

In the matter of an application for bail under Section 438 of the Code of Criminal Procedure filed on 16th April, 2012 in connection with Lake P.S. Case No. 293 of 2011 dated 09.12.2011, under Sections 304/308/283/36 of the Indian Penal Code read with Sections 11C/11L and 11J of the West Bengal Fire Service Act 1950.

In re: Priti Sureka And Petitioner.

Mr. Pradip K. Ghosh, Sr. Advocate,
 Mr. Sudipto Moitra,
 Mr. Amit Bhattacharjee,
 Mr. Utpal Mazumdar,
 Mr. Sandipan Ganguly,
 Ms. Rupa Bhadyopadhyay,
 Ms. Sreyashree Biswas,
 Mr. Pushanvar,
 Mr. Sanjoy Bose,
 Mr. Souvik Majumdar,
 Ms. Tapati Chatterjee

... for the Petitioners.

Mr. Debasish Roy, Ld. P... for the State.

The petitioner apprehending arrest in connection with Lake Police Station Case No. 293 dated 09.12.2011 applied for anticipatory bail before the Learned Sessions Judge, Alipore, 24-Parganas (South). However, the learned Court below having rejected petitioner's such prayer, she has now approached this Court.

Mr. Pradip Ghosh, the learned Senior Counsel, appearing on behalf of the petitioner asserted the following facts in support of our prayer for pre-arrest bail.

a) In May 2009 the petitioner was inducted in the Board of Director of AMRI Hospital Limited, a Public Limited Company as an Additional Director on being nominated by Emami Limited, a Company which held 66% shares in AMRI Hospital Limited. Subsequently in May 2009 she became a whole time Non-Executive Director.

The petitioner in her capacity as the Non-Executive Director of AMRI, except attending the Board meetings, never took part in day-

to-day administration and the management of the affairs of the said Hospital, for which a Managing committee was specially constituted and that committee was entirely responsible for the same.

b) There is no dispute that during investigation the materials collected by the police clearly indicate that while the Board meeting used to be held once in three months, the managing committee headed by the Managing Director of the Hospital Dr. Mani Chettri and 10 others including two directors S.K. Todi and Dr. Pranab Das Gupta used to hold meetings at every weekend to take various decisions for running the said hospital.

c) The investigation is over and charge-sheet has been submitted and as it appears from the charge-sheet the prosecution has proposed to examine as many as 455 witnesses and exhibit several documents in support of its case and thus there is remote possibility of trial being concluded shortly.

d) Out of total 16 charge-sheeted accused 13 are on bail. While the High Court granted bail to 6, the Court below granted bail to 7 others.

The 5 accused who have been granted bail by the High Court are Mr. Radheshyam Agarwal, Mr. Radheshyam Goenka, Mr. Prashant Goenka, Mr. Ravi Todi and Mr. Manish Goenka and like the present petitioners they are Non-Executive Directors, except the S.K. Todi who is not only a member of the Board of Directors but also is a member of the managing committee of the Hospital.

Out of remaining 7 co-accused who have been granted bail by the Court below Dr. Mani Chettri was not only the managing Directors of the AMRI, he also headed the managing committee and Dr. Pranab Das Gupta was member of both the Board of Directors and the managing committee. Similarly the Court below granted bail to Dr. Satyabrata Upadhyay, Vice-President Project and the Chairman of the Fire Safety Committee, Mrs. Preetha Banerjee, Vice-

President, Administration, Mr. Dayanand Agarwal, a Director of the Company, all three are the members of the managing committee and Mr. Sanjib Pal, AGM Maintenance of the Hospital at Dhakuria and Mr. Sajid Hossain.

e) According to the statement of the witnesses whom the prosecution proposed to examine during trial the overall activities of the Hospital was controlled and managed by the said managing committee and all decisions about such activities used to be taken by them in weekly meetings held on at the weekend on every Saturday and thus the petitioner is standing on much better footing than those who have been granted bail by the Court below and similar footing with the co-accused who have been granted bail by this High Court.

f) The petitioner is a married lady and is a mother of two minor-children. Apart from that she has been suffering from various diseases namely Auto Immune Tissue Disorder associated with Pigmat Epitheopathy Osterporosis and Ostero Malacea and from Ophthalmic problem diagnosed as acute Posterior Multi Focal Placoid in both eyes.

Mr. Ghosh in support of his submissions relied on a decision of the Supreme Court in the matter of **Siddharam Satlingappa Mhetre vs. State of Maharashtra & Ors.**, reported in (2011) 1 SCC (Cri) 514 and referred what have been held by the Apex Court in paragraphs 112 and 113. The same are quoted below:

"112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences.

