THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION NO.12025 of 2015

ORDER :

The petitioner, who is accused No.1 in Crime No.122 of 2015 of Central Crime Station, Hyderabad, preferred the present application under Section 438 Cr.P.C. seeking release in the event of his arrest in connection with the above crime, registered for the offences punishable under Sections 403, 406, 409, 420, 468 and 471 read with 120 (b) of IPC.

The informant, who is a N.R.I. came around India and lodged a report. The contents of which are as under:

The Informant was Managing Director of Material Software System India Limited, which was established in the year 2003. The said firm was engaged in the business of Software Development, Consulting and various other allied things connected with the software development. Accused No.1 joined as an employee in his company during December, 2003. He was delegated to see the overall affairs of the company in the absence of the informant as he was having other businesses in United States of America. The informant authorized the petitioner to operate bank accounts of the company and see that the income and expenditures are correctly accounted and maintained. The averments in the report further show that the informant sent an amount of Rs.19,36,22,271/- to the company in India, to the accounts maintained in Karnataka Bank, Dilsukhnagar Branch and Vijaya Bank, Basheerbagh Branch. Apart from that an amount of Rs.2,50,56,375/- was also transferred to the Karnataka Bank and Vijaya Bank on different dates. When the informant came to India and verified the records, he noticed that the company was not booking any profits, but on paper they have showed that the company was earning profits. His verification revealed that right from the beginning, the petitioner with a dishonest intention was siphoning off the funds of the company to various accounts. The beneficiaries are being himself, K.Venugopal, D.Subramanyam and M.S.Sastry. He also transferred funds to various persons and business entities. The total amount that was siphoned was about nearly 10 crores. It is also alleged that the petitioner fabricated false income tax returns by forging the signatures of the informant on the income tax returns though he was abroad at the time of filing of income tax returns. He also mortgaged the personal properties of the informant and obtained loans from Karinataka Bank and Vijaya Bank. The averments in the report further discloses that accused No.1 misutilised the power of attorney given to him by signing personal cheques, encashing cheques and misappropriated money from the company accounts and personal accounts. In the year 2004 the petitioner forced the informant to sell part of the property in office space bearing No.707 and 708 of Babukhan Estates to M/s. Agrasen Hall Trust for Rs.29,00,000/- each and part of Plot Nos.705 and 706 for an amount of Rs.69,00,000/- to Agarwal Packers and Movers, but he did not hand over the money to the informant till date. The said amount is not even accounted in any of the accounts. The house belonging to the informant was rented by the petitioner to a third party but failed to account the rents collected by him since last 7 years. Basing on these allegations the above report came to be lodged on 18.05.2015.

An application for anticipatory bail was filed on 18.11.2015 which was being adjourned from time to time. On 17.12.2015 a learned Single Judge of this Court directed the police not to arrest the petitioner till 28.12.2015 and further directed the petitioner to appear before the investigating officer concerned and produce the documents which are relevant to the issue. The said order came to be extended on 29.12.2015. On 18.01.2016 this Court directed the Investigating Officer to issue notice to the petitioner for his appearance before him and on receipt of the said notice, the petitioner was directed to appear before the investigating officer and give his specimen signatures and also hand writing as per the directions of the investigating officer. On 08.02.2016 this Court directed the petitioner to appear before the police and co-operate with the investigation by producing the documents, if any, available with him.

While things stood thus, the petitioner herein filed Criminal Petition No.5819 of 2015 seeking quashing of investigation in the above crime. By an order, dated 13.10.2015 a learned Single Judge of this Court partly allowed the petition. The operative portion of the said order is as under:

> "The Criminal petitions are partly allowed by quashing the entire proceedings so far as against accused Nos.2 and 3 among the three petitioners/accused Nos.1 to 3 respectively for all the offences in Crime No.122 of 2015 of Central Crime Station, dated 20.05.2015 and by quashing so far as accused No.1 concerned for the other offences but for Section 409 IPC. The CCS police can continue the investigation of the crime so far as accused No.1 is concerned for the offence under Section 409 IPC and file final report."

