

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Criminal Petition No.5295 of 2017

ORDER:

This Criminal Petition, under Section 438 of the Code of Criminal Procedure, 1973, is filed by the petitioner/accused No.39/party-in-person, for grant of anticipatory bail in the event of his arrest in Crime No.24 of 2011 on the file of Narasannapeta Police Station, Srikakulam District, registered for the offences punishable under Sections 420, 403, 465, 468, 471, 177 and 120-B of I.P.C.

2. Heard the petitioner/party-in-person (A.39), learned Additional Public Prosecutor representing the respondent-State and perused the record.

3. The petitioner/party-in-person would submit that he is innocent person and falsely implicated in this case. All the allegations made against him are false. He has not committed any irregularities in processing the bills. The allegations that he did not verify whether the agreements are in force or not and whether the insurance certificates were produced with the agreements or not are false. Further, the allegations that head of account for technical sanction and payment of bills was not checked and that the technical sanction was made under Head 2701 whereas the payment was made under Head 4701 and that no verification was done regarding the receipt of EMD and quality control certificate from the competent authority are

absolutely false. He has not caused any loss to the State exchequer by making excess payments for the works carried out at any point of time during his tenure and ultimately prayed to allow the application.

4. On the other hand, the learned Additional Public Prosecutor opposed the grant of bail to the petitioner/party-in-person stating that all the allegations levelled against the petitioner/party-in-person are borne by record and examining the officers concerned. In all, the petitioner/party-in-person caused loss to a tune of Rs.26,35,76,427/- to the State exchequer. The allegations are grave in nature. The petitioner/party-in-person is not entitled for bail under Section 438 of Cr.P.C.

5. In view of the rival contentions, the point for determination is whether the petitioner/party-in-person is entitled for bail under Section 438 of Cr.P.C.

6. Having found some irregularities in the works carried out relating to BRR Vamsadhara Project, Main Canal Division, Tekkali, Narasannapeta, Amadalavalasa and Hiramandalam Divisions, an enquiry was ordered against the petitioner/party-in-person and others by the Vigilance and Enforcement Unit, enquiry was conducted, found shortage of material with reference to the recording in M.Books for an amount of Rs.19.65 crores. The petitioner/party-in-person, along with the other accused officials, committed conspiracy. The petitioner/party-in-person facilitated the other accused and allowed the contractors

to submit the bills without execution of works and without complying with the terms and conditions of agreement entered into between them and caused huge loss to the State exchequer. There is also record to show that there were 906 works, the physical verification reports suggested that 247 were fixed works ground, for 659 works, material available in 10 stock yards, and 223 works were neither recorded in M.Books nor fixed on ground. The above 906 works were sent to the General Superintendent, PWD Division, Seetanagaram, for preparing the cost analysis. On that, the General Superintendent, Seetanagaram, furnished the rate analysis for 906 agreements vide Lr.No.GS/P.W.W.S.Dn./Sn./DB/AEE/633M, dated 05.08.2015 and 16.09.2015. As per the said report, Sri S.K.Venkatacharyulu, Executive Engineer, SMI Division, Visakhapatnam, vide letter No.EE/SMI/VSP, dated 26.11.2015, prepared the excess payments for 247 works which were fixed on ground and for the 659 works for which stocks of the material available at the godowns. As per this information, the P.A.O. paid a total amount of Rs.8,00,27,313/- for 247 works. After physical verification, the total amount is worked out for Rs.2,55,44,436/- as per the existing GS rates. Thus, excess payment made to the agencies is Rs.5,44,82,877/-. The P.A.O. also paid a total amount of Rs.20,90,93,550/- for 659 works. During physical verification of godowns, the rates fixed by PWD work shop came to Rs.2,50,04,077/-. Thus, after physical verification, the total amount is worked out for the 659 works is Rs.20,90,93,550/-. Accordingly, a total amount of

Rs.26,35,76,427/- was made as excess payment to the agencies for 906 works.

7. The petitioner/party-in-person (accused No.39) previously worked as Pay & Accounts Officer, Srikakulam, (now retired), in BRR Vamsadhara Project, Srikakulam, during the period from 2005-2008. During that period, he committed several irregularities in collusion and conspiracy with the engineering officials, contractors and stamp vendors etc. He did not verify whether the agreements are in force or not. No correspondence was made on extension of time of agreement period (EOT) after the lapse of original EOT. He did not verify whether the insurance certificates were produced with the agreements or not, and whether they were in force or not. The head of account for technical sanction and payment of bills were not checked. The technical sanction was made under Head 2701, whereas, the payment was made under Head 4701. No verification was done regarding the receipt of EMD and quality control certificate from the competent authority etc.

8. Further, the police recorded the statement of one Sunkara Appa Rao, who was working as Pay and Accounts Officer, Works & Projects, Srikakulam, since December, 2014. He is the successor-in-office of the petitioner/party-in-person. His statements corroborated with the allegations levelled against the petitioner/party-in-person. He clearly supported the prosecution case.

9. There is also other material to substantiate the allegations levelled against the petitioner/party-in-person. As per the prosecution case, an excess payment of Rs.26,35,76,427/- was made to the agencies for carrying out 906 works. There are other accused in this case. There is no reason for the enquiry officials to falsely implicate the petitioner/party-in-person in this case. The allegations are serious and grave in nature. The petitioner/party-in-person, being a Government official, ought to have behaved in responsible manner by adhering to the procedure stipulated. It is alleged that he has passed several bills running into crores of rupees. Under these circumstances, it cannot be said that the petitioner/party-in-person is innocent. The matter requires thorough investigation. It is not a fit case to allow this application under Section 438 of Cr.P.C.

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

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

Dr. SHAMEEM AKTHER, J

04th January, 2018
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