THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.304 OF 2016

ORDER:

Heard the learned counsel for the petitioner and the learned Public Prosecutor.

2. The present Criminal Petition came to be filed under Sections 437 and 439 of the Code of Criminal Procedure, 1973, by the petitioner/Accused seeking enlargement on bail in Crime No.100 of 2015 of Dwaraka Police Station, Visakhapatnam District, registered for the offences punishable under Sections 420 and 406 of the Indian Penal Code, 1860.

3. The case of the prosecution is that the District Medical and Health Officer (DM & HO), Visakhapatnam allotted outsourcing agency in open lottery system vide Procs.Rc.No.A1/OS/2011, dated 22.11.2011 of District Collector & Chairman, District Level Outsourcing Committee, Visakhapatnam and made MOU between DM & HO and Outsourcing Agency i.e., M/s. Bethasda Industrial Services, Visakhapatnam during the month of November, 2013 for supply of 104 FDHS employees. In this connection DM & HO has released funds to the above said agency towards EPF, ESI and service tax to a tune of Rs.69,04,309/-. But, the petitioner being Managing Partner of said agency has paid partial amounts and not remitted the remaining amount of Rs.12,23,033/- to the employees. Basing on these allegations the present case came to be registered.

4. Learned counsel for the petitioners submit that the allegations made in the First Information Report are all false and

invented for the purpose of this case.

5. On the other hand, learned Public Prosecutor opposed the same contending that the FIR clearly discloses the alleged misappropriation by the petitioner.

6. It is to be noted that out of the EPF amount, the petitioner's society paid an amount of Rs.33,09,965/ out of Rs.39,75,155/- and still due Rs.6,65,190/-. Similarly, with regard to ESI amount, the petitioner's society paid an amount of Rs.5,71,026/- out of Rs.10,09,914/- and still due Rs.4,38,888/-. Even in respect of Service Tax, the petitioner's society paid Rs.17,99,901/- out of Rs.19,19,240/- and still due a sum of Rs.1,19,939/-. Thus, the actual amount misappropriated is Rs.12,23,417/-. In view of the above, it cannot be said that the petitioner is innocent of the offences alleged and that there was no misappropriation.

7. Having regard to the fact that substantial amount has already been paid, the petitioner shall surrender before the concerned Court and move an application for bail after giving prior notice to the learned Public Prosecutor, in which event, the said Court shall consider the same on the same day or at the earliest, in accordance with law.

8. Accordingly, the Criminal Petition is disposed of.

JUSTICE C. PRAVEEN KUMAR

Date:08.03.2016
INL