Thus, this Hon'ble Court while quashing the proceedings for all the other offences (except Section 409 IPC) held that the acts of the accused No.1 in forging the signatures, diverting the funds, preparing false accounts, filing incorrect income tax returns etc. are part of breach of trust which requires investigation. Challenging the said order, the petitioner as well as the informant preferred S.L.P.s before the Apex Court which are pending. No interim orders are said to have been passed by the Apex Court.

Learned counsel for the petitioner submits that the allegations in the report are all false and invented for the purpose of this case. He submits that since substantial part of the first information report was found to be false; as the matter is pending before the Apex Court and since he has been co-operating with the investigating agency by appearing before them as and when required, the petitioner is entitled for anticipatory bail.

Learned counsel for the second respondent strongly opposed the application contending that in view of the finding of this Hon'ble Court in the quash petition with regard to alleged misappropriation and fraud committed by the petitioner which is not stayed by the Hon'ble Apex Court, the petitioner is not entitled for any relief.

A counter came to be filed by the Assistant Commissioner of Police Hyderabad, stating that during the course of investigation they found accused No.1 diverting funds of the company to the accounts of his wife, his brother-in-law, D.Subrahmanyam and other relatives and friends who have nothing to do with the company, thereby misappropriating an amount to a tune of Rs.19,36,22,271/-. It is further averred that during the course of investigation, the petitioner filed several petitions such as anticipatory bail, quash petition and also filed petitions before the Civil Court to delay the process of investigation. It is said that the petitioner is absconding from his residence, switched off his phones and is not co-operating with the investigation. It is averred that the petitioner has misappropriated about Rs.22.00 crores from company accounts and also sold the properties of the informant. The custodial interrogation of the petitioner is essential to trace the whereabouts of the money misappropriated by him.

Learned Additional Public Prosecutor submits that taking advantage of the interim order of stay of arrest, the petitioner is not co-operating with the investigating agency and has also not produced the documents as sought for by the investigating agency. He further submits that custodial interrogation of the petitioner is necessary in a case of this nature.

A perusal of the material on record would show that the informant is a resident of United States of America. With a view to look after his business in India, he appointed accused No.1 in the month of December, 2003 and to look after the day today affairs of the company he was also gave an authorization to operate/handle the bank accounts. The averments in the report further disclose that substantial amounts were transferred by the informant to the account of the company. The counter filed by the Assistant Commissioner of Police would show that during the course of investigation, the petitioner diverted funds to the accounts of other accused and misappropriated the funds of the company to a tune of Rs.19,36,22,271/-. The record further discloses that in the year 2004 accused No.1 forced the petitioner to sell plot Nos.707 and 708 to M/s. Agrasen Hall Trust for Rs.29,00,000/- each and plot Nos.705 and 706 to Agarwal Packers and Movers for Rs.69,00,000/-, but neither did he hand over the said amount to the informant nor credited the same in the account of the company. Apart from that, the record also discloses forging of signature of the informant on the income tax returns when the informant was in U.S.A. All the allegations referred to above were considered by this Court in Crl.P.No.5819 of 2015 filed for quashing the proceedings. While disposing of the quash petition, this Hon'ble Court held that an offence under Section 409 IPC is prima facie made out against the petitioner. In view of the finding of this Court in holding that an offence under Section 409 IPC is made out against the petitioner and as the said judgment is not suspended by the Apex Court till date, the question of going into the merits of the case so as to find out as to whether an offence under Section 409 IPC is made out or not would not arise.

As seen from the docket proceedings, this Court while granting stay of arrest directed the petitioner to co-operate with the investigation and also produce the documents as sought for by the investigating agency. The counter filed by the Assistant Commissioner of Police show that despite receiving notices, the petitioner did not co-operate with the agency. It has been stated that the petitioner is absconding from his residence, switched off his phones and not co-operating with the investigation. It is alleged that the total amount which is alleged to have been misappropriated by the petitioner is about Rs.22.00 crores and the properties belonging to the informant were sold without knowledge of the informant by forging his signatures. Having regard to the above circumstances and in view of the findings given by the learned Single Judge of this Court in the quash petition that the offence under Section 409 IPC is made out against the petitioner, I am not inclined to consider the request of the petitioner.

Accordingly, the Criminal Petition is dismissed. However, the petitioner is at liberty to surrender before the Court concerned and move an application for regular bail, in which event the same shall be dealt with on merits, in accordance with law, at the earliest.

Miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

01.03.2016
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