made investments in 'The Surana Group of Companies' on various dates between 2010 to 2017. Though it is alleged that the brochure issued by 'The Surana Group of Companies' giving a rosy picture with regard to its business ventures and describing themselves as fund managers for senior citizens had induced the de-facto complainant to make the aforesaid deposits, the said averments are significantly absent in the civil proceeding which was filed by the de-facto complainant.

16. For the reasons best known to the de-facto complainant he withdrew the civil proceeding and thereafter filed the criminal case. Omission to mention inducement via brochure in the civil suit needs to be explained by the de-facto complainant in the course of trial.

17. Admittedly, a sum of Rs.6.79 crores out of 14.86 crores has been repaid which was suppressed in the FIR but was revealed during investigation.

18. Learned Public Prosecutor strenuously canvassed that the investments were deemed to be loans and were described as such in the civil proceeding. This stance does not appear convincing. It is inexplicable why the genesis of the criminal case that is inducement by showing brochures to the de-facto

complainant is absent in the pleadings. In fact, the pleadings did not make any reference whatsoever to the brochure or leaflets alleged to have been floated by the de-facto complainant company.

19. On the other hand, it has been strenuously contended on behalf of the petitioner that the brochure was subsequently manufactured in order to give the impression of a fraudulent transaction and paint a simplicitor loan transaction in a sinister manner.

20. It is also relevant to note that the so-called brochures give an impression that the scheme primarily catered to senior citizens and admittedly, the de-facto complainant did not fall within that category.

21. During arguments it has been canvassed that a large number of persons were duped. But inspite of repeated queries, learned Public Prosecutor was unable to come out with a quantum more than Rs.55 crores allegedly misappropriated by 'The Surana Group of Companies'.

22. Apart from the offence punishable under Section 3 of the Act of 2013, other offences attract a maximum sentence of seven years and are triable by Magistrate. Even with regard to the applicability of the Act of 2013 to the present transaction, learned Senior Advocate contends it is doubtful that the de-facto complainant had made deposits upon being induced by the brochure inviting investments primarily from senior citizens to 'The Surana Group Fund'. On the contrary, the defence

argues transaction was a loan investment made in the ordinary course of business. This defence plea requires to be thrashed out against the prosecution case as made out in the FIR. Even otherwise, offence under section 3 of the Act of 2013 does not attract mandatory life imprisonment and prescribes a minimum imprisonment of three years which may extend to life. The special law does not impose any additional embargo on bail like PMLA.

23. We are conscious in economic offences quantum of sentence is not the only parameter to assess its gravity. Impact of such offence on the economic health of the nation, number of victims affected and overall impact on society are also to be considered.

24. Collective investment schemes run by ponzi firms form a class apart. But in the present cases alleged misappropriation is said to be around Rs.55 crores and would not qualify as a large collective investment scheme over Rs.100 crores to which the rigours of SEBI Act would apply. Moreover, profile of the investors including the de-facto complainant shows they form a close knit group of friends and associates of 'The Surana Group of Companies'. The activity of the company does not impact victims across the broad cross section of society unlike other Ponzi cases.

25. Statements of some witnesses have been placed before us who also claim they have been duped. But these statements

are not backed by contemporaneous documents evidencing acknowledgement of deposit and do not inspire confidence.

26. With regard to criminal antecedents apart from the batch of cases involving a corpus of Rs.55 crores, no other case against the petition is placed on record apart from a case registered in Nagaland. In that case, the intermediary in the negotiation are the *Danis* (de-facto complainant in one of the batch cases). This reinforces the defence plea that the de-facto complainant/ investors and the accused persons had a close knit business relationship between themselves. Said case has been assailed before the jurisdictional High Court. It is also important to note that the investments were made over a span of eight years i.e. 2010 to 2017 which gives an impression of continuing business transaction.

27. These aspects need to be kept in mind while the nature and gravity of offence in the present batch of cases are assessed vis-à-vis the plea of bail of the under trial.

**(ii) <u>Role of the petitioner in the crime</u>** :-

28. Petitioner argues that she is the wife of Shanti Kumar Surana and is not a director of any of the companies.

29. Learned Public Prosecutor rebuts such stance and draws our attention to the brochure wherein she has been described as the Chief Investment Officer of 'The Surana Group Fund'. It is also alleged that the investments were made in the joint account of the petitioner and her husband. It may not be out of place to note that the petitioners have cast serious doubt

with regard to the authenticity of the brochure itself. It is also relevant to note allegations against the petitioner in the FIR are generic in nature.

