IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
12.07.2021	22.07.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO.10527, 10529, 10531 & 11102 OF 2021
AND
CRL. M.P. NOS. 6793 TO 6795 OF 2021

Pavithra Sugichandran @
Pavithra Ramprasath .. Petitioner in Crl. OP 10527/21

Muthunarayanan Narayanasami .. Petitioner in Crl. OP 10529/21

Ram Prasath Muthunarayanan Reddy .. Petitioner in Crl. OP 10531/21

Kumudhavalli .. Petitioner in Crl. OP 11102/21

- Vs -

1. The State, rep. By
   The Asst. Commissioner of Police
   EDF-III, Central Crime Branch
   Vepery, Chennai. .. Respondent in all Crl. OPs

2. Digvijay Singh
   Authorised Representative
   of Gateway Office Parks Pvt. Ltd. (GOPL)
   Block A-6, Ground Floor
   GST Road, Perungalathur
   Chennai 600 063. .. Intervener in all Crl. OPs

Criminal Original Petitions filed u/s 438 Cr.P.C. praying this Court to enlarge the petitioner on bail in C.C. No.92 of 2020 pending on the file of the Asst. Commissioner of Police, Central Crime Branch – EDF-III, Vepery, Chennai.

For Petitioners : Mr.Abrar Mohamed Abdullah for
Mr. S.Murugavel in Crl. OP 10527/21
Mr. P.Wilson, SC, for
Mr. G.V.Anjaneyababu in Crl OP 10529/21
Mr. N.R.Elango, SC, for
Mr. D. Prabhu & Mr.B.Manivannan
in Crl. OP 10531/21 & 11102/21

For Respondent : Mr. C.E.Pratap, GA (Crl. Side)

For Intervener : Mr. P.S.Raman, SC &
Mr.Sathish Parasaran, SC
for Mr. P.Kumaresan

COMMON ORDER

The petitioners are arrayed as accused in C.C. No.92 of 2020 for the offences u/s 403, 471, 477-A, 120-B, 465, 468, 420 and 409 IPC on the file of the respondent and they seek anticipatory bail by filing the present petitions.

2. The first anticipatory bail application in Crl. O.P. No.4904/21, filed by the petitioner in Crl. O.P. No.11102/2021 was dismissed by this Court as early as on 16.04.2021.

3. It is the case of the prosecution that the petitioner in Crl. O.P. No.10531/21 is A-1; the petitioner in Crl. O.P. No.10529/21 is A-2; the petitioner in Crl. O.P. No.11102/21 is A-3 and the petitioner in Crl. O.P. No.10527/21 is A-7. While A-2 and A-3 are the parents of A-1, A-7 is the wife of A-1 and the daughter-in-law of A-2 and A-3.

4. A-1 was working as Managing Director of Gateway Office Parks Ltd. (for short “GOPL”). A-2 and A-3 are running a business enterprise under the name AMN Earthmovers, which according to the prosecution, was doing some sub-contracting jobs for GOPL, as assigned to it by the approved contractors, viz., JKS Constructions Pvt. Ltd., M/s.Suyambu Projects and M/s.GR Projects.

5. The defacto complainant/company is engaged in the business of construction and development of Information Technology/Information Technology Enabled Services and that the defacto complainant entered into a Development Management Agreement (for short 'DMA') with Shriram Properties and Infrastructure Pvt. Ltd. and Shriram Properties Pvt. Ltd., for the purpose of

construction and the work of construction was entrusted with Global Entropolis (Vizag) Pvt Ltd. (for short 'GEVPL') and that the funds for the said construction are to be provided by the defacto complainant.

6. It is the further allegation that reconciliation of the account books of the defacto complainant with GEVPL resulted in unearthing information that though the books of the defacto complainant revealed that huge amounts to the tune of about Rs.128 Crores were transferred to various entities towards the construction activities, yet GEVPL informed the defacto complainant that it had not received any payments as per the DMA. A further scrutiny of the transaction revealed that A-1 had siphoned off the funds through fraudulent means by authorising the said payments to the account of many firms/entities, which were rerouted to the account of AMN Earthmovers, in which A-2 and A-3 were partners and ultimately the said amounts found its way to the account of A-1 and that certain of the accounts in which the money was deposited was jointly held by A-2 and A-3. It is the further allegation of the prosecution that amounts to the tune of around Rs.100 Crores were siphoned off by A-1, through illegal means and that the said amounts did not turn up in the account of GEVPL, but had

curiously ended into the account of A-1 through the accounts of A-2 and A-3. It is the further case of the prosecution that with the aid of the said amounts, very many properties were purchased by A-1 in his name as well as in the name of A-2, A-3 and his wife – A-7.

