HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition Nos.2927 and 2928 of 2015

COMMON ORDER:

These two bail applications are filed under Sec.437 & 439 Cr.P.C by petitioners/A.1 and A.2 respectively consequent to dismissal of their bail applications in Crl.M.P.No.147 and 148 of 2015 by learned XIV Additional Chief Metropolitan Magistrate, Hyderabad and Crl.M.P.Nos.649 and 650 of 2015 by the learned Special Judge for Economic Offences, Hyderabad.

2) The factual matrix of the case is thus:

a. On the complaint given by Deputy General Manager, Canara Bank, Prime Corporate Branch, Secunderabad, the Superintendent of Police, CBI, BSFC, Bangalore registered a case in Crime No.RC.3(E)/2013-CBI/BSFC/ Bangalore against the petitioners and some other accused for the offences under Sec.120-B r/w 420, 468 & 471 IPC. The allegations in brief are that M/s.Deccan Chronicle Holdings Limited (for short "D.C.H.L"), Secunderabad engaged in printing and publishing newspapers and periodicals. The petitioners/A.1 and A.2 are the Chairman and Vice Chairman of DCHL. The accused hatched criminal conspiracy to cheat the Canara Bank and in that process they availed open cash credit limit with periodical enhancement and multiple short term corporate loans aggregating 1230 Crores from Canara Bank by suppressing the financial status of their Organization and also suppressing existing liabilities with other banks and financial institutions and further, they fraudulently diverted the proceeds of various credit facilities and did not repay the credit limits and fell in arrears of payment of liability to a tune of Rs.357.77 Crores against which the available security is only to an extent of Rs.188.86 Crores.

b. The investigation is reported to be pending.

c. While-so, the petitioners/A.1 and A.2 were arrested and produced before the trial Court on 14.02.2015. On the request of Investigating Agency, they were given police custody from 23.02.2015 to 27.02.2015. Now they are in judicial custody.

d. Whileso the earlier bail applications filed by the petitioners/A.1 and A.2 were dismissed by learned Magistrate and learned Special Judge for Economic Offences on the main ground that the offence alleged is an economic offence wherein the victim is the society and investigation is still pending as the I.O has to examine the crucial documents and witnesses more particularly, the employees of DCHL and as such if the accused were released on bail, they would tamper with the evidence.

Hence the instant applications by the petitioners/A.1 and A.2.

3. The CBI filed the counter and opposed the petitions.

4) Heard learned Senior Counsel Sidharath Luthra, representing for Sri A. Chandra Sekhar, learned counsel for petitioner/A.1, learned Counsel Sri T.Niranjan Reddy, representing for Sri A. Chandra Sekhar, learned counsel for petitioner/A.2 and Sri P.Kesava Rao, learned Special Standing Counsel for CBI (for short “Spl.S.C”).

5) The arguments on behalf of both petitioners/A.1 and A.2 are in similarl lines.

a) It is firstly argued on behalf of petitioners that even if the FIR allegations are uncontroverted and admitted to be true, they would reveal only a civil dispute inasmuch as, the DCHL availed Rs.1230 Crores of loan and defaulted to an extent of Rs.357.77 Crores after discharging a major part of the loan due to market vagaries and in the entire process, there was neither cheating nor deception on the part of the DCHL or the petitioners/A.1 and A.2 so as to attract any criminal offence. For the Company's default, the bank already initiated civil proceedings before Debt Recovery Tribunal under SARFAESI Act and having not contented lodged FIR by unduly giving criminal flavor to the civil case.

b) Secondly, denying the allegation that balance sheet and accounts were fudged to secure loans, learned counsel argued that the bank has extended different credit limits and loan facilities only upon a thorough and intense scrutiny of the accounts and balance sheets of the DCHL and it is inappropriate to cast aspersions that the DCHL has manipulated its records to avail the credit facilities from the bank.

c) Thirdly, it is argued that it is also false to allege that the DCHL availed loans from different banks by suppressing said fact before the Canara Bank. It is argued that the Canara Bank has been given primary and first charge over the books of accounts and debts and also collateral security of the assets of DCHL in preference to the other banks and therefore, the interest of the Canara bank is well protected and further, with the appreciation of the securitized assets, the value of the collateral securities will increase much more than Rs.180 Crores and on that count also the interest of the bank is safeguarded.

d) Fourthly, it is contended that both the accused have been in custody since 14.02.2015 i.e, for more than 55 days and no useful purpose will be served by further detaining them as the I.O has not examined any witnesses subsequent to August, 2014 or examined any of the employees of the DCHL, which the CBI claimed necessary, after the arrest of the accused and hence virtually no useful purpose will be served in further incarcerating the accused. It is also argued that since inception, the accused have been cooperating and submitting the required records and information to the CBI and added to it, the CBI obtained their custody and interrogated them extensively. As there is no further examination of witnesses subsequent to the arrest of accused, in all probability it can be said that investigation is virtually completed and hence there can be no threat of petitioners either interfering with the investigation or tampering with the witnesses.