**(iii) <u>Materials collected during investigation</u>:-**

30. Investigation in the crime essentially revolves around documents. All relevant documents pertaining to the subject matter of case are in the hands of the investigating agency. Investigation is complete and it cannot be said further detention of the petitioner for the purpose of investigation is warranted.

31. At this stage it is strenuously argued by the de facto complainant that assets of 'The Surana Group of Companies' are encumbered and petitioner may be directed to secure the acknowledged dues.

32. In response, senior counsel submits that the petitioner is not in a position to secure dues.

33. We have considered the prayer of the de facto complainant with regard to continued detention for recovery of dues in the light of the direction of the Apex Court in ***Ramesh Kumar vs. State of NCT of Delhi***[2].

34. In the said case the Apex Court has clarified the process of criminal law may not be utilized to recover private dues. Only exception has been made with regard to misappropriation of public fund.

35. The present batch of cases show a number of persons who are closely associated with 'The Surana Group of

[2] 2023 SCC OnLine SC 766

Companies' had made investments in the said companies presumably on the expectation of high returns. Investigation reveals alleged misappropriation is to the tune of Rs.55 cores which falls below the threshold of Rs.100 cores which would have attracted powers of search, seizure and attachment under the SEBI Act.

36. However, provisions under the Act of 2013 provide for attachment and confiscation of assets of the financial establishment and its entities for recovery of dues. None of the powers have been invoked.

37. It is also relevant to note part payment had been made prior to the registration of FIR.

38. In this backdrop we are unable to accept the submission of the de facto complainant that further detention of the petitioner is necessary for recovery or securing the outstanding liabilities. Other recourses in law require to be availed as has been done in some of the cases through institution of civil proceedings etc.

**(iv) '<u>Triple test' and period of detention</u>:-**

39. Other test for under trial detention is the 'triple test' i.e. (i) flight risk/ abscondence of the accused and her availability during trial (ii) tampering of evidence, (iii) winning over of witnesses etc.

40. It is argued on behalf of the State and the de facto complainant that the petitioner had been arrested from a different State namely Rajasthan. There is chance of

abscondence. We are not impressed by such submission. Petitioner is a lady and her passport is already in the custody of the court. There is no flight risk whatsoever.

41. With regard to tampering of evidence or winning over of witnesses we note that the case revolves around documents which have been already seized. Vital witnesses are the de-facto complainant and his associates and it is highly unlikely that the petitioner or any of her associates would be in a position to exercise influence over them. Her availability in the course of trial may be secured by appropriate restrictions which are less intrusive than continued custody.

42. Petitioner had been granted bail after 143 days of detention. Hon'ble Apex Court quashed the order of bail and remanded the matter for reconsideration. Presently the petitioner is in custody for over 300 days. Investigation is complete.

43. We have considered the nature and gravity of offence. Investments in the cases appear to have been made by close friends and associates of 'The Surana Group' and not from diverse sections of society. Quantum of investment is to the tune of Rs. 55 crores and does not exceed the threshold envisaged under the SEBI Act of 2014.

44. We have also taken into consideration number of witnesses and the documents which the prosecution proposes to adduce in the course of trial. There is little possibility of trial concluding in the near future.

45. It is argued some of the co-accused are absconding. This needs to be addressed by appropriate coercive measures taken by the investigating agency and continued detention of the petitioner is not an answer.

**Conclusion** :-

46. In the light of the aforesaid discussion, we are of the opinion petitioner may be enlarged on bail.

47. Accordingly, the petitioner be released on bail upon furnishing a bond of Rs. 50,000/- with two sureties of like amount each, one of whom must be local to the satisfaction of the learned CJM, South 24 Parganas at Alipore on the condition that the petitioner shall appear before the trial court on every date of hearing and shall not intimidate witnesses or tamper with evidence in any manner whatsoever and on further condition that the petitioner while on bail shall remain within the municipal limits of Kolkata until further orders.

48. In the event she fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel her bail automatically without reference to this court.

49. Trial court is requested to take appropriate measures to ensure attendance of the absconding accused. In the event their attendance cannot be secured inspite of exhaustion of all processes, to declare them as proclaimed offenders and proceed with the trial of the petitioner and other co-accused who are before the court and conclude the same at an early date without unnecessary adjournment.

50. It is also made clear any unjustified adjournment of dilation resorted by the petitioner would entail cancellation of bail by the trial court without reference to this court.

**(Ajay Kumar Gupta, J.)** **(Joymalya Bagchi, J.)**