

10.04.2024
tkm/ct 28
sl no.76

C.R.M. (DB) 1394 of 2023

In Re : An application under section 439(2) of the Code of Criminal Procedure

And

In Re : Shyam Metalics and Energy Limited petitioner

Mr. Rajdeep Mazumder
Mr. Moyukh Mukherjee
Ms. A Bazaz
Ms.T Roy

..... for the petitioner

Mr. R D Nandy
Ms. Sarjana Saha

..... for the State

Mr. Arnab Chattejee
Mr.D Biswas
Ms. Poulami Bose

..... for the OP

1. Order dated 18.11.2022 granting bail to opposite party has been assailed.
2. Learned lawyer for the petitioner submits opposite party Vikash Jain was his employee. He had abused his position and siphoned away a sum of Rs. 28 crores from the account of the company and misappropriated it through the accounts of other individuals. He had forged and manipulated signatures to facilitate the crime. Initially investigation was conducted in a laconic manner. Petitioner/de-facto complainant approached this court in writ jurisdiction in WPA 26927 of 2022 and the court directed the investigation to be monitored by the Joint Commissioner of Police. Taking advantage of the lackadaisical approach of the investigating agency, opposite party was enlarged on bail. Subsequently the

entities through whom the opposite party had siphoned away money, have been arrayed as accused. Hence, bail granted to opposite party may be cancelled.

3. Learned lawyer for the State submits report.
4. From the report it appears forensic analysis have revealed incriminating materials against the accused.
5. Learned lawyer for the opposite party contends the order impugned is a well-reasoned one. Learned magistrate considered the factual aspect of the case, period of detention and released him on bail. Further development in investigation does not call for cancellation of bail.
6. We have considered the rival submissions at the bar. Pre-trial detention of an accused is to facilitate progress of investigation or prevent him from absconding/evading the process of law or tampering with evidence or commission of similar offence in future. The tripod test for bail had been considered by the learned magistrate. We are in wholesome agreement with the learned magistrate that there is no chance of abscondence or wining over witnesses/tampering of evidence or commission of similar offence by opposite party. The sole ground on which the petitioner has sought cancellation is that entities through whom funds were allegedly siphoned away have been arrayed as accused. This development by itself does not require committing the opposite party back to custody at the pre-trial stage. Learned magistrate had considered the

nature and gravity of offence and the period of detention suffered by opposite party while granting bail. Further evidence being collected in support of accusation may be a relevant consideration to adjudicate guilt of the opposite party during trial but cannot be a ground to cancel the bail in absence of post-bail conduct.

7. For these reasons, we do not find any merit in the application for cancellation of bail and the same is rejected.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)