The petitioners finally argued that bail is a matter of right and jail is an exception and there are no exceptional circumstances for continuing them in jail. The petitioners to buttress their argument relied upon several decisions.

6 a) Per contra, firstly, taking objection to the argument of the petitioners that the matter on hand is purely a civil case and the complainant and CBI unduly converted it into a criminal case, learned Spl.S.C. vehemently argued that the deceitful intention of the accused to cheat the bank since the inception is manifest from the different acts. He argued that without frankly disclosing the financial status of the DCHL and by suppressing its losses and also suppressing the loans borrowed from different banks, the accused from time to time secured credit limits and loans from the complainant bank and offered insufficient security to the loans and thus cheated the complainant bank and petitioners/A.1 and A.2 being in the helm of affairs signed resolutions to obtain loans and credit facilities and thus personally aware of the fraud perpetrated against the bank. He thus argued that the case on hand is not purely a civil oriented one but involved in deep-rooted conspiracy against the bank to cause economic loss running into hundreds of Crores. While admitting that the bank already initiated civil proceedings he argued that when same set of facts give rise to cause of action for both civil and criminal cases, both can be simultaneously maintained. On this point, he relied upon the judgment of Apex Court in the case of ***Smt.Rumi Dhar vs. State of West Bengal and another***.

b) Secondly, opposing the argument that there was no manipulation of the balance sheets and other records and no suppression of the financial status of the DCHL, learned Spl.S.C argued that suppression of material facts was made at every stage inasmuch as in the subsequent balance sheets the name of the complainant company was not shown as secured creditor or as creditor and the loans obtained from other banks was also not shown and further, the credit balance of the DCHL was also wrongly shown and most importantly when the DCHL was running at loss, it declared dividends by suppressing the said fact.

c) Thirdly, regarding the insufficiently of security to the loan amount, learned Spl.S.C argued that the CBI is investigating with the help of the records as to the possible involvement of the public servants in accepting the manipulated records and insufficient security for advancing the credit limits etc. He filed a sealed cover styling: “status report of investigation qua the public servants” for perusal of the Court.

d) Fourthly, opposing the bail, he argued that the investigation is still pending and the CBI is analyzing the seized records and trying to unearth the role of public servants and in this regard, some more employees of the DCHL are to be examined and if at this stage the accused are granted bail, they being top brass of the DCHL will influence the investigation by tampering the record and also threaten the witnesses from giving statements and thus, he submitted, bail may not be granted at this stage. Opposing the arguments of the petitioners that no witnesses were examined since after August, 2014, he filed a list of the witnesses examined by the CBI.

e) Finally, he argued that the case on hand is an economic offence which stands on a different pedestal than the ordinary offence which will undermine economic progress of the society and in view of the gravity of the offence and pending investigation, bail may not be granted to the accused. He too relied upon several decisions to buttress his arguments.

7) In the light of above rival arguments, the point for determination in these petitions is:

“Whether the petitioners/A.1 and A.2 deserve bail or not?”

8) **POINT**: The main plank of argument on which the petitioners seek bail is that it is purely a civil case wherein the accused due to financial constraints could not repay the bank loan but the complainant even after initiating civil proceedings, parallelly took up the criminal proceedings by converting the civil case into a criminal one only to harass and trouble the accused. However, the line of argument of the complainant is quite different. It vehemently contends that since inception the accused acted with a deceptive mind to cheat the bank in securing the credit limits. Its grievance is that the internal investigation conducted by the bank auditors revealed the following fraudulent acts on the part of the DCHL.

i. As per the Audited Balance Sheets of the Company for the years 2009, 2010, 2011, the Canara Bank's liability was not shown under the secured loans.

ii. The names of the Creditor banks of the DCHL including Canara bank are not disclosed.

iii. The Cash and bank balance shown in the balance sheets do not tally with the actual deposits lying with the banks. As on 31.03.2011, the cash and bank balance was mentioned as Rs.703.79 Crores but actual deposits with the bank were only to the extent of Rs.200 Crores.

