THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION NO.12984 of 2015

ORDER :

The petitioner, who is accused No.2 in Crime No.881 of 2015 of Malkajgiri Police Station, filed the present application under Section 438 Cr.P.C. seeking release in the event of her arrest in connection with the above crime registered for the offences punishable under Sections 420, 419, 403, 467, 465, 466, 468, 471, 472, 120 (b) IPC and Sections 13 (2) read with 13 (1) (d) of the Prevention of Corruption of the Act, 1988.

The Official Liquidator, High Court of Judicature at Hyderabad, lodged a report on 30.11.2015, the contents of which are as under:

On 17.10.2015 the office of Official Liquidator (OL), High Court of Judicature at Hyderabad, transferred a sum of Rs.9,86,11,679/- by way of RTGS requesting the Manager, State Bank of Hyderabad, Malkajgiri branch to issue interest bearing fixed deposit receipts in the name of various companies in liquidation for the denominations mentioned in the letter dated 16.10.2015 annexed to it. The said letter was delivered by one T.Prabhakara Murthy to the Manager, who has informed him that the F.D. receipts would be ready by Monday i.e. on 19.10.2015. Since the office of the Official Liquidator did not receive the fixed deposit receipts by 19.10.2015, a telephone call was made to the Manager ie., petitioner herein, informing non-receipt of fixed deposit receipts. She is alleged to have informed that F.D. receipts are being sent through one K.V.Ramana Rao, an ex-employee of the bank. Accordingly, the same were delivered in the afternoon on 20.10.2015. Since the office of official liquidator was receiving forged fixed deposit from other banks, the staff of Official Liquidator were making effort to cross check all the F.D.R.s issued by various banks. On 26.11.2015 a call was made to the Manager of State Bank of Hyderabad, Malkajgiri, to enquire as to issuance of fixed deposit receipts, to which, she replied about the issuance of F.D. receipts and delivery of the same through one K.V.Ramana Rao (accused No.1). During the conversation, it came to light that one F.D.R. issued in favour of M/s. Allwyn Watches Limited was prematurely closed under the instructions issued by the office of the Official Liquidator vide its letter dated 04.11.2015 and the amounts were transferred to various accounts mentioned therein, by way of RTGS. Immediately, the Manager/petitioner was informed that no such instructions were ever given and the petitioner/Manager was requested to forward a scanned copy of the correspondence by e-mail. On going through the e-mail and after verifying the records of the office, it was found that F.D.R. for Rs.8,45,67,745/- bearing No. 62440619450 which was alleged to have been prematurely closed was found in the office of official liquidator. When the same was informed, the petitioner visited the office and held discussions. Later on, the A.G.M. of the bank also joined the discussion. After verifying the available F.D.R.s with the office of the Official Liquidator, the Manager made oral observations that the said F.D.R.s are not genuine. She reiterated that the F.D.R.s issued by her, were sent to the office of official liquidator through K.V.Ramana Rao, an ex-employee of the bank. But it was informed to the Bank Officials that the office of official liquidator never issued any letter requesting pre-closure of the F.D.R. The averments in the report show that till date there is no response to the e-mail. The averments in the report further show that accused No.1 fabricated and replaced the original F.D.R.s; made the same available to unknown persons who surrendered the same to the bank with instructions to prematurely close and transfer the receipts to various persons mentioned in the forged letter. The complaint refers to transfer of the amounts by

RTGS to different accounts in Mumbai and Rajkot to a tune of Rs.8,45,67,745/-. Basing on these allegations the above report came to be lodged.

The learned counsel for the petitioner mainly submits that even accepting the allegations in the report to be true no offence is made out against the petitioner. He submits that the petitioner has bonafidely acted on the letter dated 04.11.2015 received from the office of official liquidator and transferred the amount to various accounts in different parts of the country. He submits that in the absence of any allegations of alleged fraud and forgery against the petitioner in the first information report she deserves grant of anticipatory bail. He further placed on record the letter dated 27.11.2015 written by the petitioner to the Assistant General Manager informing the transfer of amount pertaining to official liquidator of High Court to various accounts. The said letter narrates the events which took place from the time the money was transferred through RTGS till transfer of the amounts by RTGS to Rajkot and Mumbai. The letter also indicates that the F.D.R.s which were with the official liquidator, are not the same that were issued by the bank. He also places reliance on the report lodged by the State Bank of Hyderabad, Zonal Office with the Superintendent of Police, C.B.I., with regard to the alleged fraud committed at their branch in Malkajgiri by K.V.Ramana Rao and the beneficiaries of the remittances. In view of the above, he submits that the petitioner cannot be found fault with and the Court should not get carried away by the quantum of amount involved in the transaction.

