

23.03.2023
tkm/ct 28
sl no. 50

C.R.M. (DB) 1075 of 2023

In Re : An application for bail under section 439 of the Code of Criminal Procedure in connection with Bowbazar PS case no. 113 of 2022 dated 19.4.2022 under sections 120B/420/405/406/409/467/468/471 of the IPC

Allowed

and
In Re : Bhabani Prasad Mukherjee @ Bhabani Prasad
Mukhopadhyay petitioner

Mr. Sekhar Basu, Sr. Adv
Mr. Sandipan Ganguly, Sr. Adv
Mr. S K Banerjee
Ms. S Sinha

..... for the petitioner

Mr. Sudip Ghosh
Mr. A K Datta

..... for the State

Mr. Sudipto Maitra, Sr. Adv
Ms. Sutapa Sanyal
Mr. Pawan Kr. Gupta
Mr. K Chattrjee
Mr. S Nesar
Mr. S Sett

..... for the de facto complainant

Petitioner is in custody for 43 days. Learned Senior Counsels for the petitioner submit there is a commercial dispute between him and the de facto complainant, Arup Majee with regard to transfer of 50% shareholding of M/s. Purulia Metal Casting Private Limited (hereinafter referred to as 'the company'). A commercial suit is pending before this court for specific performance of the agreement between the parties. During its pendency 37% of the shareholding of the company has been transferred to the de facto complainant. To exert pressure on the petitioner, criminal case has been registered. He was arrested and subjected to custodial interrogation. Further detention for progress of investigation is not necessary.

Learned lawyer for the State submits petitioner had dishonest intention from the inception of the transaction. After having agreed to transfer 50% of the shareholding he had entered into a similar arrangement with one Susil Kumar of Dubai in November 2021. Investigation is in progress. Son of the petitioner (a co-accused) is absconding.

Senior Counsel for the de facto complainant opposes the bail prayer. He submits ingredients of cheating and other offences are evident from the facts of the case. Recourse to civil proceeding does not obliterate the crime. Petitioner is a habitual offender and investigation is in progress.

In rebuttal, learned Senior Counsel for the petitioner submits the son of the petitioner has been granted interim protection from arrest.

We have considered the materials on record. Presently, we are concerned with the prayer of bail and not maintainability of the criminal proceeding which in appropriate cases may run alongside a civil claim.

Profile of the allegations shows petitioner had entered into a contract with the de facto complainant to transfer 50% of the shareholding of the company. It is alleged he failed to comply with the agreement and removed the de facto complainant from the directorship of the company. A civil suit was filed by the de facto complainant seeking specific performance of the agreement. Thereafter, in December 2022 petitioner appears to have

transferred about 37% of the shareholding in favour of the de facto complainant. Though it is claimed that he had entered into a similar arrangement with a third party, legal right of the de facto complainant to seek specific performance is a subject matter of the civil proceeding pending inter parties. In the course of investigation it appears about 37% of the shareholding has been transferred. After having filed a suit for specific performance it cannot lie in the mouth of the de facto complainant that he is entitled to refund of the sum advanced under the agreement. Be that as it may, purpose of criminal investigation is not to ensure refund of money. Petitioner is already in custody for 43 days and had been subjected to custodial interrogation.

Under such circumstances, we are of the opinion further detention of the petitioner is not necessary and he may be granted bail.

Accordingly, the petitioner be released on bail upon furnishing a bond of Rs. 25,000/- with two sureties of like amount each, one of whom must be local to the satisfaction of the learned ACMM, 2nd Court, Calcutta on 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. Petitioner shall co-operate with investigation in accordance with law.

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

The application being CRM (DB) 1075 of 2023 is disposed of.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)