

09.12.2024
16
Ct. No. 28
SG
[Allowed]

C. R. M. (A) 3455 of 2023

In Re: An application for anticipatory bail under Section 438 of the Code of Criminal Procedure read with Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Tamluk Police Station Case No. 649 of 2023 dated 14.06.2023 under Sections 406/420/467/468/471/472/473/341/323/354-B/506/34 of the Indian Penal Code and 3(1)(r)/3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

And

In Re: **Subhankar Maity.**

... .. Petitioner

Mr. Supratic Roy,
Mr. Sudipta Roy,
Mr. Shuvajit Ray.

..... for the petitioners

Ms. Zareen N. Khan,
Mr. Ashok Das.

..... for the State

Mr. Amit Singh,
Mr. Pappu Adhikari.

....for the de facto complainant

1. Petitioner contends he is the brother of the principal accused Dipankar Maity. He is employed as an Assistant Professor at Uttar Pradesh Textile Technology Institute in Kanpur. He has nothing to do with the affairs of the concerned 'M/s. Smart Choice'. He prays for anticipatory bail.

2. Learned Advocate for the State contends the accused persons had floated a firm, namely, 'M/s. Smart Choice' to induce innumerable individuals to make deposits on the false promise of high returns. Thereby they wrongfully gained over Rs.5.9 crores and misappropriated most of the funds. It is also contended the application is not maintainable in view of bar

under Sections 18/18A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. Firstly, with regard to maintainability of the petition, we note the uncontroverted allegations relate to carrying on illegal collective investment scheme through a firm under the name and style of '*M/s Smart Choice*'. Crux of the allegation under Section 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is that petitioner had assaulted and abused the *de facto* complainant investor taking his caste name. Essential ingredients to attract the aforesaid offence are that the insinuation/abuse by taking caste name must be done in public view and with intention to denigrate the member of the Scheduled Caste community. Statements recorded during investigation do not show the imputation was made in public and heard by any other person. Prima facie, the ingredients of the offence under Section 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are not disclosed. The application is, therefore, maintainable as per law declared in ***Shajan Skaria vs. State of Kerala***.¹

4. On merits, we have considered the materials on record. One Dipankar Maity is the brain behind the firm '*M/s. Smart Choice*' which undertook an organized crime activity to defraud numerous investors of their hard earned money. Prayer for pre-arrest bail of Dipankar Maity has been turned down. Petitioner is the brother of principal accused and is employed as an Assistant Professor at Kanpur. His involvement in the affairs of the firm is

¹ 2024 SCC OnLine SC 2249

marginal and his custodial interrogation may not be necessary for unraveling the crime.

5. Accordingly, we are inclined to grant anticipatory bail to the petitioner subject to conditions.

6. Accordingly, we direct that in the event of arrest, the petitioner viz., **Subhankar Maity** be released on bail upon furnishing a bond of Rs.10,000/-, 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 482(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 and on further condition he shall deposit his passport, if any, within 48 hours from date before the trial Court and shall offer himself for interrogation as and when necessary. He shall appear before the jurisdictional court and pray for regular bail within four weeks from date.

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

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)