Sri P.Keshava Rao, learned Standing Counsel for the C.B.I. strenuously opposed the application contending that the deposit of amount in the State Bank of Hyderabad, Malkajgiri is contrary to the orders passed by a learned Single Judge of this Court vide note dated

14.10.2015, wherein the learned Judge directed deposit of the amount in S.B.H. High Court Branch itself which gives an indication of fraud and intention to cheat at inception. He further submits that though S.B.H., High Court Branch offered 7.25% interest, there is no point in depositing the amount in S.B.H. Malkajgiri Branch which gave only 7% interest. He further submits that a reading of the entire case diary clearly discloses that the petitioner has intentionally violated the procedure and without verifying the genuinity of the letter issued by the official liquidator transferred the entire amount to different banks in different places which was later withdrawn. He submits that a perusal of the case diary discloses involvement of the petitioner in the crime and as such she is not entitled for any relief.

Before proceeding further, it would be appropriate to refer to the contents of the statement of the official liquidator. As per the procedure, for keeping the amount with the banks in fixed deposit in respect of companies under liquidation, the amount has to be invested in interest bearing deposits as per Rule 293 read with Rule 9 of Company Court Rules, 1959 with the State Bank of India. The amount can also be invested in another bank with the prior permission of the Hon'ble High Court. After perusing the record, he states that the office staff dealing with the account section namely Smt. Hemalatha and company prosecutor Sri Yadu Bushan Rao prepared a report dated 09.10.2015 for orders. After approving the same, the original was placed before a learned Judge of this Hon'ble High Court, who was company Judge at that point of time. The note contains the details of the nationalized banks, who gave their quotations with regard to the rate of interest offered by them. It is to be noted that the State Bank of Hyderabad, Malkajgiri, never sent its quotation. Amongst the banks which sent their quotation, State of Bank of Hyderabad, High Court Branch, quoted interest at 8% p.a. for an amount below Rs.1.00 crore and for the amounts above one crore it proposed to give interest @ 7.25% p.a. On being shown a copy of the said note, the learned Judge ordered as under:

> "As S.B.H. is offering high rate of interest, the amount be deposited with it."

As per the directions, the official liquidator instructed the company prosecutor to find out a branch of S.B.H. which can be patronized. Accordingly, on 16.10.2015 some of the Bank Managers including the Branch Manager, S.B.H., High Court Branch attended the meeting. The Branch Manager, S.B.H., West Malkajgiri Branch, sent e-mail dated 15.10.2015, pursuant to which a note was prepared which was approved by the official liquidator for depositing the amount in S.B.H., High Court Branch and also in S.B.H., Malkajgiri Branch. Letter was issued for deposit of the amount for a period of one year in the fixed deposits, in the name of official liquidator of respective companies. Insofar as Malkajgiri Branch is concerned, fixed deposit of Rs.8,45,67,745/- was instructed to be taken in respect of M/s. Alwyn Watches Limited. The record further discloses that the above amount was transferred by way of RTGS to S.B.H., Malkajgiri Branch.

At this stage, it is to be noted that in the report of the S.B.H., given on 03.12.2015, it has been stated that on 14.10.2015 itself accused No.1 informed the Branch Manager, Malkajgiri about the availability of the funds with official liquidator and to send a request to the official liquidator indicating the rates of deposits. Letter was sent on 15.10.2015 and amount was received on 17.10.2015 which was kept in parking account. 22 F.D.R.s were prepared and the same were alleged to have been sent through accused No.1 to hand over the same in the office of official liquidator.

A perusal of the material on record would show that the

F.D.R.s which were handed over to the Official Liquidator in a sealed cover were fake F.D.receipts. Subsequently, on 05.11.2015 the Branch received a cover through a messenger along with the discharged T.D.R. for Rs.8,45,75,745/- from the office of the official liquidator advising the Branch Manager to premature closure and transmission of the same to different accounts in Mumbai and Rajkot through RTGS. Without verifying the genuinity of the letter and without contacting the official liquidator, who by his earlier letter directed taking of fixed deposit for a period of one year, the petitioner on her own transferred the said amounts to Mumbai and Rajkot, which amount was withdrawn immediately. It was found that the letter which was alleged to have been issued by the official liquidator was a forged one. The letter which was received by the bank from the office of the official liquidator does not find place in the inward register of the bank. Further, the case diary dated 31.01.2016 containing the statement of accused No.1 show that the petitioner telephoned to him on 04.11.2015 and informed him that she received a cover through a messenger alleged to have been issued from the office of official liquidator. Pursuant to the instructions of accused No.1, she acted on the said letter and prematurely closed the F.D.R. Thereafter, accused No.1 visited the Branch on 05.11.2015, collected Unit Transaction Receipt numbers from the Manager and the same were sent to Venkatesh and Damodar from his mobile. The averments in the said confession also disclose that the petitioner is alleged to have asked him as to when she will get the commission for having closed the F.D.R. prematurely and sending the amount through RTGS. He is alleged to have told the petitioner that she would get commission from Damodhar within a week or two. After that accused No.1 never visited the S.B.H., Malkajgiri Branch. The relevancy of confession while dealing with a bail application came up for consideration before the Apex Court in ***State through C.B.I. V.***

***Amarmani Tripathy*[1]**, wherein it was observed as under:

> "The admissibility or otherwise of the confessional statement and the effect of the evidence already adduced by the prosecution and the merit of the evidence that may be adduced hereinafter including that of the witnesses sought to be recalled are all matters to be considered at the stage of the trial."