7. It is the further case of the prosecution that though the statement of accounts were audited by the in-house auditing firm as also by the independent audit firm, the large scale manipulation of accounts and fraudulent transactions, were not brought to the notice of the Board of GOPL, which resulted in the Board taking action against the auditors as well and the auditors have also been implicated in this case. Only on the reconciliation of the accounts of the defacto complainant company and GEVPL, the fraud perpetrated by A-1 as Director of the defacto complainant company had come to light which has resulted in the lodging of the complaint against the petitioners in Crime No.92/20 by the respondent.

8. Mr. N.R.Elango, learned senior counsel appearing for A-1 and A-3 submits that the petitioner/A-1, as Managing Director of the defacto complainant

company had charge of the affairs of the company, which is not disputed, but the stand of the complainant that the petitioner had approved the transactions for payment of the amounts to the various contracting firms, without the knowledge and approval of the Board is wholly unacceptable for the simple reason that all the transactions have been scrutinized by the finance team and only after their approval, the amounts have been released. Further, the accounts of the company had been audited both by its in-house auditors and also by independent external auditors, who have approved all the transactions made by the company. It is the further submission of the learned senior counsel that audited statement of accounts for the financial years 2017-2018, 2018-2019 and 2019-2020 have been approved by the auditors, who have not found out any fraudulent transactions. That being the case, the present complaint by the company that a sum of Rs.100 Crores has been siphoned off by A-1 by closing the eyes of the auditors is too big an ask to be believed.

9. Learned senior counsel further submitted that only in order to cover its corrupt activities from becoming public, the complainant/GOPL had made the present complaint against the petitioners by giving a colour of misappropriation

of funds by A-1, when even to a layman, it would be evident that it is a physical impossibility to siphon off the funds, that too to an extent of about Rs.100 Crores, from a company of such a large extent, which has many in-built checks and balances before releasing payment to any business enterprise.

10. It is the further submission of the learned senior counsel that even in the intervening application in Crl. M.P. No.6795/21, the defacto complainant had categorically stated that the amounts were released to GEVPL/its affiliates only based on the writing and emails and that the said payments were reviewed and processed by GOPL's internal audit as well as external independent audit, which did not report any discrepancies, which clearly shows that the payments were made by GOPL to GEVPL and that there was no misappropriation of funds as claimed by the defacto complainant. It is therefore the submission of the learned senior counsel that once the auditors have reviewed and approved the statement of accounts and the payments made, spanning a period of two years, the allegation made by the defacto complainant that though amounts did not reach the hands of GEVPL, but the audit has not found any discrepancies in the payments made to GEVPL only vindicates the stand of the petitioners that the

payments have been approved by A-1 for payment to GEVPL and the allegation made by the defacto complainant is nothing but an attempt on their part to shield their fraudulent act by projecting the petitioners as the persons, who have misappropriated the money.

11. It is the submission of the learned senior counsel for A-1 that on A-1 being expelled from his post and notice having been issued to him, A-1 had sent a reply notice pointing out the fallacies in the allegations of the defacto complainant and it is the submission of the learned senior counsel for A-1 that only to distance itself from the ongoing CBI investigation into the fraud committed by certain consultancy firms, with which the defacto complainant company was associated with relating to obtaining certain clearances from the government, the defacto complainant had roped in the petitioners as the fraudsters. It is the submission of the learned senior counsel that only to keep out GOPL of its complicity in giving bribe for the purpose of obtaining clearances, the petitioners have been mulcted with the responsibility of siphoning off the funds to their enrichment.

12. It is the further submission of the learned senior counsel for A-1 that in the reply to the notice given by the defacto complainant company, A-1 has categorically highlighted the lapses committed by the defacto complainant company and has pointed out that A-1 was retained in services against his wishes to resign way back in May, 2020 was only due to the fact that the defacto complainant was perturbed that A-1 may turn whistle blower, if allowed to resign and only with a vindictive and vengeful attitude, by casting slur on the reputation of A-1, A-1 was terminated from service, at a time found appropriate by the defacto complainant company. It is the submission of the learned senior counsel that the legal notice issued on behalf of A-1 has clearly spelt out the above facts and has also stated that A-1 was taking appropriate steps u/s 213 (b) of the Companies Act seeking investigation into the affairs and misconduct of the defacto complainant company.

13. Learned senior counsel appearing for A-1 further submitted that the status report filed by the investigating agency in Crl. O.P. No.4904/21 relating to the very same crime clearly reveals that a sum of around Rs.2.50 Crores has been paid as bribe to Government officials for the purpose of getting NOC from the

various authorities, viz., Ministry fo Environment, Forest and Climate Change, State Environment Department, National Highways authority of India and Airports Authority of India and that the said aspect is being investigated by the investigating agency. It is therefore the submission of the learned senior counsel that the stand of A-1 in the reply notice as well as in the legal notice relating to bribe being the issue for A-1 and the other petitioners being roped in as accsued stand vindicated.