iv. In violation of the agreement with the Canara Bank, the Company availed various loans from other banks like Andhra Bank, HDFC Bank, Ratnakar Bank, Yes Bank, ICICI bank, IDBI Bank etc., and thereby derived excess finance.

v. Out of proceeds of OCC/ODBD, ILC/FLC, Short Term Loan, STCL etc., the complainant bank lent Rs.1,230

Crores during the period from 2009 to 2011 to the accused company. However, the accused fraudulently diverted the funds for the purposes other than for which the loans were sanctioned and the loan outstanding is Rs.357.77 Crores. The Company availed various loans from different banks and financial institutions by unauthorisedly alienating the security (both current and fixed assets) by suppressing the details to the complainant bank. The complainant borrowed more than Rs.4,087 Crores from different banks. The company declared dividends ostensibly to show profits though it was running into losses.

Thus the complainant and investigating agency claimed that all the acts were done by the accused with a deceptive intention to obtain credit facilities from the complainant bank. A.1 and A.2 being at the helm of affairs and passed resolutions and signed on manipulated balance sheets were criminally responsible for their acts.

It is true that the veracity of the above allegations and complicity of the accused has to be determined only after a full-fledged investigation and ofcourse trial. However, if the allegations are uncontroverted, they would certainly show that it is an economic fraud rather than a mere non-repayment of the loan amount. As rightly argued by learned Spl.S.C, when same cause of action give rise to civil and criminal proceedings, both can be taken up simultaneously and mere pendency of the civil proceedings is neither a bar nor hurdle for proceeding with criminal case. It was so observed by the Apex Court in ***Smt. Rumi Dhar***'s case (1 supra), wherein it was held thus:

> *"<u>Para 18</u>: It is now a well settled principle of law that in a given case, a civil proceeding and a criminal proceeding can proceed simultaneously. Bank is entitled to recover the amount of loan given to the debtor. If in connection with obtaining the said loan,*

criminal offences have been committed by the persons accused thereof including the officers of the bank, criminal proceedings would also indisputably be maintainable."

9) Therefore, the case on hand prima-facie has to be treated as an economic offence. The Apex Court time and again reiterated that economic offences undermine the economic progress of the society and so they have to be dealt with on a different pedestal. Keeping the same in mind, it has now to be seen whether the petitioners deserve bail or not.

10) The Apex Court in many of its judgments, for instance, in ***Gurucharan Singh and others vs. State (Delhi Administration)*** and ***Sanjay Chandra vs. Central Bureau of Investigation*** has laid down certain guidelines for either granting or refusing the bail. Those guidelines are succinctly thus:

i. Prima-facie case against the accused.

ii. Nature and gravity of the charge and severity of the punishment in the event of conviction and larger interest of the public / State.

iii. Danger of accused absconding or fleeing if released on bail.

iv. Reasonable apprehension of the offences being tampered with and danger of justice being thwarted by grant of bail.

The above guidelines/parameters are not exhaustive but inclusive depending upon the facts and circumstances of each case. So the merits of the case of the petitioners have to be tested on the touchstone of the above guidelines.

11 a) Sofaras the prima-facie case against the petitioners is concerned, it is the vehement contention of the Investigating Agency that A.1 being the Chairman and A.2 being the Vice Chairman have convened Board Resolutions before seeking for credit facilities and loan from the complainant bank and further, they signed on the fudged balance sheets to hide the actual liabilities and project an inflated deposit position and hence they cannot feign innocence

arguing that loan was taken by the company and no *mens rea* can be attributed to the individuals like them. I find considerable force in the contention of the prosecution. With the position the accused occupy, it is too naive to argue that company took the loan and the individuals like them have no concern in it and they cannot be found fault with. Hence the accusing finger definitely will be pointed out towards them. Therefore, it can be reasonably said that a strong *prima facie* case is made out against the petitioners/A.1 and A.2.

b) The second guideline is concerned with the nature and gravity of the charge and severity of the punishment. The offences charged are under Sec.120-B r/w 420, 468, 471 IPC. Sentence wise, the offences under Sec.420 and 468 are punishable for Seven years and Sec.471 IPC for two years. In terms of the punishment, the offences may not be grave but it must not be forgotten that as already discussed, the consolidated offence on hand is an economic offence to cheat the bank and thereby to undermine the economic progress of the society. The Apex Court has cautioned to treat such type of offences on a different plank. In the decision cited by learned Spl.S.C reported in ***Y.S.Jagan Mohan Reddy vs. Central Bureau of Investigation***, it was held thus:

