THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No. 12741 OF 2017

ORDER:

This Criminal Petition is filed under Section 438 Cr.P.C. seeking to grant anticipatory bail to the petitioner-A.2 in crime No.1056 of 2017 of Madhapur police station, Cyberabad registered for the offences punishable under Sections 420 IPC and 3 and 4 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 (for short, 'the Act, 1978').

2. Heard both sides and perused the material available on record.

3. The learned counsel for the petitioner-A.2 would submit that the petitioner-A.2 is innocent person and falsely implicated in this case; that he has nothing to do with the money circulation scheme; that the defacto complainant signed the I.R. Registration form out of her free will after being satisfied with the explanation about Vihaan's business model; that the defacto complainant did not pay any money to the petitioner-A.2 and there is no entrustment of property; that the present complaint is motivated and *mala fide*; that some of the accused were arrested in this case without prior notice or summons and remanded by the Court concerned; that their remand report indicates vague allegations against Vihaan and the business of the company; that the petitioner-A.2, being shareholder of Vihaan, is apprehending arrest; that his application under Section 438 Cr.P.C. was dismissed by the learned Metropolitan Sessions Judge, Cyberabad vide order dated 13.12.2017 in Crl.M.P. No.5198 of 2017; that the present complaint is filed intentionally to malign and arm-twist against A.1 company by suppressing the truth.

It is further contended that on 12.09.2016, the Ministry of Consumer Affairs, Government of India issued Direct Selling Guidelines to all States/Union Territories as Guiding Principles to consider regulating the business of Direct Selling and Multilevel Marketing and strengthen the existing regulatory mechanism on Direct Selling and Multilevel Marketing for preventing fraud and protecting the legitimate rights and interests of consumers, and that these guidelines require the State and Union Territories to take necessary steps to set up a mechanism to monitor and supervise the activities of Direct Selling Entities, and that the guidelines enumerate conditions for the functioning of the Direct Selling Entities; that that even if the prosecution case is believed, the petitioner-A.2 is not guilty of any of the offences alleged, and ultimately, prayed to allow the application.

4. On the other hand, the learned Additional Public Prosecutor appearing for the respondent-State opposed the grant of bail to the petitioner-A.2 under Section 438 Cr.P.C. and contended that the ingredients to constitute the offence punishable under Section 420 IPC, besides the provisions of Sections 3 and 4 of the Act, 1978, would apply to the instant case; that the petitioner-A.2 played key role in conduct of illegal activities of A.1 company and made money by resorting to illegal means, and ultimately, prayed to dismiss the application.

5. In view of the contentions put forth by both sides, the point for determination is whether the petitioner-A.2 can be granted bail under Section 438 Cr.P.C.?

6. The material placed on record discloses that the defacto complainant lodged a report on 21.10.2017 stating that A.1 to A.4 and their team members informed her to meet at Café Coffee Day, Madhapur on 19.10.2017 wherein they

tried to involve her in a Q Net scam by motivating her with false inducements, and ultimately, she paid Rs.3,50,000/- to A.1. The report further discloses that thereafter, on enquiry through internet, she noticed that A.1 is a fraudulent company and found many people being cheated by it and its founder agents made false promises and resorted to money circulation schemes.

7. As per the remand case diary dated 22.10.2017, A.1 is company is represented by one Datho Vijay Eswaram and the petitioner-A.2 is key person in A.1 company. A.4, who is friend of the defacto complainant, along with A.3, A.12 and A.13, induced the defacto complainant to deposit money in A.1 company on the pretext of getting huge profits, and it prompted the defacto complainant to deposit Rs.3,50,000/- in A.1 company. There is also record to show that the petitioner-A.2, being the key person in A.1 company, had joined other accused in the money circulation scheme which is chain linked scheme and earned easy money. It also reveals that the persons who joined A.1 company made huge amounts illegally by inducing and cheating public to invest small amounts in A.1 company's money circulation schemes stating that the members would get huge profits by joining other members in the chain linked scheme.

8. As far as subject crime is concerned, no stay is granted by the Hon'ble Supreme Court of India. Investigation is in progress. Some of the accused persons were remanded to judicial custody vide remand report dated 22.10.2017. It is not in dispute that the petitioner-A.2 is not a member of A.1 company. The contention is that the business of A.1 company is being carried on as per the Regulations prescribed. The *modus operandi* of A.1 company is not as per the Regulations prescribed by the Government of India.

9. It is evident from the record that it is an economic offence where innocent public is made to invest small amounts and the persons representing A.1 company and its members are making huge profits violating the provisions enumerated under Sections 3 and 4 of the Act, 1978. Under these circumstances, it cannot be held that the petitioner-A.2 is innocent person and falsely implicated in this case. Release of the petitioner on bail under Section 438 Cr.P.C. would hinder investigation. There is also possibility of petitioner causing disappearance of material evidence. Under these circumstances, the petitioner-A.2 is not entitled for relief under Section 438 Cr.P.C. The Criminal Petition is devoid of merit and liable to be dismissed.

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

Dr. SHAMEEM AKTHER, J

Date: 19 .1.2018
DRK

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

<u>Crl.P. No. 12741 OF 2017</u>

19.1.2018

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