09.12.2024
17
Ct. No. 28
SG
[Partly Allowed]

<u>C. R. M. (A) 3457 of 2023</u>

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. 526 of 2023 dated 18.05.2023 under Sections 406/420/467/468/472/473/34 of the Indian Penal Code).

And

In Re: **Dipankar Maity and Anr.**

… … Petitioners

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

…… for the petitioners

Mr. Debasish Roy, ld. Public Prosecutor

…… for the State

Mr. Samantak Banerjee.

…… for the SEBI (through VC)

Mr. Amit Singh,
Mr. Pappu Adhikari.

….for the de facto complainant

1. Petitioners contend petitioner no. 1 was carrying on business in share trading through a sub-broker. In course of the trade the *de facto* complainant deposited cash in tranches and had received a return of over Rs.53 lakhs. There is no wrongful loss suffered by him.

2. On the other hand, learned Advocate for the *de facto* complainant contends the petitioners and other accused persons had constituted a firm, namely, *'M/s. Smart Choice'* and indulged in illegal money circulation business. A large number of depositors were duped. In light of these submissions, we called upon the State as well as SEBI to submit report with regard to the affairs of the company.

3. Learned Public Prosecutor submits report. Report shows *'M/s. Smart Choice'* is not registered as a company under the Companies Act. It also does not have permission from SEBI to invite deposits from public. The firm which is primarily managed by petitioner no. 1 had illegally induced 45 depositors to make deposits which runs over rupees five crores ninety-one lakhs and fifty thousand. Only ninety-eight lakhs and seven thousand has been refunded.

4. We have considered the materials on record. Allegations in the FIR only disclose the tip of the iceberg. Petitioners contend that amount deposited by the *de facto* complainant had since been returned, has to be considered in light of the report submitted by the State. Investigation report shows petitioner no. 1 through *'M/s. Smart Choice'* had induced no less than 45 individuals to make investments on the false promise of giving rosy returns. As a consequence, over Rs.5.9 crores were entrusted to him and barely one crore has been refunded. Profile of allegations make out an organized crime activity to defraud numerous unsuspecting individuals of their hard earned money. It cannot partake the character of a commercial dispute merely between the *de facto* complainant and the accused.

5. We have also considered the individual roles of the petitioner. Petitioner no. 1 is the principal player in the racket. Petitioner no. 2 is his wife and only marginally involved in the affairs of the firm.

6. Keeping in mind the aforesaid facts, we are of the opinion custodial interrogation of petitioner no. 1 is most essential to

unravel the ramifications of the organized crime racket and to trace the misappropriated money.

7. Accordingly, we are not inclined to grant anticipatory bail to petitioner no. 1.

8. However, petitioner no. 2 is his wife. Nothing has been placed on record to show that she had played active role or was aware of the illegal nature of business carried on by petitioner no. 1. She appears to be a mere name lender in the business.

9. Accordingly, we are inclined to grant anticipatory bail to petitioner no. 2 subject to conditions.

10. Accordingly, we direct that in the event of arrest, the petitioner no. 2 viz., **Suhindita 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 she shall deposit her passport, if any, within 48 hours from date before the trial Court and shall offer herself for interrogation as and when necessary. She shall appear before the jurisdictional court and pray for regular bail within four weeks from date.

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

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