

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.10915 of 2017

ORDER:

This Criminal Petition, under Section 439(2) of the Code of Criminal Procedure, 1973, is filed by the petitioner/de-facto complainant, to cancel the anticipatory bail granted to the respondents 2 to 6 herein/accused Nos.2 to 6, vide order, dated 28.04.2017, passed in CrI.M.P.No.1214 of 2017 (Crime No.22 of 2016 on the file of the Police Station, CID, EOW, TS, Hyderabad) by the learned IV Additional Metropolitan Sessions Judge at Hyderabad, registered for the offences under Sections 409, 420, 477A of I.P.C. and Section 37 of the Foreign Contribution (Regulation) Act, 2010.

2. Heard Sri J.Sudheer, learned counsel for the petitioner/de-facto complainant, learned Additional Public Prosecutor representing the 1st respondent-State, Sri C.V.Mohan Reddy, learned senior counsel appearing for Sri C.Sumon, learned counsel for the respondents 2 to 6 herein/accused Nos.2 to 6 and perused the record.

3. The learned counsel for the petitioner/de-facto complainant would submit that on a detailed report lodged by the petitioner/de-facto complainant, this Crime in FIR No.22 of 2016 on the file of the Police Station, CID, EOW, TS, Hyderabad, was registered on 29.09.2016 for the offences under Sections 409, 420, 477A of I.P.C. and Section 37 of the Foreign

Contribution (Regulation) Act, 2010. The case is under investigation. The respondents 2 to 6 herein/accused Nos.2 to 6 are the Directors/Trustees of an organization called M/s.Operation Mobilisation India Trust (for short, 'OMIT'), which is established to spread the concept of love and service to mankind, which is a basic and fundamental tenet of Christianity. The respondents 2 to 6 herein/accused Nos.2 to 6 have misused their position, converted OMIT into commercial one and started engaging themselves in illegal activities. There is breach of trust on the part of the respondents 2 to 6 herein/accused Nos.2 to 6. The petitioner/de-facto complainant was unceremoniously terminated from service few years back. After collecting huge material with regard to the involvement of the respondents 2 to 6 herein/accused Nos.2 to 6 in illegal/fraudulent activities, he filed a report. Thereafter, the respondents 2 to 6 herein/accused Nos.2 to 6 have approached the High Court to quash this Crime No.22 of 2016 by way of filing a Writ Petition in W.P.No.40742 of 2016, wherein, this Court initially granted interim direction on 02.12.2016 staying arrest of the respondents 2 to 6 herein/accused Nos.2 to 6. Thereafter, the said writ petition was dismissed by this Court. Then, the matter was carried to the Hon'ble Supreme Court. There also, the respondents 2 to 6 herein/accused Nos.2 to 6 did not get any relief. In view of the relief of stay of arrest granted by this Court to the respondents 2 to 6 herein/accused Nos.2 to 6, they had the benefit of destroying the evidence. When one of the police personnel visited the premises of OMIT, the said officer was confined. On a

report lodged by the said officer, FIR No.109 of 2016 on the file of Police Station, Konaraopet, Sircilla District, was registered for the offences under Sections 353, 506 read with 34 of I.P.C. This speaks volumes of conduct of accused. In the pleadings in Criminal M.P.No.1214 of 2017 on the file of the Court below, the respondents 2 to 6 herein/accused Nos.2 to 6 have not incorporated the fact of filing of the writ petition before this Court and also about the filing of the SLP before the Hon'ble Supreme Court and obtained anticipatory bail under Section 438 of Cr.P.C. The respondents 2 to 6 herein/accused Nos.2 to 6 indulged in suppression of material facts. The respondents 2 to 6 herein/accused Nos.2 to 6 have been indulging in criminal activities. The Court below did not analyze the facts and circumstances of the case in proper perspective and erroneously granted relief to the respondents 2 to 6 herein/accused Nos.2 to 6 under Section 438 of Cr.P.C. and ultimately prayed to cancel the anticipatory bail granted to the respondents 2 to 6 herein/accused Nos.2 to 6 under Section 438 of Cr.P.C. by the Court below.

4. In support of his contentions, the learned counsel for the petitioner/de-facto complainant relied on the decisions reported in A.V.Papayya Sastry and others Vs. Govt. of A.P. and others¹, Arunima Baruah Vs. Union of India and others², K.D.Sharma Vs. Steel Authority of India Limited and others³, Dalip Singh Vs. State of Uttar Pradesh and

¹ (2007) 4 SCC 221

² (2007) 6 SCC 120

³ (2008) 12 SCC 481

others⁴, Meghmala and others Vs. G.Narasimha Reddy and others⁵ and M.Nagabhushana Vs. State of Karnataka and others⁶.

5. Per contra, Sri C.B.Mohan Reddy, learned senior counsel appearing for Sri C.Sumon, learned counsel for the respondents 2 to 6 herein/accused Nos.2 to 6 would submit that the respondents 2 to 6 herein/accused Nos.2 to 6 did not suppress the material facts. The filing of the writ petition before this Court and dismissal of the same was mentioned in the anticipatory bail application filed by the respondents 2 to 6 herein/accused Nos.2 to 6 before the Court below. One of the terminated employee (Mr.Ratnakar) of OMIT filed a report with the police. After due enquiry, the police was pleased to close the criminal case. One after the other, false reports are being lodged against the respondents 2 to 6 herein/accused Nos.2 to 6 by the said terminated employee of OMIT. The respondents 2 to 6 herein/accused Nos.2 to 6 have not indulged in any kind of malpractices. They are discharging their duties in tune with the objectives of OMIT. Except the respondent No.2 herein/accused No.2, all the respondents herein/accused are senior citizens. It is also brought to the notice of this Court that a Criminal Miscellaneous Petition in Crl.M.P.No.1523 of 2017 was filed by the State through Station House Officer, Santoshnagar Police Station, Hyderabad, for cancellation of anticipatory bail granted to the respondents 2 to 6 herein/accused Nos.2 to 6 and the

