

6. 28.07.2014

This is an application for bail under Section 438 of the Cr.P.C.

2. The petitioner is an accused in G.R. Case No.1397 of 2013 in the court of the learned S.D.J.M., Sambalpur arising out of I.C.C. Case No.59 of 2012 corresponding to Dhanupali P.S. Case No.175 of 2013. The case is registered under Sections 419/420/34 of I.P.C.

3. The allegation against the petitioner is that he along with his parents constituted a partnership Firm in the name and style 'Basic Solution Provider' of which the present petitioner is the Managing Director. The Firm circulated leaflets alluring prospective investors to deposit money with the Firm offering monthly interest on the deposit at the rate of 3% with further assurance that the capital shall be paid back in installments within one year. The complainant/informant being allured by such offer deposited a sum of Rs.3,50,000/- (Rupees three lakh fifty thousand) with the Firm on 04.11.2010. But there was default in making payment of interest as well as principal. Later it was found that the office had been closed and the partners of the Firm had absconded.

4. The petitioner has stated in the bail application that he has been falsely entangled in the criminal case. However, he admits that he is the Managing Director of the Firm and customers invested money with the Firm and they used to get their dividends. Due to loss of its entire capital in share market, in course of time the Firm suffered financial crisis. However, this matter was intimated to the investors in general assuring that the invested capital would be returned within three years. It is

contended that the petitioner had no mens rea and that it is due to the financial crisis the Company has failed to repay the invested amount to the investors.

It is also contended that the petitioner has already been granted anticipatory bail by this Court in some other cases initiated at the instance of other investors. The present case being for the same cause of action, it is submitted, the petitioner is entitled to get anticipatory bail in this case as well. It is also stated in the petition that the petitioner being a permanent resident of Sambalpur having movable and immovable properties, there is no chance of absconding to avoid the trial and that the nature of the prosecution allegation is such that there is no chance of tampering with evidence.

5. Learned counsel for the State raises strong objection against the petitioner's prayer for anticipatory bail. It is further submitted that in case the prayer for anticipatory bail is allowed then the Court may impose a condition by directing the petitioner to deposit at least the principal amount that the informant has paid to the partnership Firm of which the petitioner is, admittedly, the Managing Director so that the interest of the innocent informant/complainant would be protected.

6. It is true that in some similar cases such as G.R. Case Nos.749 of 2011, 1358 of 2013 and 1373 of 2013 in the file of the learned S.D.J.M., Sambalpur, the petitioner has been granted bail under Section 438 Cr.P.C. by this Court, these cases have been instituted on the complaint of individual investors. Now it comes to notice that there

are other several investors on whose complaint number of separate G.R. cases have been registered on identical allegation made against the partners of the Firm. It appears that there must be large number of such cases registered against the petitioner and other partners of the Firm. The incident took place in the year 2010.

7. It cannot be said to be a case of mala fide action taken by the complainant/informant because of any rivalry. His petition for anticipatory bail allowed in some other cases registered on identical allegations cannot be said to have rendered him entitled to bail in the present case. As rightly submitted by the learned counsel for the State the interest of the investor should be taken into consideration while dealing with the petitioner's bail application who wants to avoid arrest to save his dignity and prestige in the society. This is more so when it has come to notice that a number of investors have come forward to initiate criminal action against the petitioner and other partners of the Firm. The petitioner is the Managing Director of the Firm with which the complainant/informant has invested money to the tune of Rs.3,50,000/- in the year 2010 which fact is not denied by the petitioner. Therefore, considering all these facts and circumstances, this Court allows the petition for anticipatory bail subject to the petitioner depositing a sum of Rs.3,50,000/- (Rupees three lakhs fifty thousand) before the learned S.D.J.M., Sambalpur which shall be kept in a fixed deposit in any nationalized Bank till final disposal of the criminal case and the amount in deposit

with accrued interest shall be made payable subject to the final result of the criminal case.

8. Accordingly, the prayer for anticipatory bail is allowed. On the event of the petitioner's arrest, the arresting officer shall release the petitioner on bail subject to such terms and conditions as the officer would deem just and appropriate, including the condition regarding deposit of the amount as indicated above.

The BLAPL is accordingly disposed of.

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R. Dash,J.