

**Spl T.R. 08 of 2022**

**Order No. 11**

**Dated 10.04.2023**

The record is put up by petition with a prayer of bail.

Bail application on behalf of the accused/petitioner Samsuddin alam is filed with fresh Vakalatnama in favour of Ld. Advocate Mr. Subrata Dey.

The copy of the bail application is seen by Ld. PP-in-charge with objection. The record is taken up for hearing the bail application.

Ld. Adv for petitioner, submits inter alia that the status of the petitioner Samsuddin Alam as it appears from the engagement letter of his job issued by defacto complainant West Bengal Minorities Development Corporation (W.B.M.D.C), does not come under the scope of Section 409 of IPC.

If that be the fact then Section 409 IPC does not attract against this petitioner. At best Section 408 of IPC will be attracted and the same is triable by Magistrate not by the Special Court.

It is further argued that this accused has been custody since 24.07.2022 and there no chance of immediate commencing trial as because one of the accused absconding, against him, proclamation and attachment have not yet been executed.

It is further argued that Id festival is forthcoming and considering this aspect along with legal position of law, the accused/petitioner be enlarged on bail with any condition as the Court may deem fit.

Ld. PP-in-charge in his turn, has assailed the points raised by the Id. Defence Counsel, stating that the status and activities of this petitioner very much falls within the scope of Section 409 IPC.

It is further argued that he is the main perpetrator who has misappropriated huge public money. So his bail should be rejected.

Having heard both sides and having perused the case record and case diaries, it appears that this accused is king pin who has allegedly perpetrated the crime by mis-appropriating or defalcating the huge amount of Rs. 82,31,685/- as a public money, supposed to have been used by W.B.M.D.C. for all round development including financial independence of the minorities communities which is a purely public act.

It is pertinent to recapitulate the section 409 of IPC which enunciates-- “whoever, being in any manner entrusted with property, or any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, broker attorney or agent, commits criminal breach of trust in respect that property, shall be punished.....”

Section 409 itself embodies or gives wide scope, offence like criminal breach of trust not only committed by public servant but also by banker, merchant or agent who being any manner entrusted with the property or with the domain over that property in his capacity as agent or public servant, commits that crime and Section 409 well be attracted.

In the instant case, if we look into the engagement letter of the petitioner, lying in page no. 183 of CD that this accused/petitioner Samsuddin Alam has been selected as filed Supervisor on

commission basis in the W.B.M.D.C and after taking interview he has been selected on that post as filed supervisor and his engagement is not an employment but status is a filed officer as commission agent which is purely on commission basis and he shall be paid remuneration at a certain percentage fixed from time to time by W.B.M.D.C on parentage of recovery to be made by him as per direction of the corporation. He had to discharge his duties as commission agent on his behalf of W.B.M.D.C.

It is clear that the money involved in W.B.M.D.C is a public money and purpose of use of that money to develop the of minorities communities in order to make them financial independent as a public work and this petitioner has been entrusted to collect the loan installment from the beneficiaries of D.L.S. groups of his command area of Hemtabad and Raiganj block.

It was also his duty, after collection those installments, he was bound to deposit the loan collection amounts to the respective bank account of W.B.M.D.C instantly or latest by next working days.

He, with the help of other accused persons engaged by him, collected the installments of Rs. 82,31,685/- but did not deposit the same in favour of the account of W.B.M.D.C, rather mis-appropriated for his personal gain.

So, the prima facie case is made out that he being a field supervisor entrusted over the property herein collected loan installment amounts and the same has been mis-appropriated for his personal gain in the capacity of agent of said corporation which sufficiently comes within the purview of section 409 of IPC.

In this regard, I cited ruling **Krishna Rao Vs State of Uttar Pradesh, 1997 CRLJ 1129 (Allahabad High Court)** Hon'ble High Court held that there is an agreement in production of film, Right of film and distribution for exhibition remained with the complainant that being so that Film was the property of the complainant. In breach of the terms of agreement, the accused exhibited publicly without the consent of the complainant, then the accused committed the offence under Section 409.

In the instant case, the alleged act as revealed from the FIR, case diaries apparently comes within the purview of section 409 of IPC as an agent of that corporation.

That apart, he is the main perpetrator who has mis-appropriated such huge public money for his personal gain.

Considering the gravity of the offence and keeping in mind his role, I am not inclined to allow the bail prayer as such, prayer for bail stands rejected.

This Court is not obliterate to the execution of proclamation against another absconding accused Ekeramul Haque who happens to be the brother of this main accused Samsuddin Alam, has been still absconding though he filed an application before this Court under Section 438 of Cr.P.C. filed Criminal Misc Case no. 105 of 2023 during pendency of proclamation and attachment.

Non-execution report has been received from Raiganj PS regarding execution of WA but there is no whisper regarding the execution of proclamation and attachment.

I/C Raiganj is directed to submit a report regarding proclamation and attachment as already issued by this Court on 10.01.2023 so that accused to be proceeded expeditiously after exhausting the process against absconding accused and split up the record in respect of this absconding accused person.

Let a copy of this Order be sent to I.C. Raiganj PS for his perusal and strict compliance.

Return C.D.

Todate (20.04.2023) for production, I.O.'s report and further report.

At my own dictation

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Spl Addl. Dist. And Sessn 1<sup>st</sup> Court  
Raiganj, Uttar Dinajpur