⁴ (2010) 2 SCC 114

⁵ (2010) 8 SCC 383

⁶ (2011) 3 SCC 408

same was dismissed by the learned IV Additional Metropolitan Sessions Judge, Hyderabad, by order, dated 25.05.2017. The petitioner/de-facto complainant was an employee of OMIT till 2011 and indulged in commission of irregularities including sexual harassment at work. After his dismissal from service, he filed this false report against the respondents 2 to 6 herein/accused Nos.2 to 6. Over the last five years, the petitioner herein/de-facto complainant and other terminated employees are filing similar complaints before the various authorities. The respondents 2 to 6 herein/accused Nos.2 to 6 did not indulge in suppression of material facts and ultimately prayed to dismiss the application.

6. In view of the rival contentions of both the parties, the point for determination is whether the anticipatory bail granted to the respondents 2 to 6 herein/accused Nos.2 to 6 is liable to be cancelled.

7. The material on record reveals that on an earlier occasion, Crl.M.P.No.1523 of 2017 was filed by the State through Station House Officer, Santoshnagar Police Station, Hyderabad, for cancellation of anticipatory bail granted to the respondents 2 to 6 herein/accused Nos.2 to 6 and the same was dismissed by the learned IV Additional Metropolitan Sessions Judge, Hyderabad, by order, dated 25.05.2017, holding that the Station House Officer did not specifically urge the violations/impediments for the investigation and that it is also not the case of the Station House Officer that the respondents 2 to 6 herein/accused Nos.2

to 6 have violated the conditions imposed while granting anticipatory bail. As per the material placed on record, the services of the petitioner/de-facto complainant in OMIT were terminated in the year 2011 on the allegations of various irregularities, including sexual harassment at work etc. Thereafter, number of complaints were made by one Mr.Ratnakar and others. Three out of four complaints, i.e., FIR No.350 of 2012 (Complaint filed by Mr.Ratnakar and the petitioner herein is shown as witness), FIR No.384 of 2012 (Complaint filed by Mr.Ratnakar) and FIR No.638 of 2015, were registered with the Police Station, Petbasheerabad, and were closed after due investigation. The complainants did not file any protest petition. When the aforementioned complaints were closed, Mr.Ratnakar consistently filed complaints against the Directors/Trustees of OMIT before Hon'ble Ministers and other authorities. When the petitioner/de-facto complainant filed a report with the Additional Director General of Police, CID, TS, Hyderabad, the present crime No.22 of 2016 was registered and is under investigation. The respondents 2 to 6 herein/accused Nos.2 to 6 have specifically mentioned about their filing of the Writ Petition before this Court in paragraph No.11 of the anticipatory bail application filed before the learned IV Additional Metropolitan Sessions Judge, Hyderabad, in Crl.M.P.No.1214 of 2017 and specifically contended that for the second time on similar set of allegations, the instant crime is registered and that the investigation for the 2nd report on similar allegations is legally barred. While dealing with the anticipatory bail

application of the respondents 2 to 6 herein/accused Nos.2 to 6 under Section 438 of Cr.P.C., the learned IV Additional Metropolitan Sessions Judge, Hyderabad, analyzed the entire evidence on record, including the renewal of the registration of OMIT under Foreign Contribution (Regulation) Act, on 22.08.2016. The Government of India, Ministry of Home Affairs (Foreign Division) (FCRA) also renewed the Certificate of registration of OMIT for a period of five years with effect from 01.11.2016. Similarly, the Good Shepard Society has also renewed the certificate of registration of OMIT for a period of five years with effect from 01.11.2016. Part of the investigation is completed. The custodial investigation of the respondents 2 to 6 herein/accused Nos.2 to 6 is not required for any purpose. Had there been substance in the allegations levelled by the petitioner/de-facto complainant and one Mr.Ratnakar, the renewals of registration of OMIT would not have been made by the authorities concerned. It appears from the record that those certificates were renewed after examining the activities of the OMIT. Crime No.350 of 2012 on the file of the Police Station, Petbasheerabad, was registered on the report lodged by Mr.Ratnakar. The allegations therein appear to be similar to the allegations made in the instant case. Further, it is not appropriate to hold that the allegations made Crime No.109 of 2016 are genuine and cancel the anticipatory bail already granted to the respondents 2 to 6 herein/accused Nos.2 to 6. The decisions relied on by the learned counsel for the petitioner/de-facto complainant reveal abuse of process of law,

suppression of material facts, not approaching the court with clean hands, commission of fraud and obtaining orders. The learned counsel for the petitioner/de-facto complainant would contend that the respondents 2 to 6 herein/accused Nos.2 to 6 have suppressed the material facts and fraudulently obtained impugned order, fraud vitiates proceedings. It is evident from the material placed on record, that the respondents 2 to 6 herein/accused Nos.2 to 6 have not committed any fraud nor they have suppressed the material facts. They have specifically mentioned the filing of writ petition to quash the subject crime and dismissal of the same. Under these circumstances, the purport of the above referred decisions have no application to the case on hand. The facts and circumstances of this case are distinct from the cases referred in the above decisions. The impugned order of the learned IV Additional Metropolitan Sessions Judge, Hyderabad, is not perverse. It is based on material on record. The Courts have wide discretion in granting bail. There is no suppression of material documents/facts. The considerations to quash the proceedings and grant bail are distinct. There is nothing to take a different view.

8. In the result, the Criminal Petition is dismissed.

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

Dr. Shameem Akther, J

12th December, 2017
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