

18.04.2024
as/tkm/ct 28
sl no. 94-99

C.R.M. 5280 of 2021
with
C.R.M. 5401 of 2021
with
C.R.M. 5402 of 2021
with
C.R.M. 5403 of 2021
with
C.R.M. 7305 of 2021
with
C.R.M. 7657 of 2021

In Re : An application for cancellation of bail under section 439 (2) of the Code of Criminal Procedure

And

In Re : Serious Fraud Investigation Office petitioner

Mr. Rajdeep Majumder
Mr. Mayukh Mukherjee
Mr. S Ghosh
Ms. Isabella Pal
Ms. S Roy

.....for the petitioner

Mr. Satadru Lahiri
Mr. Abhirup Chakraborty
Mr. P Das

.....for OP in CRM 7657/21

Mr. Soubhik Mitter

.....for the OP in CRM 5280/21

Mr. Avik Ghatak
Mr. A Rakshit

.....for OP in CRM 5401/21

Mr. Anirban Duta
Mr. Mrinal Palana

.....for OP no 2 in CRM 5403/21

Mr. Sandipan Ganguly, Sr. Adv
Mr. Dipanjan Dutta
Mr. R K Kalawatia

.....for OP in CRM 7305/21

Mr. Ayan Bhattacharya
Mr. S Nag

.....for OP in CRM 5402/21

1. The batch of cases gives rise to similar question of law i.e. where restrictions under Section 212(6) of the Companies Act would stand in the way of bail to the opposite parties/accused. Brief sketch of facts leading to the instant proceedings is as follows:-

2. Pursuant to the direction by the Ministry of Corporate Affairs, SFIO initiated investigation with regard to the affairs of Prayag Group of Companies. In course of investigation, involvement of the opposite parties/accused in the alleged offences transpired. They were interrogated and upon conclusion of investigation complaint was filed.

3. Learned Judge took cognizance and issued summons upon the opposite parties/accused. They appeared before the trial court and were released on bail. The bail orders are presently assailed in these proceedings the ground that the court had not taken into consideration the restrictions under Section 212 (6) of the Companies Act.

4. Section 212 (6) of the Companies Act reads as follows:-

“(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless-

- (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and*
- (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.”*

5. The twin requirements imposed on the court while considering the prayer for bail are as follows:-

- a) Public Prosecutor must be given an opportunity to oppose the application; and
- b) When the Public Prosecutor opposes the application, court must be satisfied that there is reasonable ground to believe that the accused is not guilty of the offence and is not likely to commit any offence while on bail.

The aforesaid provision is *pari materia* to the restrictions of bail in Section 37 of the NDPS Act and Section 45(1) of PMLA Act.

6. Mr. Majumder, learned Advocate for the petitioner/SFIO submits that Judge did not give opportunity to the Public Prosecutor to oppose the bail applications. He also submits the Court had not applied his mind and recorded its satisfaction that the accused were not guilty of the alleged offences or are not likely to commit similar offence. Accordingly, the bail orders suffer from patent illegality and are liable to be set aside.

7. Learned Advocates for the opposite parties/accused submit their clients had co-operated in the course of investigation and had not been arrested. Under such circumstances, in view of the observations in paragraph '89' of *Satender Kumar Antil Vs. Central Bureau of Investigation & Anr.*¹, the restrictions under Section 212(6) of the Companies Act shall not apply.

¹ (2022) 10 SCC 51

8. Section 212(6) of the Companies Act imposes restrictions in the matter of bail. The provision mandates the court to give an opportunity of hearing to the Public Prosecutor and in the event Public Prosecutor opposes the bail, the court has to record its satisfaction that the accused is not guilty of the offence or is not likely to commit similar offence in future before releasing the accused on bail. It is true in the present case the court did not record such satisfaction while granting bail to the opposite parties/accused. However, it is admitted their bail applications were heard in presence of the Public Prosecutor and the latter did not raise objection during the hearing.

9. Moreover, during investigation opposite parties/accused had co-operated with the investigating agency and had been interrogated. They had not been arrested during investigation. In *Satender Kumar Antil* (supra), the Apex Court held as follows:-

*“89. We may clarify on one aspect which is on the interpretation of Section 170 of the Code. Our discussion made for the other offences would apply to these cases also. To clarify this position, we may hold that if an accused is already under incarceration, then the same would continue, and therefore, it is needless to say that the provision of the Special Act would get applied thereafter. It is only in a case where the accused is either not arrested consciously by the prosecution or arrested and enlarged on bail, there is no need for further arrest at the instance of the court. Similarly, we would also add that the existence of a *pari materia* or a similar provision like Section 167(2) of the Code available under the Special Act would have the same effect entitling*

the accused for a default bail. Even here the court will have to consider the satisfaction under Section 440 of the Code.”

[Emphasis supplied]

10. The aforesaid observations clearly propound that the restrictions to bail in the special statute like the present one may not apply in those cases where the accused had co-operated during investigation and had not been consciously arrested.

11. For the aforesaid reasons, we are of the opinion objection raised by SFIO with regard to non-consideration of restrictions of Section 212(6) of the Companies Act while granting bail to opposite parties/accused is unmerited and the bail orders do not suffer from any illegality on such score.

12. We also note that the opposite parties/accused have strong roots in society and there is no chance of their abscondence.

13. Under such circumstances, we are not inclined to interfere with the bail granted to the opposite parties/accused and the applications are rejected.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)