22.07.2025
Item No.01
Ct.No.34
Ap.
Allowed

C.R.M. (M) 908 of 2025

In Re : An Application for bail under Section 483 of the BNSS, 2023

And

In Re : **Niket Saraf**

... Petitioner.

Mr. Sekhar Kr. Basu, Sr. Adv.
Mr. Ayan Bhattacharjee, Sr. Adv.
Mr. Amar Dudhewala
Mr. Mayukh Mukherjee
Mr. Karan Dudhewala
Mr. Vikram Wadehra
Ms. Aasia Hasan
Ms. Akansha Yadav

... For the Petitioner.

Mr. Debasish Roy, Ld. PP
Mr. Joydeep Biswas
Ms. Nahid Ahmed

... For the State.

Mr. Kalyan Bandyopadhyay, Sr. Adv.
Mr. Niladri Bhattacharjee
Ms. Pramiti Bandyopadhyay
Mr. Soham Bandyopadhyay
Mr. Rahul Singh
Mr. Aditya Chaturvedi
Ms. Pallavi Chattopadhyay

...For the Applicant.

Heard learned counsels for the parties.

FIR was lodged against the petitioner and others on 7th March, 2025 by the defacto complainant Dream Tower Kolkata Private Limited alleging that the petitioner and his parents took an amount of Rs. 15.50 crores by entering into a joint venture agreement in respect of the land in dispute by producing forged documents of mutation and payment of khajna to demonstrate that the land belonged to them with the knowledge that the land actually belonged to the Kolkata Municipal Corporation (hereinafter referred to as the KMC). They also took an amount of Rs. 4 crores for transfer of shares of a company in the name and style of Saraf Infrastructure Limited but did not transfer the said shares to the complainant company. Several litigations followed. On demand of the defacto complainant for return of the money, they were threatened with dire consequences.

The facts ought to be placed for a clear understanding of the issue. In 2008, Raja Ram Saraf, since deceased, father of the petitioner and director/person in charge and responsible for day to day business of eight companies purchased the plot in question in the name of the companies and mutated their names in respect thereof. The companies entered into a development agreement with the defacto complainant and a term sheet was prepared to that effect on 18th August, 2011. A supplementary term sheet was also executed by and between the parties on 19th August, 2011. The directors of the defacto complainant company were added as directors of the eight land owning companies. The agreements nixed and the defacto complainant filed a suit for specific performance of contract in respect of both the agreements on 13th May, 2014. An application under Section 8 of the Arbitration Act was filed in the said suit pursuant to which the matter was referred for arbitration. In the meantime, mutation accorded in favour of the eight land owning companies was cancelled by the Joint Municipal Commissioner holding that the plot was acquired in 1930 and belonged to the KMC. The said order was assailed before this Court in a writ petition filed by one of the owner companies. It was submitted before the Court that KMC had taken possession of the property and transferred the same to the West Bengal Trade Promotion Organization. This Court directed the transferee not to part with possession of property without the leave of the Court. In the arbitration proceeding, the defacto complainant sought monetary award including refund of the amount paid by them. The arbitral award directed the respondent nos. 2 to 10 & 12 including the petitioner's father (respondent no. 10) to refund Rs. 15.50 crores to Dream Tower Kolkata Private Limited (defacto complainant). Respondents no. 10 & 12 were in addition, directed to refund Rs. 4 crores to the defacto complainant, both the amounts carrying simple interest @ 14% per annum. The claimants in the arbitration proceeding filed execution case for enforcement of the arbitral award and one of the award debtors paid Rs. 12 crores as full and final settlement of the claim towards him. The arbitral award has been challenged by the land owning companies before this Court. All the litigations are subjudice. In the meantime, Raja Ram Saraf expired and the defacto complainant filed an application in the execution case for substitution of the petitioner as his heir. The FIR was lodged on 7th March, 2025, i.e., after demise of Raja Ram Saraf.

Learned counsel for the petitioner has submitted that the eight companies were represented by the petitioner's father Raja Ram Saraf and though the petitioner may have been shown as one of the directors of the companies, he had no participatory role in the business of the companies, nor did he put his signature in any of the documents pertaining thereto. He has been sought to be substituted only after demise of his father who was responsible for the day to day affairs of the companies. He is not a party to the litigations pending between the defacto complainant and the companies and is not responsible for the acts alleged.

