HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.8513 OF 2018

ORDER:

The petitioner is the sole accused of crime No.152 of 2018 of Mahabubabad Town Police Station, registered for the offences punishable under Sections 406, 408, 468 & 420 IPC from the report of the defacto complainant-R2 dated 02.05.2018 addressed to the DSP, Mahabubabad from which when forwarded to the Town Police Station, Mahabubabad the crime registered.

The sum and substance of the accusation against the petitioner from said report of the defacto complainant is that the defacto complainant is General Manager of M/s. Vardhan Motors, Mahabubabad, which is a partnership firm with registered head office at Hyderabad in their dealing with buying and selling of tractors and spare parts of tractors having branches at Mahabubabad, Thorrur, Jangaon and Thirumalgiri and they are authorized dealers of TAFE tractors. The accused Phani Gangadhar Alapati of Penamaluru Mandal, Vijayawada, was working in their Mahabubabad Branch as general manager operations from 1st September 2014 as responsible for the over all operations of all the branches Mahabubabad, Thorrur, Jangaon and Thirumalgiri stationed at Mahabubabad and incharge of the sales and operations of 4 branches supra. In that course he played fraud and cheated the entity Vardhan Motors by collected huge cash amounts from various customers by luring to buy tractors in various branches and used the money collected from the customers for his personal gain and not accounted to the company. It was found by the internal audit while completing the annual statutory audit of the company and found the fraud in the company accounts where there was manipulation of accounts by forged receipts and given to customers by the accused and when the auditors questioned about increase in the debtors list yearly and most of the amounts not recovered it came to the light of the fraud he played and when verified the sales of the vehicles in the register account and the amounts deposited towards sale of the vehicles with serious mismatch of figures from the actual amount towards the sales not deposited with the company and difference in the amounts shown as receivable or sales and he cheated in resulting to company huge loss by his fraud for the period from September 2011 to March 2018 in the sale of 581 Massey Ferguson Tractors and 186 old tractors it was in exchange out of it of a sum of Rs.1,87,00,000/-, hence to take action.

The petitioner who went unsuccessful in seeking anticipatory bail before the learned Sessions Judge, Mahabubabad, in Crl.M.P.No.890 of 2018 dated 15.06.2018 with observation of investigation not completed his concession of anticipatory bail cannot be considered from the allegations, moved this Court with the contentions in the present anticipatory bail application that he is innocent and falsely implicated after he quit the job and joined in another company to thwart his prospects by got him removed from the job with this accusation and alleged misappropriation extending for a period of 4 years all of a sudden as if about Rs.1,87,00,000/- and as if involving 581 Massey Ferguson Tractors which highly unbelievable and thereby he is entitled to the concession of anticipatory bail being innocent and committed no offence and the accusation is false.

The defacto complainant and the learned Public Prosecutor opposed the anticipatory bail application of the petitioner on several grounds including in support of the contentions in the FIR averments.

The declaration-cum-undertaking of the accused dated 01.03.2018 shows that he has been taking care of the sales of the 3 branches Thorrur, Jangaon and Mahabubabad and granted unsecured loans to the customers of Rs.1.45 crores which let loss to the company, being in charge of the operations of the company and handed over the vehicles without full payment and it shows from the calculations the alleged shortfall of Rs.1,67,65,725/- and there is some handwriting in between the signatures at page No.2 of the so called undertaking letter of 01.03.2018 later on 10.03.2018 for 2 endorsements and without date for one endorsement which reads handover Rs.50 lakhs cheque to the initial loss in the name of Kotak Mahindra Bank, Somajiguda Branch, and also handover Rs.1.11 crores cheque to the losses done drawn on Kotak Mahindra Bank, Somajiguda Branch. It is mentioned total outstanding from the day of taking over business is Rs.3.36 crores nearly and from out of the cheques given deducted, the loss is Rs.16,76,000/- that writing is of the last balance is not tallied with the next page account copy. Leave about the contention of the accused of those are filled in between signed blank papers or by forging the same by the defacto complainant, thereby it is not find place in the FIR dated 02.05.2018 if at all such letters and writings of 01.03.2018 and 10.03.2018 available. The copies of the notice and reply to the reply filed without reply notice of which first one dated 10.04.2018 of the defacto complainant to the accused mentioned of termination of services of him saying in January 2018 it came to know of some financial deviations and one Santosh was appointed as observer through whom the accounts were audited with reference to the stocks and receivables and from that irregularity the entity decided to move the accuse to one of the group companies of them while audit happens in the company to conduct in his absence and from the completion of audit he committed fraud to the tune of Rs.1.45 crores and asked him to handover of company property in his possession and his services are terminated and not entitled to any F&F or documents. The reply to the reply shows he was terminated by letter dated 10.04.2018 supra and there are valid grounds for the termination. It is mentioned about accused was appointed as general manager operations with effect from 01.09.2014 and he was made incharge though initially stationed at Mahabubabad showroom for 3 more branches supra with freehand to take decisions in dealing with operations of the 4 branches and he abused the confidence and trust and caused loss to a tune of Rs.1.45 crores to Rs.1.87 crores in respect of 581 new tractors and 186 old exchanged tractors and given an undertaking-declaration dated 01.03.2018 and part payments made of 2 cheques referred supra the balance is misappropriated. The contentions of the accused even after cheques with signatures of him not that of him.

A perusal of the case diary shows some receipts allegedly with or without signatures given by accused and swallowed the amounts and the accused denied the so called signatures in the receipts. The investigation is pending and whether those are the signatures of the accused or not in the receipts involved the alleged misappropriation is a matter requires to be investigated including through expert opinion on the writings and signatures so also it is denied about the alleged undertaking letters and the signatures on the cheques and the contents also endorsements of the letters dated 01.03.2018 and 10.03.2018 supra as the investigation is in preliminary stage.

In view of the above, though it is the duty of the Court to balance personal liberty with propensity of the crime, this Court is not inclined to grant the relief of anticipatory bail at this stage.

Having regard to the above and in the result, this Criminal Petition is dismissed.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 28.09.2018
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