

26.07.2023
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allowed

CRM(DB) No. 2965 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Narendrapur Police Station Case No. 514 of 2023 dated 01.06.2023 under Sections 420/406/465/467/471/120B of the Indian Penal Code.

And

In Re : Rajiv Tibrewal petitioner

Mr. Sandipan Ganguly, Sr. Adv.
Mr. Vipul Kundalia
Mr. Kushagra Saha
Mr. Somopriyo Chowdhury
Mr. Biswajit Kumâr
Mr. Vidya Bhusan Upadhyay
.....for the petitioner

Mr. Rudradipta Nandi, learned APP
Mr. Sudip Ghosh
Mr. Bitasok Banerjee
..... for the State

Mr. Debashish Roy
Mr. Sourav Chatterjee
Mr. Soumya Nag
Mr. Abhiram Rakshit
..... for the de facto complainant

Learned Counsel for the petitioner submits he is in custody for 45 days. It is also submitted that there was continuing business transactions between the parties. Part payment to the tune of Rs.95 lakhs with regard to the subject matter of the present case i.e. a sum of Rs.1.85 crores had already been made in 2016 i.e. much prior to registration of FIR. It is further contended that the alleged forged acknowledgement receipt had not been handed over by the petitioner but has been manufactured to falsely implicate him in the case. On the other

hand his client has acknowledged remainder of the dues which is a part of the commercial transaction. He prays for bail.

Learned Counsel for the State opposes the prayer for bail and submits investigation is in progress and original alleged forged receipt has not been recovered as yet.

Learned Counsel for the de facto complainant submits investigating agency has not conducted the investigation in a fair and impartial manner. Though petitioner was remanded to police custody for 6 days, for reasons best known to the investigating agency he was produced before the Magistrate after a day and was remanded to judicial custody. It is also contended that petitioner had resorted to devious tactics and relied to forged documents to deny liability.

We have considered the materials on record in the light of the rival submissions advanced by the learned Counsels for the parties. Gist of the accusation against the petitioner is that he had induced the de facto complainant to make an investment to the tune of Rs.1.85 crores in his company in 2015. Though he assured the amount to be repaid in 2017, the same has not been done. On the other hand, to avoid liability he used a forged acknowledgement receipt. Materials on record show apart from the subject matter of the present case there are other transactions by and between the parties. This gives an impression of a continuing commercial arrangement between the two instead of a singular act of inducement to the part with the aforesaid sum of money. It is also relevant to note a sum of Rs.95 lakhs have been repaid against the aforesaid liability by

2016. With regard to use of the alleged forged receipt, we find substance in the submission of the learned Senior Counsel for the petitioner that the money which had been handed over is doubtful as the accounts maintained in ordinary course of business continue to reflect said liability. Manner and duration of police custody is primarily within the domain of the investigating agency. Hence, truncating the said period by itself cannot be a basis to infer influence on the agency. That apart, this issue is subject to the judicial discretion of the Magistrate before whom remand was prayed. It has been held in *Ramesh Kumar v State of NCT Delhi*¹ that the process of criminal law cannot be used as a weapon to recover private dues.

In view of the aforesaid discussion, we are of the opinion further detention is not necessary and petitioner may be granted bail.

Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Baruipur, South 24 Parganas, subject to conditions that petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

In the event the petitioner fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to

¹ 2023 SCC OnLine SC 766

cancel his bail in accordance with law without further reference to this Court.

The application for bail is, accordingly, allowed.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)