THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION NO.12727 of 2015

ORDER :

The petitioners, who are accused Nos.2 to 4 and 6 in Crime No.37 of 2015 of Bhimavaram II Town Police Station, West Godavari District, preferred the present application under Section 438 Cr.P.C. seeking release in the event of their arrest in connection with the above crime, registered for the offences punishable under Sections 420 and 406 read with 34 IPC.

The case of the prosecution is that the petitioners along with others canvassed that one BORG Energy India Private Limited is engaged in the business of installing solar projects in India and also in foreign countries. Accused No.6, who is an authorized signatory along with Padma Kumar, executive of the said company, approached the informant company in the month of August, 2013 represented that the BORG Energy India Private Limited Company are experts in establishing SOLAR project and offered to establish solar project of 1 M.W. capacity in the informant company's land situated at Komarada road, Bhimavaram for an estimated project cost of Rs.7.60 crores with 30% contribution by JAMSUN Energy Private Limited and 70% by BORG Energy India Private Limited. Believing the assurance, the informant company accepted the same and in that connection an offer letter stipulating terms and conditions was reduced into writing vide document dated 27.09.2013. As per the letter the accused have undertaken the said project and agreed to complete the same in 180 days. As per the understanding, the informant company paid Rs.1.14 crores on 29.09.2013 towards advance amount through a cheque bearing No.424298 drawn on Canara Bank, Bhimavaram which was encashed by the accused company. Later the accused failed to fulfil their promise and stopped replying to the mails and phone calls. After much persuasion, accused No.1 company issued a post dated cheque dated 15.12.2014 for Rs.1,14,00,000/- towards refund of advance amount, but the said cheque when presented was returned for want of sufficient funds. Enquiries made by the informant revealed that accused No.1 company cheated several other persons with the same modus operandi by taking crores of rupees as advance on false promises. Basing on these allegations the above crime came to be registered.

Heard learned counsel for the petitioners, Additional Public Prosecutor appearing for the respondent-State and also the learned counsel appearing for the informant, who got impleaded himself as party respondent.

Learned counsel for the petitioners mainly submits that the transaction is purely a business transaction. He further submits that as the informant failed to comply with the terms and conditions of the agreement by paying the balance of the amount, the material could not be delivered. It is urged that since it is only a breach of agreement the ingredients constituting the offences punishable under sections 420 and 406 IPC are not made out.

On the other hand, learned counsel for the informant, who got impleaded himself as party respondent opposed the application contending that all the ingredients constituting offences punishable under Sections 420 and 406 IPC are made out. He further submits that under the guise of business transaction, the petitioners are cheating number of people in different parts of the country. He not only placed on record the crimes registered against the petitioners but also took me through the contents of various crimes which were registered in different parts of the country to show their modus operandi.

Learned Additional Public Prosecutor opposed the application contending that the order of stay of arrest has been misused by the petitioners and that they are not co-operating with the investigating agency.

A perusal of the docket orders would show that on 21.12.2015 this Court directed the police not to arrest the petitioners. The Additional Public Prosecutor submits that the said order came to be passed only with a view to facilitate the petitioners to compromise the matter with the informant. It is stated that neither any effort was made by the petitioners to get the matter settled nor did they co-operate with the investigating agency by appearing before them.

Though at first blush, the transaction appeared to be a business transaction, but a close perusal of the averments proved to be otherwise. The averments in the report and the case diary would show that a false promise was made to establish solar project in the company of the informant and accordingly received Rs.1,14,00,000/- towards advance. After receiving the said amount, the petitioners failed to fulfil their promise and started evading the informant. The record further shows that after much persuasion, the petitioner issued a cheque for Rs.1,14,00,000/- towards refund of the advance amount, but the same was returned un-paid due to insufficiency of funds.

Learned counsel for the petitioners further refers to the statement of account issued by the Central Bank of India show that the amount received from the informant has been sent to the person, who was supposed to deliver the goods, but the same in my view appears to be incorrect for the reason that on 01.10.2013 the BORG company received Rs.85,00,000/- but there is no debit entry showing transfer of the money to the supplier.

As held by the Apex Court, a breach of contract would amount to cheating where there was a deception played at the very inception. The circumstances referred to above clearly indicate the same.

The material further discloses that earlier the petitioners herein filed W.P.No.21067 of 2015 seeking quashing of the proceedings in Crime No.37 of 2015 of Bhimavaram II Town Police Station. In the said writ petition, the respondents opposed the petition as such no interim order was granted by this Court.

Being unsuccessful in getting an order under Article 226 of the Constitution of India wherein they also sought for stay of arrest, the petitioners preferred the present Criminal Petition seeking release in the event of arrest.

The material on record also shows that number of crimes registered against the petitioners. The details of which are as under:

1. Crime No.173 of 2015 of Visakhapatnam IV Town Police Station, registered for the offences punishable under Sections 420 read with 120 B IPC.
2. Crime No.31 of 2015 of Madhurai District Crime Branch, registered for the offences punishable under Sections 323, 406, 417, 420 and 506 IPC.
3. Crime No.15 of 2016 of Banjara Hills Police Station, Hyderabad, registered for the offences punishable under Sections 420 and 406 IPC.
4. CSR No.910 of 2015 of Abhirampuram Police Station.
5. Crime No.54 of 2015 of Madhurai District Crime branch.

Since the ingredients constituting the offences alleged are *prima facie* made out and in view of the registration of number of crimes against the petitioners in different parts of the country and having regard to the nature of offence committed, I am not inclined to grant anticipatory bail to the petitioners.

Accordingly, the Criminal Petition is dismissed.

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

JUSTICE C. PRAVEEN KUMAR

09.03.2016
gkv