28.07.2023.
9
Ct.No.28
as
(Allowed)

C.R.M. (DB) 2003 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Burrabazar P. S. Case No.24 of 2020 dated 28.01.2020 under Sections 420/406/34/120B 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

Mr. Dipankar Aditya
Mr. Anurag Sardar

… … for the de-facto complainant
Subhra Mukherjee

<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 alleged being induced by the accused persons with regard to high investment potential in the ‘Surana Group of Companies’ and on the strength of a brochure describing them as Fund Manager for senior citizens, the petitioner was induced to make a deposit of Rs.2.25 crores in favour of one Surendra Singh Bengani and ‘M/s. Mahesh Commercial Corporation’ in the following manner :-

CHEQUE/RTGS NO	DATE	AMOUNT
1. Cheque No.247530	dt. 16/05/2008	for Rs.15,00,000/-
2. Cheque No.576437	dt. 07/07/2008	for Rs.35,,00,000/-
3. RTGS	dt. 01/12/2014	for Rs.1,25,00,000/-

In the name of accused No.1 Surendra Singh Bengani.

Chq No.247534 dt. 09/09/2008 Rs.50,00,000/-

In the name of accused no. 2 Mahesh Commercial Corporation.

2. Inspite of repeated request, the amount remained unpaid. Finally, Shanti Kumar Surana, husband of the petitioner issued cheques to the tune of Rs.1.75 crores which have since been dishonoured. Hence, the present FIR.

3. In the course of investigation, petitioner was arrested and he is presently in custody for 300 days. She prays for bail.

4. The matter was assigned before this Bench on 20th June, 2023 for hearing.

Arguments at the Bar:-

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

6. Learned Senior Advocate for the petitioner submits petitioner is a housewife and a mere name lender in the business. Even the allegations in the FIR/charge sheet do not show any role of the petitioner in the investment made by the de-facto complainant. Monies were paid to co-accused Bengani and 'M/s. Mahesh Commercial Corporation'. In repayment cheques were issued by Shanti Kumar Surana and not the petitioner. Proceedings under the N.I. Act have been instituted against Shanti Kumar Surana.

7. It is also contended that the alleged brochure is a fake and fabricated document. No brochure was floated on behalf of the company. In fact, criminal case registered with regard to the said brochure has ended in a final report but the petitioner has challenged the said report.

8. She is suffering from various ailments and required treatment while in custody. De-facto complainant had advanced a loan to co-accused 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). Even otherwise, brochure refers to the Surana Group as fund manager for senior citizens and petitioner, being below 60 years in 2015 did not qualify in that category.

9. 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.

10. In response learned Public Prosecutor submits petitioner has been described as the Chief Investment Officer of the '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.

11. Learned Advocate for the de-facto complainant opposes the bail application. He submits that the petitioner is a principal player and had defrauded his clients.

Decision with reasons:-

12. Bail prayer of an undertrial requires to be considered in the light of the following parameters :-

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.

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

(i) <u>Nature and gravity of offence</u>:-

13. Allegations in the First Information Report show the de-facto complainant was persuaded to make deposits being induced by a rosy picture with regard to the investment possibilities in 'Surana Group of Companies' and the possibility of high return on investment. She was further persuaded by a brochure showing the group as fund managers for senior citizens. Accordingly, she made deposits to the tune of Rs.2.25 crores Bengani and one 'M/s. Mahesh Commercial Corporation'. None of the deposits were made in the name of the petitioner. It is also relevant to note that petitioner is neither a director of 'M/s. Mahesh Commercial Corporation' nor is a shareholder in the said company. It is also pertinent to record that the dishonoured cheques were not issued by the petitioner.

14. Though it is argued at the bar that investments were made by a large number of persons, on repeated queries learned Public Prosecutor could not come out with a quantum more than Rs.55 crores allegedly misappropriated by 'The Surana Group of Companies'.

15. 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.

16. 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 being induced by the brochure inviting investments primarily from senior citizens to 'The Surana Group Fund'. On the contrary, the defence argues the transaction was a loan investment made in the ordinary course of business. This defence plea requires to be thrashed out against the prosecution case during trial. 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.

17. 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.

18. 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 show 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.

19. Statements of some witnesses have been placed before us who also claim to have been duped. But these statements are not backed by contemporaneous documents evidencing acknowledgement of deposit and do not inspire confidence.

20. Part of the deposits made were sought to be refunded by cheques issued by Shanti Kumar Surana, a co-accused, and not the petitioner. The cheques were dishonoured and proceedings under the N.I. Act have been initiated against the said co-accused.

21. With regard to criminal antecedents apart from the batch of cases involving a corpus of Rs.55 crores, no other case against the petitioner 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.

22. 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) Role of the petitioner in the crime :-

23. Petitioner has argued none of the deposits were made in the account of the petitioner. It is also stated that she is not a director or shareholder of the company in which deposits were made. Cheques issued for repayment were also not signed by the petitioner.

24. Learned Public Prosecutor rebuts such stance and draws our notice to the brochure wherein she has been described as the Chief Investment Officer of 'The Surana Group Fund'. He argues deposits had been made on the false representation of the accused including the petitioner. In this backdrop, it may be noted that the allegations against the petitioner are generic in nature.

(iii) Materials collected during investigation:-

25. Investigation in the crime essentially revolves around documents. All relevant documents pertaining to the subject matter of the 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.

26. 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.

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

28. 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***[1]. 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.

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

30. 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.

[1] 2023 SCC OnLine SC 766

31. It is also apposite to record proceedings under N.I. Act have been initiated in respect of dishonor of cheques issued by co-accused for refund of the deposits.

32. 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 by initiating proceedings under the N.I. Act or as in some of the cases through institution of civil proceedings etc.

33. It may be relevant to note that refunds in the present case were made via cheques which have been dishonoured in respect of which proceedings under section 138 of the N.I. Act are pending.

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

34. 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.

35. 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.

36. With regard to tampering of evidence or winning over of witnesses we note that the case revolves around documents which have already been 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.

37. Presently the petitioner is in custody for over 300 days. Investigation is complete.

38. 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.

39. 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.

40. 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 :-

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

42. 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.

43. 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.

44. 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.

45. 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.)**