23.12.2024
(D/L 28)
Ct. No.1
(Allowed)
(BKN)

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI

C.R.M.(A) 991 of 2024

In Re:- An application for anticipatory bail under Section 482 of the B.N.S.S., 2023 corresponding to Section 438 of the Cr.P.C., 1973 in connection with Matigara P. S. Case No. 513 of 2024 dated 26.08.2024 under Sections 316(2), 318(4), 336(2)(3), 338, 340(2), 341(1), 61(2) of the B.N.S., 2023 corresponding to G.R. Case No. 2968 of 2024, currently pending before the Additional Chief Judicial Magistrate, Siliguri, Darjeeling.

In the matter of : Sarika Devi & Anr.

... Petitioners

Mr. Sourav Ganguly,
Mr. Deborshi Dhar,
Mr. Gopal Roy,
Ms. Rishita Chakraborty

... for the petitioners

Mr. Abhijit Sarkar,
Mr. Ujjwal Luksom
Mr. Biswarup Roy

... for the State

1. Heard learned counsel for the petitioners and the learned counsel for the State.
2. The sum and substance of the allegations levelled by the complainant is that the complainant along with another person, namely Sanjay Pandit has given to the accused (a doctor) Rs. 40,00,000/- + Rs. 4,00,000/-, being a total sum of Rs. 44,00,000/- when the doctor (petitioner no. 2) was in distress as regards running of his hospital/nursing home named as “CARE N CURE NURSING HOME”. The petitioner no. 2 having accepted

such financial assistance was not refunding the same. To resolve the issue the defacto complainant and the said Sanjay Pandit were inducted as partners to the extent of fifty per cent share in profit of the partnership business. The petitioner no. 2, however, has not changed the identity of the business. He is continuing to operate the business under the same name as a sole proprietorship without modifying or changing the trade licence. He is also availing financial benefits from the banks representing the business of the nursing home as a sole proprietorship. The present petitioner no. 2 is also concealing the actual profit of the venture and misappropriating the profits in another venture a nurses training centre for his own benefit, to the exclusion of the other partners. The complainant has made several demands for details of the accounts and profits so as to ascertain whether they were being paid their due share in the profit to the extent of their share in the partnership firm, which also has been denied to the defacto complainants. It is under such circumstances that the criminal prosecution has been lodged by way of an F.I.R.

3. The learned counsel for the petitioners has submitted that the prosecution has been lodged on extraneous considerations. The defacto complainants are under the false notion that the petitioners are making more profit

than what has been disclosed and the F.I.R has been lodged for ascertaining the accounts and claiming more share in the profits of the business. The prosecution has been lodged, even though the partnership agreement contains an arbitration clause. The dispute which is sought to be raised is predominantly civil in nature and, therefore, resort to a criminal proceedings is not sustainable. It is further submitted that in the F.I.R itself the defacto complainant has stated that after entering into the partnership business they were happy with the manner in which the business was proceeding. Four years after such agreement the present prosecution has been lodged. Since cheating is not alleged at the initial stage allegations to this extent on being dissatisfied with the profit sharing subsequently would not be sustainable in view of the settled legal position in this regard. It is further submitted that the petitioner has been made an accused of the offence under Sections 406 and 420 I.P.C corresponding to Section 316(2) and 318(4) of the B.N.S, 2023 which cannot co-exist.

4. The learned A.P.P has opposed the prayer for bail and has at the very outset fairly submitted that in so far as the petitioner no. 1, wife of the main accused, he is unable to find any specific allegation levelled against her.

5. However, with respect to the petitioner no. 2 he submits that he is a habitual offender. Being a doctor he enjoys a position of perceptible trust in society and relying upon such perceptible trust he has duped another person also in similar manner, which fact emerged in the course of investigation as per case diary wherein another complaint of similar nature has been found by another person. The same was lodged after lodging of the present case. It is submitted that, therefore, he is under instructions by the prosecution that custody of the petitioners are required.
6. Considering the rival submissions we have gone through the partnership agreement which forms the basis of all the allegations levelled against the present petitioners by the present complainant. We *prima facie* observe that there are specific clauses in the agreement namely, Clause 1, 17 and Clause 18 thereof which specifies that the name and style of the firm constituted as a partnership firm shall continue to be "CARE N CURE HOSPITAL". The partnership agreement did not *prima facie* contemplate any in name change.
7. Para 17 and 18 of the agreement *prima facie* shows that the management and control of the firm was to be exercised by all the partners jointly or severally on the basis of a resolution taken by all the partners. But we do not find any such resolution has been referred to by the

defacto complainant. The defacto complainant has also not referred to any agreement between all partners as *prima facie* contemplated in Clause 18 of the partnership agreement as regards change in modus of operation of any bank accounts in any new manner other than what it has been done earlier prior to the partnership agreement.

8. For the purposes of granting anticipatory bail we find that the offences alleged are predominantly document based offences. The documents have been annexed by the complainant to the F.I.R. The petitioner himself is a doctor having deep root in the society. We are of the opinion that there is no chance of petitioners fleeing away. There is no allegation whatsoever that the petitioner has made any attempt to influence any witness or tamper with evidence. The submission of the petitioners' counsel that the nature of allegations alleged are predominantly civil in nature also merits consideration in view of our observations, above. We, therefore, are of the opinion that the petitioners are entitled to be granted anticipatory bail.

9. Accordingly, it is directed that in the event of arrest the petitioners shall be released on bail upon furnishing a bond of Rs. 25,000/- each, with two sureties of the like amount each, one of whom must be local, to the satisfaction of the Arresting Officer and subject to the

conditions as laid down under Section 438(2) of the Code of Criminal procedure, 1973.

10. It is further directed that the petitioner no. 2 shall not tamper with evidence and/or influence the witnesses in any manner whatsoever and shall meet the Investigating Officer once every week and shall not leave the jurisdiction of the concerned police station without obtaining prior permission of Investigating Officer.
11. In the event, the petitioner no. 2 fail to comply with the aforesaid directions without any justifiable cause, the learned Court below shall be at liberty to cancel their bail without any further reference to this Court.
12. Accordingly, the prayer for the anticipatory bail is allowed.
13. Within 15 days from today petitioners are directed to appear before the I.O. along with a server copy or certified copy of this order.
14. The application being CRM(A) 991 of 2024 is disposed of.
15. Case Diary be sent back immediately.
16. The Arresting Officer is hereby directed to act upon the server copy or certified copy of this order.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)