THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.3089 OF 2018

ORDER:

This criminal petition, under Section 438 of the Code Of Criminal Procedure, 1973 (for short 'CrPC), is filed by the petitioner/ Accused to grant pre-arrest bail directing the Station House Officer, Choutuppal Police station, Rachakonda District, Telangana, to release him in the event of his arrest in connection with Crime No.18 of 2018 registered for the offence punishable under Sections 409 and 420 of the Indian Penal Code, 1860 (for short 'IPC'), apprehending his arrest in connection with the above crime.

The case of the prosecution is that the *de facto* complainant initially appointed the petitioner as an employee to give job orders of Tamil Nnadu State for processing fabric and accordingly the *de facto* complainant doing business with the petitioner till the end of January 2016. In January 2017 the company appointed the petitioner as an agent to procure orders from Tamil Nadu Government on its name and also authorized the petitioner to open an account in Indian Overseas Bank, Tamil Nadu Erode for the purpose of depositing the cheques received by the company from Tamil Nadu Government and for drawing petty amounts if required strictly from the company. While so, the petitioner approached with such acquaintance, the company in January 2017 with a dishonest and malafide intention to cheat the company, induced the representatives of the company including the Managing Director of the company that he would act as an agent of the company and induced the company to open the account in Indian Overseas Bank authorized signaturory and as per the terms, the petitioner is entitled commission @ 6% as value of the contract for securing contracts and for acting as an agent on behalf of the company with Tamil Nadu Government. While so, the Department of Handlooms & Textiles, Chennai, Tamil Nadu awarded work order for Rs.25 crores on 08.02.2017 to the company for process fabric vide RC No.16/2016/Uniform/TN dated 08.02.2017. As per the requirement, the company has furnished a Bank guarantee for Rs.1,19,60,125/- dated 14.02.2017 issued by the Agrasen Co-operative Urban Bank Ltd., Siddiamber Bazar, Hyderbaad. As per the request of the petitioner, the company has passed a resolution for opening a separate account with respect to Erode account and accordingly opened an account in Indian Overseas bank, A/c. No.002502000015555 Erode Branch, Chennai, Tamilnadu, and the purpose of this account is to meet petty expenditure at Erode strictly for the purpose of their company. Deceived by such inducement and for smooth running and functioning of the operation of the business, the company has nominated the petitioner as the authorized representative to operate the bank account in Indian Overseas Bank Erode, further a DD No.890691 dated 30.01.2017 drawn on Indian Overseas Bank, Erode Main Branch for Rs.10,00,000/- towards EMD was submitted to Director of Handlooms & Textiles, Kuralagam, Chennai. The company has successfully completed the project awarded to them and accordingly received a sum of Rs.21,60,32,377/- from the Director of Handlooms and Textiles, Kuralagam, Chennai. However the petitioner contrary to the trust reposed on him, diverted a sum of Rs.6,61,13,556/- and has diverted total funds in different accounts and thus misappropriated the same while withdrawing EMD Rs.10,00,000/- and therefore, requested to take necessary action against the petitioner.

On the strength of the same, the police registered a crime against the petitioner and issued First Information Report and the petitioner initially approached the Madras High court and obtained interim bail vide order dated 14.02.2018 in Crl.O.P.No.2082 of 2018 enabling the petitioner to obtain bail from the jurisdictional court in the State of Telangana, since it relates to Choutuppal Police Station.

The present petition is filed on the ground that civil litigation is pending and the petitioner is entitled to 6% commission i.e. Rs.1,38,18,240/- along with 18% GST of Rs.24,87,283/-. As of now the complainant company paid only Rs.1,07,01,885/- towards commission and still there is outstanding amount of Rs.55,94,638/-. Therefore, the amount he retained is only towards his commission, if any, and that apart the amount was diverted only at the instruction of the company not otherwise as the company was due certain amount to the various companies referred in the petition. The petitioner also expressed his readiness to return bank guarantee to the *de facto* complainant and that there are no grounds to proceed against the petitioner.

During hearing, Smt.K.Lalitha, learned counsel for the petitioner, contended that the dispute is purely civil in nature and suits were pending, legal correspondence between the parties further disclosed that certain amount is due to the various companies in view of the transaction between the other companies and the *de facto* complainant and therefore, the petitioner shall be enlarged on bail in the event of his arrest in connection with the above crime and prayed to allow the petition.

The Public Prosecutor for the State of Telangana contended that the investigation is not yet completed and the court cannot grant pre-arrest bail as a matter of course and prayed for dismissal of the petition.

As seen from the material on record the petitioner was an agent of the Maruti Cottex Ltd., who obtained orders from Tamil Nadu State Government on commission basis @ 6% per agreement, but it is the duty of the agent to account of the amount and diversion of amount without the consent of the company would amount to breach of trust *prima facie*. Therefore, retaining amount of more than six crores is another strong circumstance to believe, *prima facie,* that the petitioner misappropriated the amount.

Grant of pre-arrest bail is not a matter of course, it is a matter of exception. Unless the petitioner has shown exceptional circumstances, the court cannot grant pre-arrest bail and such discretion is only in exceptional circumstances as per the law declared by the Apex Court in **SIDDHARAM SATLINGAPPA MHETRE VS. STATE OF MAHARASHTRA AND OTHERS[1],** the Apex Court held as follows:

i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

ii) The antecedents of the applicant including the facts as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

iii) The possibility of the applicant to flee from justice;

iv) The possibility of the accuser's likelihood to repeat similar or the other offences;

v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

vi) Impact of grant of anticipatory bail particularly in case of large magnitude affecting a very large number of people;

vii) The Courts must evaluate the entire available material against the accused very carefully. The Court must also clearly comprehend the exact role of the accused in the case. The case

[1] 2011 Crl.L.J. 3905

in which accused is implicated with the help of Section 34 and 149 of IPC, the Court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix) The Court to consider reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

Applying the guidelines to the present facts of the case, the total amount allegedly misappropriated was crores of rupees being an agent amounts to breach of trust, *prima facie,* and the petitioner retaining the bank guarantee is another strong circumstance to conclude that there is *prima facie,* material to proceed against the petitioner.

In those circumstances, it is difficult to exercise power under Section 438 CrPC to grant pre-arrest bail to the petitioner as there is, *prima facie,* material to connect the petitioner with the offence punishable under Sections 409 and 420 IPC and apart from that the investigation is not completed and taking into consideration of the facts and circumstances of the case and gravity of the offence, I am of the considered view that it is not a fit case to grant pre-arrest bail to the petitioner. Consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

M.SATYANARAYANA MURTHY, J

21.03.2018
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