

05.08.2024
Court No.29
Item No. ML-5

Allowed

sg

CRM (A) 2187 of 2024

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure read with Section 482 of the BNSS, in connection with Shyampukur Police Station Case No. 21 of 2024 dated 16.03.2024 under Sections 408/420 of the Indian Penal Code, pending before the learned Additional Chief Metropolitan Magistrate, at Calcutta.

And

In Re: **Santosh Kumar Nair.**

Petitioner

Mr. Bhaskar Jha
Mr. Priyankar Ganguly
Ms. Shalini Bairagi

For the Petitioner

Mr. Subhomoy Bhattacharya
Mr. Abhishek Verma

For the State

Ms. Manaswita Mukherjee

For the defacto complainant

1. The learned Counsel for the petitioner submits that the petitioner is an ex-employee of the complainant. He has resigned from the company in March 2021. The company, however, did not pay his retiral benefits. As a consequence whereof, he issued legal notice for a sum of Rs.6,72,866/- along with interest at the rate of 18% per annum to the Director of the complainant company as well as the General Manager Mr. Shashi Bhushan Jha. Since he has not been paid, a Recovery Suit being Spl. C.S. No. 128/2023 dated 9th May, 2023 has been filed and is pending before learned 2nd Jt. Civil Judges, S.D. Vasai, Mumbai. Thereafter the company filed the present case making false allegation.

2. The learned Counsel for the defacto complainant has submitted that the petitioner has defalcated more than Rs.37 lakhs and have not accounted for the said amount. The complaint, prima facie, clearly discloses criminal breach of trust.
3. The learned Counsel for the State has submitted that the petitioner has complied with the notice under Section 41A of the Code of Criminal Procedure and has cooperated with the investigation. The learned Counsel for the State has referred to the statement of some of the customers alleging that cash payments have been made to the petitioner.
4. Considering the materials available in the case diary, the nature and extent of complicity of the petitioner in the commission of alleged offence, having regard to the fact that the statement of some of the customers which has stated that they have made payments directly to the bank account of the complainant save and except few customers who alleged that some cash payments were made to the petitioner during 2020-21 without any formal complaint being made to the company during the aforesaid period and without enquiring about acknowledgment of such payments which appears to be surprising and also having regard to the fact that the complainant in the civil suit has made a counter claim of Rs.15 lakh and odd which is far below the amount claimed in the FIR, and in view of the fact that the petitioner has complied with the notice under Section 41A Cr.P.C. and has also cooperated with the investigation, we are of the view that the custodial interrogation of the present petitioners is not necessary.
5. Accordingly, we direct that in the event of arrest the petitioner namely, **Santosh Kumar Nair**, 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, with two registered sureties of like amount each, to the satisfaction of Arresting Officer, subject to conditions as laid down under Section 438(2) of the Code of Criminal Procedure corresponding to Section 482(2) of the Bharatiya Nagarik Suraksha Sanhita. The petitioner shall appear before the learned Additional Chief Metropolitan Magistrate, at Calcutta within two weeks from date.

6. In the event the petitioner fails to comply with any of the conditions as mentioned above, the trial court shall be at liberty to cancel their bail in accordance with law without any further reference to this Court.
7. Accordingly, the prayer for anticipatory bail of the petitioner is allowed.
8. CRM (A) 2187 of 2024 is, thus, disposed of.
9. All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Soumen Sen, J.)

(Uday Kumar, J.)