> *"**Para 34:** Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."*

In the instant case also, the debt outstanding is Rs.357.77 Crores as against the paltry security of Rs.188.86 Crores. More than the debt, the *modus operandi* adopted to secure the credit limits is dubious and questionable one which is under investigation and if proved, certainly will have severe repercussions on the banking sector on one hand and economic health of the society on the other.

c) The third guideline is regarding the possibility of accused absconding if enlarged on bail. Since the prosecution has not expressed any such doubt against the present petitioners, there can be no such apprehension.

d) The next guideline concerns to the accused interfering with the investigation and tampering with witnesses and documents. It is in this regard, the prosecution vehemently opposed the bail.

i) It is the argument of learned Spl.S.C that right from the beginning, accused not cooperated in a proper manner for smooth completion of investigation as A.1 only responded twice to the 10 notices issued to him and he briefly attended to the investigation on 25.09.2014 and 30.09.2014 but did not answer to the most of the questions and sought time for referring their documents and subsequently he did not attend the investigation despite sending repeated notices. So also A.2 did not attend the investigation at all despite sending 9 notices requiring him to attend the investigation and to answer the questions relating to the case. He further argued that even during the stint of police custody from 23.02.2015 to 27.02.2015 also, both of them continued to remain non-cooperative by not answering to most of the questions relating to the vital facts of the case and that was their conduct in the past. He further argued that with the documents secured, the CBI made a threadbare analysis and it has to examine a number of witnesses who are the employees of the DCHL to know the persons responsible for the fudging of the balance sheets and accounts and in that process, the CBI has to identify the possible role of some of the public servants also. Learned Spl.S.C submitted that the I.O submits to the Court the status report of investigation relating to the public servants in a sealed cover for perusal of this Court and in view of the investigation is in a crucial stage, if the accused are enlarged on bail, they would certainly prevail upon their employees and others to stifle the truth.

ii) On the other hand, the argument of petitioners is that all through they have cooperated with the investigating agency as otherwise the CBI could not have secured the voluminous documents in their possession and further, after they were arrested, the I.O has not examined even a single employee of the accused company which shows that there is nothing left for further investigation. Learned counsel opposed CBI filing sealed cover purportedly containing the particulars of the investigation relating to the public servants. It is alternatively argued that even if investigation relating to some other persons is pending, that may not be a ground to oppose bail sofaras petitioners are concerned who have been in jail for more than 55 days. It is further argued that during the bail arguments before the lower Courts, the CBI never submitted that they have to unearth the possible complicity of public servants and such a point is raised for the first time only to see that the accused are denied bail. Learned counsel thus submitted that the petitioners have never come in the way of investigation nor they do in future and they will abide by any conditions imposed in this regard.

12) In the light of above divulgent arguments, I perused the record. Briefly stating, the argument of CBI is that it has to examine the employees of the accused company to know the persons responsible for fudging of the accounts, balance sheets etc and also to unearth the possible connivance and complicity of the public servants and some others and if bail is granted at this juncture, the accused will tamper with the witnesses and other documentary evidence. It is true that before the Lower Courts they have not raised a point that they were engaged in unearthing the possible complicity of the public servants. Merely because such a point was not raised, that cannot be a ground to discard their submission. During the course of analyzing the various documents seized by the I.O, he might felt the necessity of conducting investigation in that line also. Till charge-sheet is filed, it is the prerogative of the I.O to conduct investigation in various angles. So the necessity of the I.O to examine the employees of the accused company can be understood. Admittedly, the accused are at the helm of affairs in their company. So if they are released on bail, certainly there is a possibility of their interfering with the crucial aspect of investigation. Though this apprehension expressed by the investigating agency is not supported with evidence but that can be inferred in the circumstances

of the case. Sofaras the sealed cover submitted by learned Spl.S.C. is concerned, this Court is not willing to look into the purported details of investigation regarding the involvement of public servants. Hence, the Registry is directed to return the sealed cover to the Investigating Officer. However, even without looking into the said cover also the necessity of I.O to investigate into the aspect of possible connivance and involvement of public servants can be understood in the factual circumstances of the case. So when the case of the petitioners is tested on the touchstone of the above guidelines, it is obvious that the petitioners/ A.1 and A.2 do not deserve bail at this stage.

13) In the result, both the Criminal Petitions are dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 15.04.2015

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