

IN THE COURT OF METROPOLITAN MAGISTRATE 4TH COURT, CALCUTTA

PRESENT: SK JAFAR ALI, (WBJS), J.O. Code No. WB/01347

GRS Case No. 4305/2013

CIS/GRS/4305/2013

Order Dated: 05.09.2023

Record is taken up on the basis of put up petition.

The Ld. Advocate of the accused filed a bail petition on behalf of the accused namely, Goutam Kundu who is in Judicial Custody.

Accordingly, the instant case record is taken up for hearing bail petition of the accused.

The Ld. Advocate of the accused submitted that the accused has been produced before the Ld. Court of the Ld. CMM, Calcutta on 27.06.2023 on being shown arrest and since then he has been in custody. He further contended that it is alleged by the authority of EPF that the accused had not deposited the amount deducted from the employees of the company of which the accused is the director and the instant case was filed by the said authority on 08.12.2013. He further contended that the accused had already resigned from the company on 31.12.2012 but he has been entangled in various cases. He further contended that the accused was the director of Rose Valley Company and the same is a private company and so section 409 of IPC cannot be sustained against him. He further contended that the instant case is triable by the court of Magistrate and not by the court of Ld. Special Judge. He referred one case law of the **Hon'ble Calcutta High Court** in the case of **Jasoda Glass and Silicate and others -Vs- Regional Provident Fund Commissioner and others** decided on 10.10.2021 in connection with FMAT No. 875/1992. He prayed for bail of the accused considering his detention in the custody.

On the contrary, Ld. APP submitted that she has strong objection against the bail petition of the accused and she referred the orders of Ld. CMM, Calcutta passed in connection with the instant case whereby rejected the bail applications of the accused.

Perused the materials in record. Considered

On perusal of the same, it is found that admittedly the accused was the director of Rose Valley Patrika Ltd. and the documents as collected by the Police shows that the accused had already resigned from the said company on 31.12.2012. It is further found from the record that the allegation against the accused is that he being the director of M/s Rose Valley Patrika Ltd. had deducted a sum of Rs. 15,80,292/- from the wages/salaries of the employees as the share of the employees for Provident Fund Contribution for the period from March, 2012 to October, 2013 but did not deposit the same to the EPFO and dishonestly misappropriated the money. This case is lodged only against the accused and the charge sheet also filed only against this accused.

I have also perused and considered the case law as referred by the Ld. Advocate by the accused and also considered the orders passed by the Ld. CMM, Calcutta in connection with instant case vide order dated 12.07.2023, 24.07.2023 & 19.08.2023.

Considering the facts and circumstances of the instant case this court is inclined to refer the case law of **Dilip Kumar Das -Vs- State of West Bengal and another** as reported in **2016 SCC OnLine Cal 686**, wherein the accused being officer of Cooperative Society was charged with an allegation u/s 409 of IPC and he was ordered to be tried by Ld., Special Court as established under West Bengal Criminal Law Amendment (Special Court) Act, 1949 but the **Hon'ble Calcutta High Court** has held that "By applying the above interpretation of law in the present case, I am of the view that the petitioner cannot be prosecuted as public servant for the offence under Section 409 of the Penal Code, 1860 before learned Judge, Special Court, established under the West Bengal Criminal Law Amendment (Special Court) Act, 1949. However, the petitioner is liable to be prosecuted for the offence under Section 409 of the Penal Code, 1860 before the court of learned Magistrate."

This court considering the above mentioned case law, is of the view that the instant case is to be tried by this court as the accused is/was admittedly the director of a private company and he cannot be regarded as a public servant for the purpose of section 409 of IPC. This court also like to refer the case laws as decided by the **Hon'ble Calcutta High Court** in connection with **CRR No. 425 of 2018** decided on **20.02.2021** and **CRR 1638 of 2016** decided on **21.06.2019**.

Therefore, in view of the decision of the Hon'ble Supreme Court as held in the case of **Satender Kumar Antil**, this court is inclined to grant bail to the accused of Rs. 2000/- with one surety I.d. to J/C till 15.09.2023.

If on bail, on 15.09.2023 for appearance and copy.

D & C by me.

Sd/-

MM, 4th Court, Calcutta

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MM, 4th Court, Calcutta