

11.08.2023
Sl. No.20
akd
[ALLOWED]

C. R. M. (DB) 3175 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 07.08.2023 in connection with Chatterjeehat Police Station Case No.71 of 2023 dated 27.04.2023 under Sections 420/406/467/471/120B of the Indian Penal Code. (G.R. Case No.1898 of 2023)

And

In Re: ***Saikat Mukhopadhyay***

... .. Petitioner

Mr. Sandipan Ganguly .. Sr. Advocate
Mr. Ayan Bhattacharya
Mr. Santanu Talukdar
Mr. Rajib Mullick
Ms. Sonia Mukherjee
Mr. Deep Bairagi

... .. for the petitioner

Mr. Debasish Ray
Mr. Soumopriya Chowdhury
Mr. Parag Mukherjee
Mr. Soumya Basu Roy Chowdhury

... .. for the de-facto complainant

Mr. Sudip Ghosh
Mr. Kaushik Kundu

... .. for the State

1. Petitioner was the Managing Director of the company viz. M/s. NIJJ Healthcare Pvt. Ltd. (*hereinafter referred to as 'the company'*). He along with his wife is said to have majority shareholding in the company.
2. It is contended the de-facto complainant is a minority shareholder and had taken loan from the company in favour of his brother. When the petitioner insisted on the refund of the loan, disputes and differences cropped up. Proceeding was instituted before the National Company Law Tribunal (NCLT) which is pending before the said Tribunal. In order to exert pressure upon the petitioner and his wife and to compel them to meet the unjustified demands, the

present criminal case was registered. Petitioner was ready and willing to participate in the investigation but in an arbitrary manner was arrested. He is in custody for more than a fortnight. Investigation revolves around the records of the company which have been furnished before the regulatory authorities like Registrar of Companies (ROC), West Bengal, Income-tax Department etc. Custodial detention for recovery of the records is not necessary. Accordingly, petitioner may be enlarged on bail.

3. Learned Advocate for the State opposes the prayer for bail and submits petitioner was the Managing Director of the company from 2016 to 2021. Thereafter, he fraudulently represented himself as the Managing Director. He in collusion with his wife manufactured records of meetings of the company showing attendance of the de-facto complainant by forging his signatures. Digital signature of the de-facto complainant was also misused to upload income-tax returns. A large volume of cash withdrawal to the tune of over Rs.67 lakhs was made in course of 2021-2022 clearly evidencing siphoning of funds.
4. Learned Advocate for the de-facto complainant also opposes the prayer for bail and submits petitioner, his wife and co-accused viz. Pradip Karmakar, Accountant had manufactured fictitious accounts and siphoned away money. A large volume of cash was withdrawn without justification. His client was kept in the dark with regard to the affairs of the company. Signatures of his client have been forged and an impression was given that he had participated in the board meetings in which the illegal activities were condoned.
5. We have given anxious consideration to the rival submissions made at the Bar.

6. Crux of the allegation relates to mismanagement of the affairs of the company. Petitioner was in charge of the company since 2016. While it is contended that his term as Managing Director had come to an end in 2021, it is argued on behalf of the petitioner that he had been re-appointed.
7. The issue relating to mismanagement of the affairs of the company is the subject matter of enquiry before the National Company Law Tribunal (NCLT). It may be relevant to note that the Tribunal has not enjoined the petitioner from carrying on the affairs of the company. During the pendency of the said proceeding, the present criminal case has been registered.
8. Learned Advocate for the de-facto complainant strongly contends the allegations disclose cognizable offences and institution of the proceeding cannot be said to be mala fide.
9. At present, we are concerned with deprivation of liberty of the petitioner in a corporate struggle over control of the affairs of the company. The moot issue which concerns the Court is the justification of arrest and continued detention of the petitioner. Allegations in the FIR essentially revolves around forgery of signature of the de-facto complainant in the records of the company including misuse of digital signatures for submitting documents before the Income-tax Department and regulatory authority. While the petitioner strongly contends that the signatures are not forged, the de-facto complainant would like us to believe otherwise. Statements of accounts have been furnished by the company in course of Annual General Meeting as well as before regulatory authority i.e. ROC, West Bengal. Investigation of the crime would

require verification of the aforesaid documents which are within the control and custody of the Investigating Agency.

10. Whether the alleged withdrawal of over Rs.67 lakhs was in the ordinary course of business or constitutes dishonest siphoning of funds requires to be assessed at the time of settlement of accounts in the light of cash withdrawals by the company in the previous years. These aspects, in our considered opinion, do not require continued detention of the petitioner.
11. We are also mindful of the fact that collateral proceedings are pending, *inter se*, with regard to similar issue and petitioner has not been enjoined by the Tribunal from carrying on the affairs of the company.
12. It is also relevant to note petitioner has permanent home and hearth and there is no possibility of his abscondence. Nothing has been placed on record to show petitioner had evaded the process of investigation or had not cooperated. Justification of his arrest requires to be assessed from this perspective also. Under such circumstances, we are of the opinion further detention of the accused/petitioner is not necessary but he requires to cooperate with the investigation in accordance with law.
13. Therefore, the accused/petitioner, namely **Saikat Mukhopadhyay**, be released on bail upon furnishing a bond of Rs.50,000/- (Rupees Fifty thousand only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Howrah subject to condition that the said petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever and on further condition that the petitioner,

while on bail, shall meet the Investigating Officer once in a week until further orders.

14. 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.

15. The application for bail, thus, stands allowed.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)