HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION Nos.11269 AND 11274 OF 2017

COMMON ORDER:

These Criminal Petitions are filed under Section 438 Cr.P.C. to grant anticipatory bail to the petitioners-A.1 to A.4 in Crime No.1095 of 2017 of Madhapur Police Station, Cyberabad, registered for the offences punishable under Sections 403, 406, 420, 464 and 506 I.P.C. r/w Section 120-B I.P.C. and Sections 447 and 448 of the Companies Act, 2013.

2. Heard Sri M.R.K. Chakravarthy, learned counsel for the petitioners-A.1 and A.2 in Crl.P. No.11269 of 2017, Sri Sreenivasa Rao Velivela, learned counsel for the petitioners-A.3 and A.4 in Crl.P. No.11274 of 2017, and the learned Additional Public Prosecutor appearing for the respondent-State, apart from perusing the material available on record.

3. The learned counsel for the petitioners-A.1 to A.4 would submit that the petitioners are falsely implicated in this crime for personal gain of the *de facto* complainants; the offences under Sections 447 and 448 of the Companies Act are non-cognizable offences, which cannot be taken cognizance except on a complaint by the Registrar under Section 439(3) of the Companies Act; except the offences under Sections 420 and 464 I.P.C., the punishment for the other offences is imprisonment up to two years; for the offence under Section 406 I.P.C., the punishment is imprisonment up to three years; the allegation do not constitute the offences relating to

criminal breach of trust, cheating, misappropriation of funds, intentionally causing wrongful loss to the *de facto* complainants and extortion; the petitioners and the *de facto* complainants are known to each other from more than a decade; they are Directors and shareholders in M/s. Big-C Mobiles Private Limited and M/s. Lot Mobiles Private Limited; the disputes and differences between the parties are civil in nature; the police have no authority to register F.I.R.; the police issued notice under Section 41A Cr.P.C. to appear before them within three days and produce documents; the police seized the material documents at the instance of the *de facto* complainants; the notice under Section 41A Cr.P.C. was complied with by the petitioner-A.1 on 02.11.2017; the bank account of M/s. Big-C Mobiles Private Limited was also seized by the police; no fraud has been committed by the petitioners in respect of either receipt of salaries or other money received by them; and ultimately, prayed to allow the applications.

4. On the other hand, learned Additional Public Prosecutor appearing for the respondent-State opposed the grant of bail to the petitioners-A.1 to A.4 under Section 438 Cr.P.C. contended that the petitioners indulged in fabrication of accounts and coerced the *de facto* complainants to sell their shares, made an attempt to damage the reputation of the *de facto* complainants; and ultimately, prayed to dismiss the applications.

5. Now the point for determination is, whether the petitioners-A.1 to A.4 are entitled for bail under Section 438 Cr.P.C.?

6. The material on record reveals that the *de facto* complainants are shareholders, promoters and directors in M/s.Big-C Mobiles Private Limited and M/s. Lot Mobiles Private Limited, companies incorporated under the Companies Act, 1956. The day-to-day affairs of the said company are being managed by the petitioners, who are its shareholders, managing directors and directors, respectively. The *de facto* complainants invested huge money in the aforementioned companies. Accordingly, they were given equity shares. It is also alleged that the petitioner-A.1 in the active collusion of the petitioner-A.2 hatched a conspiracy to usurp the shares of minority shareholders, such as the *de facto* complainants, for lesser amounts by adapting to illegal means and resorted to send away the *de facto* complainants from the companies. Some of the minor shareholders were recently sent away by the petitioners-A.1 and A.2 with the help of petitioners-A.3 and A.4. It is also alleged that the *de facto* complainants are no longer required in the companies. It is also alleged that the petitioner-A.1 raised his voice and shouted stating that as the managing director of the company, he would decide who would be the shareholders. The *de facto* complainants are being forced to sell their shares and leave the company. The petitioners-A.2, A.3 and A.4 are sailing with the petitioner-A.1. It is also alleged that the petitioners/A.1 and A.2 are forcing the *de facto* complainants to take the value of shares determined by them.

7. There are specific and grave allegations against the petitioner-A.3 that he being Finance Director of the Company misused his power to operate bank account of M/s.Big-C Mobiles Private Limited (Syndicate Bank current account at S.R. Nagar) and has withdrawn Rs.95,00,000/- on 18.10.2017 and Rs.44,55,000/- on 20.10.2017 without the approval of Board of Directors or the shareholders of the Company. There is also specific allegation against the petitioner-A.4 that on 20.10.2017 he has withdrawn Rs.3,00,00,000/- and Rs.25,30,000/- on 20.10.2017 without the approval of Board of Directors or the shareholders of the Company. There are allegations against the petitioner-A.1 that on 20.10.2017 he has withdrawn Rs.88,00,000/- without the approval of the Board of Directors or the shareholders of the company. Similarly, the allegation against the petitioner-A.2 is that he has withdrawn an amount of Rs.3,00,00,000/- on 20.10.2017 and Rs.44,55,000/- without the approval of the Board of Directors or the shareholders of the Company.

8. The passwords were changed and the *de facto* complainants were denied access to the information. It is also alleged that the petitioner-A.1 communicated to all the employees of the Big-C and Lot Mobile Private Limited stating that the *de facto* complainants are out of the company and no employees should interact with them in future and the *de facto* complainants have no role in the companies. The petitioner-A.1 removed the name of the *de facto* complainants in the companies' mobile group entries like whatsapp etc.,. It is done to deny the *de facto* complainants from

functioning in the companies. When the petitioner-A.1 was questioned about these matters, the *de facto* complainants were taken to conference hall in order to make them exit from the company and were forced to sign certain documents. The *de facto* complainants had left the company premises on 24.10.2017 and the petitioners/A.1 and A.2 threatened that they would damage the reputation of the *de facto* complainants, if they don't sign the exit papers and also threatened to damage their reputation in public domain. There are also allegations that the petitioner-A.2 took the *de facto* complainants to the cabin of the petitioner-A.1 in the presence of A.5, where the *de facto* complainants were coerced and induced to sign certain documents and were threatened not to interfere with the affairs of both the companies. There are also other allegations against the petitioners/A.1 to A.4, that they are fraudulently withdrawing huge amounts from the above companies without following the procedure and the regulations under the Companies Act. As seen from the material placed on record, the allegations against the petitioners are serious in nature. There is also record to show that huge amounts were withdrawn by the petitioners against the prescribed rules and regulations. The petitioners-A.1 and A.2 several times coerced, threatened and forced the *de facto* complainants to sell their shares. The *de facto* complainants were denied the information and access in both the companies, which is illegal and uncalled for. The petitioners-A.1 to A.4 being the Managing Directors and the Directors of the subject companies, failed to honour the commitments in terms of the Companies Act.

There are specific allegations of *mala-fides*, cheating and misappropriation of funds belonging to both the companies. Therefore, it cannot be said that the petitioners are falsely implicated in this case. The allegations require thorough investigation. The release of the petitioners would hinder the investigation. There is possibility of the petitioners causing disappearance of the material evidence. Therefore, it is not a fit case to grant bail to the petitioners-A.1 to A.4 under Section 438 Cr.P.C.

9. In the result, both the Criminal Petitions are dismissed.

Dr. SHAMEEM AKTHER, J

Date: 05-12-2017.
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HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Crl.P. Nos. 11269 and 11274 OF 2017

Date.05-12-2017

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