

JPD-31
Ct No.01
14.09.2023
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction

CRM (A) 733 of 2023

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed on 31.08.2023 in connection with Siliguri Police Station Case No. 76 of 2023 dated 04.02.2023 under Sections 406/417/420/448/506/120B IPC, 1860.

And

In the matter of: Prashanta Bera @ Prasanta Bera and others
.... petitioners

Mr. Arjun Choudhury,
Mr. Bikash Singha
... for the petitioners

Mr. Aditi Shankar Chakraborty,
Mr. Nilay Chakraborty,
Mr. Sourav Ganguly
... for the State

Ms. Sukanya Adhikary
... for the *de facto* complainant

1. Learned counsel for the petitioners argues that the allegations were primarily levelled against the company, of which the petitioners are Directors and, as such, the petitioners have been sought to be embroiled in the dispute, thereby seeking to resolve a civil dispute (money dispute) by way of lodging criminal complaints against the petitioners.

- 2.** By placing reliance on a judgment of the Supreme Court reported at (2008) 5 SCC 668 (*Maksud Saiyed vs. State of Gujarat*), it is argued that where jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. It was held by the Supreme Court that the Bank is a body corporate and vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the Statute. Statutes indisputably must contain provisions fixing such vicarious liabilities, it was observed by the Supreme Court.
- 3.** Learned counsel for the petitioners also places reliance on a Notification dated August 23, 2023, whereby it was *inter alia* directed that all police officers be provided with a check list containing specified sub-clauses under Section 41(1). In Clause 6 of the Notification, notice of appearance in terms of Section 41A, CrPC are to be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for reasons to be recorded in writing.
- 4.** Learned counsel for the petitioners, thus, submits that the petitioners ought to be granted anticipatory bail.
- 5.** Learned counsel for the State vehemently opposes the prayer for anticipatory bail and, placing reliance on the case diary, submits

that specific allegations were made against the petitioners, which culminated in materials being obtained which incriminate the petitioners and establish *mens rea* beyond reasonable doubt.

6. Learned counsel for the *de facto* complainant submits that only upon specific endeavour and a writ petition being filed by the *de facto* complainant, pursuant to an order of a learned Single Judge of this court, the statements were taken under Section 161 of the CrPC and investigation started.
7. Upon a careful consideration of the judgment cited by the petitioners, we find that the same pertains to allegations against a Bank. It was observed therein that a former Chairman-cum-Managing Director of the Bank had transaction with the company and had taken loan from Dena Bank. As loans were not paid, an original application was filed against him before the Debts Recovery Tribunal. In the said case, the Bank had floated a public issue of 8 crores equity shares of Rs. 10/- each for cash at a premium of Rs. 17/-, that is, at a price of Rs. 27/- each.
8. However, the prospectus was published for the purpose of public issue and therein some false and misleading information had been given with regard to sanction limits, the dues and export bills of the Company. It was alleged that the company had committed an offence punishable under Sections 120B, 425, 191, 192, 177, 181 as also 500 of the Indian Penal Code. In such context, it was observed by the Supreme Court that unless a

vicarious liability was established between the company and the concerned Directors, the concerned Directors could not be embroiled in a criminal action against the company.

9. However, insofar as the present case is concerned, the specific allegation is that there were certain transactions, *albeit* with the company of which the petitioners are Directors, but the entire amount was allegedly deposited in various Bank accounts of certain individuals, including the petitioners, and not in the account of the company. Due to the huge transaction, it has been alleged, taking advantage of the faith of the *de facto* complainant, the present petitioners requested the *de facto* complainant to deposit Rs. 50 lakh in their personal accounts.
10. Hence, the plinth of the allegations here is against the petitioners in their personal capacity and not regarding any economic offence or other financial offence committed by the Company of which the petitioners are Directors. Hence, there is no scope or necessity to lift the corporate veil in the present case, as the allegations are squarely levelled against the petitioners themselves, in their individual capacities.
11. Insofar as the Notification of this court dated August 23, 2023 is concerned, the same was issued in a completely different context. Pursuant to a direction of the Hon'ble Supreme Court of India in the judgment dated July 31, 2023 passed in *Criminal Appeal No. 2207 of 2023*, in the case of *Md. Asfak Alam vs. The*

State of Jharkhand and another, certain guidelines were framed by the High Court to be followed by the Sessions Courts and all other Criminal courts within the territory of West Bengal. The endeavour of the Hon'ble Supreme Court, the said Notification read, in the above-mentioned judgment, is to ensure that police officers do not arrest the accused unnecessarily and Magistrates do not authorize detention casually and mechanically.

- 12.** In order to ensure the same, the Supreme Court had been pleased to give the directions including Clause 6 which states that notice of appearance in terms of Section 41-A of the CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing.
- 13.** The reliance of the petitioners on the said Notification is entirely misplaced and premature. The present application is one for anticipatory bail and there is no allegation that, in contravention of Section 41-A of the CrPC, an arrest has been effected in respect of the petitioners. The context of the said Notification was entirely different and does not pertain to the facts of the present case.
- 14.** In the light of the above observations, the reliance of the petitioners on the said judgment and Notification are misplaced.

15. The *de facto* complainant as well as the State has made out a strong *prima facie* case with regard to involvement of the petitioners in the alleged offence, for the purpose of considering grant of anticipatory bail.
16. Hence, in the light of the above observations, we are not inclined to grant anticipatory bail.
17. Accordingly, CRM (A) 733 of 2023 is dismissed.
18. Needless to say, this court has only arrived at the above observations tentatively in the context of the prayer for anticipatory bail and nothing in the above observations touches the merits of the matter insofar as the future trial is concerned.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)