In view of the above, the confession of accused No.1 referring to demand of the petitioner for payment of commission cannot be ignored. Further, the remand report dated 06.02.2016 show that there were 10 cameras working in the branch as on 30.09.2015 and the back up was available in CC TV cameras for the period. When the Deputy Superintendent of Police questioned as to whether the CC TV cameras were not functioning on the intervening dates i.e. from 16.09.2015 to 16.11.2015, it was informed to him that the system was functioning properly however the back up was not available in the system as the system was switched off, which is evident from the record. It is to be noted that there was no complaint about the functioning of system during the period it was switched off.

Further, the term deposit advise for Rs.8,45,67,745/- deposited with the S.B.H., West Malkajgiri Branch on 17.10.2015 for one year carried interest of only 7%, where as the S.B.H., AP High Court Branch proposed to give 7.25% interest on an amount above one crore if deposited for a period of one year. No explanation whatsoever is forthcoming for depositing the amount with the Branch where less interest was given. As contended by the learned counsel for the petitioner the F.I.R. is silent as to the role of the petitioner and it is also true that on 02.12.2015 the Divisional Manager of the S.B.H. also lodged a report explaining the misdeeds of the ex-employee of the bank (accused No.1). But it is to be noted that relevant facts showing culpability of the accused came to light only during the course of investigation. Having received the fixed deposits from the official liquidator and having been in touch with him while accepting the fixed deposit, there was no reason for her to keep quiet without contacting him while transferring such huge amounts to unknown accounts in different states more so, when the fixed deposits was initially kept pursuant to the orders of the official liquidator and High Court for a period of one year. Definitely, accused No.1 is not the authority for accused No.2 to act on his instructions. Having regard to the same, the petitioner was also placed under suspension. The investigation is still going on and transactions of this nature have come to light in different branches of State Bank. This Court in a Company Application No.1835 of 2015 dated 08.12.2015 refers to various frauds committed in various branches of the State Bank including the present one. It would be useful to extract the relevant portion of the order, which is as under:

> "Now it has been brought to the notice of this Court that though State Bank of Hyderabad, High Court Branch was shown in the application, a sum of Rs.9,86,11,679/- was deposited in State Bank of Hyderabad, Malkajgiri Branch through RTGS.
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> Recently it came to light that the funds deposited by the Official Liquidator in the United Bank of India, Khammam Branch, were transferred in favour of Telangana New and Renewable Energy Development Corporation Limited and from there the money was transferred to different accounts across the country. As a matter of fact, subsequent investigation by the State Investigating Officer, pursuant to the complaint made by the Official Liquidator, revealed that the sums were transferred to various accounts in far away places in Maharastra, Gujarath, Chennai besides Hyderabad. The accounts are in Bank of Maharastra, Axis Bank, Development Credit Bank (DCB), IDBI Bank, Sahebrao Deshmukh Cooperative Bank Limited etc. The amounts were also transferred in different names, viz., Aadi Enterprises, Bombay Mercantile Cooperative, Goreswar Grameena Multistate Credit Cooperative Society, Hardik P.Joshi etc. It has also been revealed from the information available in public domain that the money belonging to the Government of Karnataka was transferred into a fictitious account by name Rajeev Gandhi Foundation Trust, and the said amount was further transferred into various accounts. One of the accounts to which the money

> came to be transferred is Goreswar Gramina Multistate Credit Cooperative Society, Siddembar Bazar, Hyderabad. A part of the amount from the United Bank of India, Khammam Branch was also transferred to Goreswar Gramina Multistate Credit Cooperative Society. Involvement of Goreswar Gramina Multistate Credit Cooperative Society in relation to transfer of funds from Rajeev Gandhi Foundation Trust, and from the United Bank of India, Khammam Branch, cannot be a coincidence. Similarly, the money deposited with the State Bank of Hyderabad, Malkajgiri Branch was also transferred to various accounts. All these transactions appear to have been carried out with premeditated systematic plan involving a large number of people from different States. The involvement of certain bank officials, who are well conversant with the system and accounting procedures, particularly, keeping the money in suspense accounts and posting of this entries into respective accounts, cannot be ruled out."

From a perusal of the above order, it is clear that the involvement of certain bank officials who are well acquainted/ conversant with the banking procedure cannot be ruled out. In the instant case, except the Bank Manager, none of the staff of the branch were shown to have been involved in issuing the F.D.R.

Having regard to the nature and magnitude of the offence, the request of the petitioner cannot be accepted.

Accordingly, the Criminal Petition is dismissed.

JUSTICE C. PRAVEEN KUMAR

01.03.2016
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[1] AIR 2005 SC 3490