09.10.2023
Sl. No.3
[ALLOWED]
as

C. R. M. (A) 4289 of 2023

In Re: An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Bishnupur Police Station Case No. 504 of 2023 dated 28.06.2023 under Sections 420/467/468/406/120B of the Indian Penal Code.

In Re: ***Sumita Saha @ Sumitra Saha.***

… … Petitioner

Mr. Sandipan Ganguly, ld. Sr. Adv.,
Mr. Dipanjan Dutta,
Ms. Priyanka Sarkar.

… … for the petitioner

Mr. Sudip Ghosh,
Mr. Bitasok Banerjee.

… … for the State

1. Petitioner submits she was a former Director of M/s. Cambridge Real Estate Management Private Limited (hereinafter referred to as petitioner's Company). They had entered into a development agreement with the de-facto complainant's Company for developing a housing project. Alleging breach of terms of the agreement, proceeding under Section 9 of the Arbitration and Conciliation Act was initiated by the de-facto complainant's Company and an order of injunction was passed against the petitioner. But the same was vacated as the matter was referred to arbitration. Thereafter, the instant criminal case was registered. Petitioner is ready and willing to co-operate with investigation. Custodial interrogation is not necessary.

2. Learned Advocate for the State opposes the prayer for anticipatory bail. He submits petitioner's Company had failed to pay the amount assured under the contract i.e. Rs.21 crores. They had also dishonestly transferred properties from the owners' allocation.

3. We have considered the materials on record. A development agreement was entered into between petitioner’s Company and the de-facto complainant’s Company to develop a housing project. Allegation in the First Information Report state petitioner’s Company has failed to pay the amount assured under the agreement and sold some flats in the owners’ allocation. Initially, de-facto complainant had obtained an order of injunction against the petitioner’s Company to sell further flats. As the de-facto complainant had not referred to the arbitration with the time stipulated, interim order was vacated. Subsequently, he initiated the criminal proceeding. Allegation in the First Information Report at its height disclose breach of terms of the agreement. There is nothing on record to show that the petitioner’s Company had dishonest intention from the inception of the transaction to defraud the de-facto complainant’s Company. On the contrary, it is argued de-facto complainant’s Company had suppressed material facts regarding the property in question. It is also to be borne in mind that the de-facto complainant’s Company had not promptly initiated arbitration proceeding but much later after the injunction was vacated. It is trite law criminal investigation/proceeding cannot be a surrogate for recovery of dues under a contract. Keeping this wholesome proposition of law in mind we are of the opinion custodial interrogation of the petitioner for progress of investigation is unwarranted. Hence, we direct that the petitioner may be granted anticipatory bail subject to conditions.

4. Aforesaid circumstances while giving an impression of high handed treatment against the victim does not disclose intention of the petitioner to abet suicide. His custodial interrogation is not required. Hence, he may be enlarged on anticipatory bail.

5. Accordingly, we direct that in the event of arrest, the petitioner ***Sumita Saha @ Sumitra Saha*** be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten thousand only) each, with two sureties of like amount each, to the satisfaction of the arresting officer and also subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973 and she shall appear before the court below and pray for regular bail within four weeks from date and on further condition that the petitioner shall co-operate with the investigation in accordance with law.

6. The application for anticipatory bail is, thus, disposed of.

(Gaurang Kanth, J.) **(Joymalya Bagchi, J.)**