

28.08.2024
SL No.24
Court No.29
P.A. - DK
Allowed

CRM (A) 2917 of 2024

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure corresponding to Section 482 of BNSS, 2023 in connection with Chinsura Police Station Case No. 493 of 2023 dated 10.10.2023 (G.R. 2877/23) under Sections 420/406/465/467/468/471/120B of the Indian Penal Code, pending before the Learned Chief Judicial Magistrate, Hooghly.

And

In the matter of : **Sumanta Bhattacharyya.**

- Petitioner.

Mr. Sandip Chakrabarty
Mr. Partha Mukherjee
Mr. Soumya Bhatto
Mr. Koustav Das

.....For the Petitioners.

Ms. Anasuya Sinha,
Ms. Dattatreya Dutta

....For the State.

- 1.The petitioner is the Principal of Hooghly Engineering & Technology College (hereinafter referred to H.E.T.C.). It is submitted on behalf of the petitioner that after the petitioner came in management of the college on and from 2017, the de facto complainant belonging to the earlier governing body has lodged a false complaint alleging misappropriation.
2. It is submitted that the petitioner stands on the same footing as Saktibrata Roy and others who have been granted anticipatory bail by a co-ordinate bench in CRM(A) 1052 of 2024 on 10th April, 2024 and on the parity of reasoning he should also be granted anticipatory bail.

3. The petitioner had made alterations in the Memorandum of Association and without authority of law removed the erstwhile Principal of the college.
4. Learned A.P.P appearing on behalf of the State submits that the applicants in CRM(A) 1052 of 2024 has categorically stated that the former Principal Dr. Sumanta Bhattacharya in collusion with others had misappropriated funds of the college. Admittedly, the present petitioner was the former Principal and he is also the Principal appointed and continued in the same post on and from 2017 after new governing body was formed.
5. It is submitted that in view of fabricating the Memorandum of Association and alteration made in the said document without authority of law the prayer for anticipatory bail may be denied.
6. We have read the order dated 10th April, 2024 passed in CRM(A) 1052 of 2024 carefully. It appears that the objections of the State is similar and identical to the objections raised today save and except that in second paragraph of the previous order it appears that the Learned Counsel for the petitioners in CRM(A) 1052 of 2024 submitted that the present petitioner who was the former Principal in collusion with others misappropriated the funds of the college.
7. Saktibrata Roy and others, the applicants in CRM(A) 1052 of 2024 claimed to be the office bearers and staff of the college namely H.E.T.C and took over the college from 2017. The present petitioner indisputably is the Principal of the college and the appointment of the Principal are purported to have

been made under the altered Memorandum of Association which according to the de facto complainant is a forged document and such alteration had taken place without following the relevant provisions. However, the allegations with regard to misappropriation of funds has been dealt with in the following words:

“We have gone through these changes in the Memorandum of Association. By these alterations the word “Institute” has been substituted by the ‘Institution/Colleges’ in various clauses of the Memorandum of Association. However, Clauses (o) & (p) to the Memorandum of Association which deal with the safe custody of funds & maintenance of books of accounts remained unaltered. For better appreciation, Clause (o) and Clause (p) of the Memorandum of Association are set out hereinbelow:-

“o) Safe Custody of funds:

The Executive Committee of the society shall be responsible safe custody of the funds and assets of the society. The funds of the society shall be kept in banks/post office can be invested in any securities as specified under Section 20 of the Indian Trust Act, 1882.

p) Books of Accounts, Inspection of & Audit:

The books of accounts and other statutory books shall be kept at the registered office of the society and shall be kept open for inspection of the members of the Governing Body during usual office hours and the same shall be kept open for inspection of the members of the society at such time and place as the G.B. directs or a written request made by any member. The society

shall maintain accounts which will be audited annually by a qualified auditor/auditors.”

A conjoint reading of the aforesaid clauses show ven in the altered Memorandum of Association it is the Executive Committee of the Society i.e. H.E.T.C.S. which is responsible for the safe custody of the funds and the assets of the Society. Books of Accounts and statutory books are also to be kept in the office of the Society. Judged from this perspective, we are of the opinion alleged alterations made do not impact the power and authority of the Governing Body of H.E.T.C. to be the custodian of the funds, books of accounts and statutory books of the Institute.

Crux of the allegations against the petitioners relates to illegal removal of the principal of the college. A writ petition was instituted by the said Principal which we are informed has subsequently been withdrawn. Legality of removal of an incumbent from the post of Principal cannot be the subject matter of a criminal investigation. The other parts of the allegation are illegal siphoning of funds of the college to accounts which were opened without the knowledge of the society concerned. One of such accounts has been identified and the transferred sum is still lying in the said account.

It is open to the Investigating Agency to freeze the unauthorized account in accordance with law. Custodial interrogation is not necessary for such purpose. Till date, no other account unauthorizedly opened by the petitioners has been identified. Petitioners undertake to cooperate with the investigation in this regard.

The substratum of the dispute is essentially a fight over the management and affairs of the society and/or the educational institutions under its supervision.”

8. The aforesaid considerations are also relevant in so far as the present writ petition is concerned and in such circumstances we are of the opinion that custodial interrogation for progress of investigation is not necessary
9. Accordingly, we direct that in the event of arrest, the petitioner, namely Sumanta Bhattacharya shall be released on bail upon furnishing a bond of Rs. 10,000/- with two sureties of like amount, one of whom must be local, subject to the satisfaction of the arresting officer and also to comply with the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973 corresponding to Section 482(2) of the BNSS, 2023. The petitioner shall meet the Investigating Officer once in a fortnight till the submission of the final report. The report filed by the Investigating Officer is kept to the record.
10. It is further directed that the present accused petitioner shall appear before the learned Chief Judicial Magistrate, Hooghly in connection with G.R. Case No. 2877 of 2023 within two weeks from date. In the event of non-compliance of any of the conditions, the anticipatory bail shall stand automatically cancelled without any further reference to this Court.
11. Accordingly, the application for anticipatory bail of the petitioner is allowed and the same is accordingly disposed of.

12. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Soumen Sen, J.)

(Uday Kumar, J.)