Learned counsel has placed reliance on the authority in Mohammed Ibrahim and others v/s. State of Bihar and Another reported in (2009) 8 Supreme Court Cases 751 in support of his contention.

Vehemently opposing the prayer, learned counsel for the State has submitted that the petitioner was one of the directors of the companies since 2011 and was responsible for the day to day affairs of the company since then alongwith the other directors. He alongwith others dishonestly induced the defacto complainant company to pay Rs. 15.50 crores in addition to Rs. 4 crores and have not refunded the money, thereby cheating the company to the tune of Rs. 19.5 crores. The land in question belongs to the KMC despite which it was sold out to the defacto complainant by the petitioner and others on a false representation that the land was owned by them. It is learnt from the deeds of conveyance that one Pulin Das, since deceased, sold out the property to the eight companies as owner thereof. The statement of the wife of Pulin Das recorded under Section 180 of the BNSS demonstrates that the witness is not aware about any land being owned by Pulin Das or his father or whether Pulin Das had received any money as sale proceeds of land in 2008-2009. Investigation is in progress and custodial interrogation of the petitioner is necessary to unearth the truth.

Learned counsel for the defacto complainant has opposed the prayer for bail and has submitted that the petitioner is the key person who compelled the defacto complainant to part with huge sum of money on false representation of title in respect of the plot in question. The money was taken on the basis of forged documents. Referring to paragraph 8 of the authority referred to above, learned counsel has submitted that disputes of civil nature may also contain ingredients of criminal offence as in the instant case and the instant case has to be treated as a criminal offence despite there being several civil litigations pending between the parties.

I have considered the rival contention of the parties and material on record.

It is not in dispute that one Pulin Das sold out the plot in question to the eight companies sometime in 2008. It was subsequently found that the land was vested with the State in 1930 and Pulin Das had no authority to sell out the same to the companies. The mutation was subsequently cancelled and possession taken by the KMC and handed over to the West Bengal Trade Promotion Organization. Several litigations are pending between the parties challenging the cancellation of mutation, for specific performance of contract and for execution of the arbitral award. Though the petitioner's name appears as one of the directors of the companies since 2011, his father appears to be the person who was responsible for the day to day affairs of the company. In the substitution application filed by the defacto complainant and others, it is clearly stated that the petitioner is now controlling the companies and taking all legal steps on their behalf as used to be done by his father before his death. This indicates that the petitioner stepped into the shoes of his father in participating in the affairs of the company only after his demise. The term sheets executed between the companies and the defacto complainant bear the signature of the petitioner's father and not the petitioner. The petitioner's name does not appear in the litigations pending between the parties. He is sought to be substituted in the place of his father after his father's demise.

Whether the erstwhile owner Pulin Das transferred title in respect of the plot in question upon demonstrating forged documents shall be adjudicated by the appropriate forum. The ingredients of criminal offence in the present matter as pointed out by learned counsel for the State are to be assessed in course of investigation. The Hon'ble Supreme Court has observed in the authority in Mohammed Ibrahim (supra) that when a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document is not execution of a false document as defined under Section 464 of the Code.

In the case in hand, the petitioner's name does not prima facie appear in the term sheets executed by and between the parties.

The petitioner is in custody since 28th June, 2025. Considering the material on record and extent of complicity of the petitioner in the alleged offence, this Court is of the view that further detention of the petitioner is not required and he may be released on bail subject to stringent conditions.

Accordingly, prayer for bail is allowed.

The petitioner shall be released on bail upon furnishing bond of Rs.10,000/- (Rupees Ten Thousand only) with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Alipore, subject to condition that he shall remain within the jurisdiction of the concerned Court and shall deposit his passport, if any, before the concerned Court. He shall meet the investigating officer once a week till completion of investigation and shall cooperate in investigation of the case. He shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

In the event the petitioner fails to adhere to any of the conditions stated above, the learned Court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.

It is made clear that the observation made in this order is solely for the purpose of consideration of the bail application and shall have no bearing on the merits of the case. The learned trial Court shall deal with the case on merits independently in accordance with law, without being influenced by any observation which may have been made in this order.

The application for bail, being CRM (M) 908 of 2025, is accordingly disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)