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The Court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the fair, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused.

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record."

Then Mr. Ghosh concluded his submissions urging that in the charge-sheet neither any specific allegation has been made against the petitioner except that she being a Director of the AMRI Hospital is responsible for the fateful incident nor any role has been attributed to her in the commission of the alleged offences or in any omission and submitted that this is not one of such exceptional case where taking this petitioner into custody is imperative in the facts and circumstances of the case.

The learned Public Prosecutor, Mr. Debasish Roy in his submissions never disputed rather conceded the case of the petitioner that she is standing on same

footing with the accused persons who are the Directors of the AMRI Hospital and granted bail by this Court and on much better footing than those accused namely Dr. Mani Chettri, the Managing Director, Dr. Pranab Das Gupta and Mr. Dayanand Agarwal, the Directors of AMRI Hospital and 4 other co-accused who were granted bail by the Court below. However, he contended that those accused persons were released on bail after their arrest but the petitioner is seeking a pre-arrest bail. Then he submitted that the State has challenged the order of granting bail to all 5 co-accused by filing SLP before the Supreme Court and in connection therewith notice has been issued.

In his reply, Mr. Ghosh contended that the fact that the State has filed Special Leave Petitions and the Hon'ble Supreme Court has been pleased to issue notice thereon does not at this stage affect the validity of the decisions rendered by this Hon'ble Court, in respect of the said Directors who were granted bail and in this connection he referred the decision of the Supreme Court in the matter of **Kunhayahmed & Ors. vs. State of Kerala & Anr.**, reported in **(2006) 6 SCC 359**.

Considering the respective submissions of the learned Counsels of the parties, we find there is no dispute rather it is an admitted position that the present petitioner is standing on same footing with the co-accused who have been granted bail by this Court and on much better footing with the co-accused, who have been granted bail by the Court below. We also find that from the statement of the witnesses that the managing committee consisting of 11 members and headed by Dr. Mani Chettri, the Managing Director of the hospital was there for the purpose of looking after the overall day-to-day activities of the hospital. The key man in the said managing committee Dr. Mani Chettri has been initially granted interim bail after a short detention in custody by the court below and then his bail was confirmed. Although it is the case of the prosecution that Dr. Chettri was granted bail on compassionate ground but it would be more apposite to mention that from the day

one his prayer for bail was opposed by the State not only by filing written objection but by its counsel while arguing the matter before the Court below. Till date State has not moved any Court for cancellation of bail of Dr. Chettri. So far as the other co-accused are concerned who are in the managing committee the State moved this Court for cancellation of bail only after we granted bail to some other co-accused with a specific observation that the order of granting bail to them was never under challenge. We also find from the perusal of the materials collected during investigation that no specific role has been attributed to the present petitioner in running the said hospital and only materials against her is this that she being a member of Board of Directors is responsible for the disaster. Besides above nothing could be brought to our notice from the side of the State to show that the petitioner being a non-executive director was responsible for performing any particular thing and her wilful non-performance lead to the aforesaid incident.

Now coming to the question as regards to the petitioner's prayer for pre-arrest bail we may refer one very pertinent observation of the Hon'ble Supreme Court in the case of **Siddharam Satlingappa Mhetre vs. State of Maharashtra & Ors. (supra)**. What have been held by the Apex Court as a note of caution is quoted below;

Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

Now testing the case of the petitioner in the light of the aforesaid observation of the Apex Court, we are of the opinion it is

not one of such exceptional case where taking the petitioner in custody is essential. The investigation of this case is over, charge-sheet has been submitted. Charge-sheeted co-accused standing on same footing as well as those standing on worst footing with the present petitioner are on bail. Quite a large number of witnesses have been examined and several documents were seized, after such thorough investigation in fact there is a very little chance, as it appears from the case of the prosecution, the custodial interrogation of the petitioner would bring fresh materials. Furthermore the petitioner is a middle aged married lady and the nature of the allegation and the materials collected against her are not such which warrants her detention in custody. Accordingly, her prayer for anticipatory bail stands allowed.

In the event the petitioner is arrested in connection with this case she shall be released on furnishing a P.R. Bond of Rs. 10,000/- to the satisfaction of the Investigating Officer of the case and subject to the condition enumerated in sub-section (2) of Section 438 of the Code of Criminal Procedure and on further condition she shall surrender before the regular Court within a fortnight.

(Ashim Kumar Roy, J)

(Toufique Uddin, J)