14. It is the further submission of the learned senior counsel that the investigation by the CBI resulted in A-2 and A-3, viz., the parents of A-1 being questioned and on such questioning, the defacto complainant company insisted A-1 to instruct A-2 and A-3 not to reveal anything to CBI about the way in which the company had obtained Government approvals. The further probe by CBI into the affairs of M/s. JKS Construction, another consultancy firm employed by the defacto complainant company, resulted in the defacto complainant company finding a scapegoat to crucify and in such a backdrop, the petitioners were roped in as accused to the exclusion of the defacto complainant company.

15. It is the further submission of the learned senior counsel that A-3 has been roped in only on account of the fact that A-1 is alleged to have diverted the funds from the company to the company which was run by A-2 and A-3, viz., the parents of A-1 on the pretext that the said companies are shell companies aiding A-1 in diverting the funds from the defacto complainant company. It is the submission of the learned senior counsel for A-3 and the company run by A-2 and A-3 are only sub-contractors under the main contractor employed by the defacto complainant company and they have no direct dealing with the defacto complainant company and that the company had paid the amounts to the contractors for the work executed by them, which was in turn paid to the sub-contractors and, therefore, the allegation against A-3 is wholly a figment of imagination and a tool for the defacto complainant company to exculpate itself from the blame of paying any bribe to the government officers for obtaining NOC for the project.

16. Mr.Wilson, learned senior counsel appearing for A-2, while adopting the sum and submission of the arguments advanced by the learned senior counsel for A-1 and A-3, further submitted that the amounts paid towards the

work executed by AMN Earthmovers, of which A-2 and A-3 were partners, clearly show that the requisite TDS was deducted from the amount paid and that the requisite GST was also collected.

17. It is the further submission of the learned senior counsel that requisite audited statements were presented before the authorities under the relevant provisions of the Act, viz., Section 129, and the same having been accepted, it cannot be reopened unless it is shown that malpractice has been committed in the filing of the said returns. The authorities having not taken any action and have accepted the genuineness of the returns, the present case filed against the petitioners is only an attempt on the part of the defacto complainant company to wriggle out of the investigation that has been initiated by CBI against the consultancy firms, which were employed by the defacto complainant company for the purpose of getting the necessary NOC for the project from the various government authorities.

18. It is the further submission of the learned senior counsel for A-2 that the company, viz., M/s. Suyambu Projects and M/s.JKS Constructions Pvt. Ltd., to

which the contracts were awarded by GOPL, did not have the ability to manage the scope of their services, which resulted in the works being sub-contracted to AMN Earthmovers which was run by A-2 and A-3. A-2 and A-3 being the partners of the sub-contracting firm and have paid the necessary taxes, cannot be fastened with connivance with A-1 merely on the ground that A-1 was the Managing Director of the defacto complainant company.

19. It is the submission of the learned senior counsel appearing for A-2 and A-3 that the said petitioners being senior citizen and are suffering physical ailments and easily susceptible to infections in the present pandemic situation, A-2 and A-3, being not in any way associated with the defacto complainant directly and have been involved in the offence only on account of A-1 being their son and the Managing Director of the defacto complainant company, their case for anticipatory bail may be favourably considered.

20. Mr.Abrar Mohammed Abdullah, learned counsel appearing for the petitioner in Crl. O.P. No.10527/2021, who is arrayed as A-7 and who is the wife of A-1, submits that merely on the ground that A-7 is the wife of A-1, A-7 has

been implicated in the aforesaid crime. Learned counsel appearing for A-7 laid emphasis on the flow chart, which shows the money trail between the various entities, submits that A-7 is nowhere showed to be the recipient of any money and such being the case, implicating A-7 in the offence is wholly unsustainable.

21. It is the further submission of the learned counsel appearing for A-7 that the allegation that A-7 is the General Manager of GEAPL is denied and submits that A-7 is in no way connected with GEAPL.

22. Four intervening applications have been filed by the authorised representative of the defacto complainant, in respect of all the four accused/petitioners, against the grant of anticipatory bail to the petitioners. In view of the nature and gravity of the allegations levelled, this Court is inclined to allow the intervening applications. **Accordingly, the intervening applications are allowed.**

23. Mr.P.S.Raman, learned senior counsel appearing for the intervener in Crl. O.P. No.10531/2021 vehemently opposed the petition for grant of

anticipatory bail. Learned senior counsel submitted that A-1, being the Managing Director of the defacto complainant company, was very well aware of the Development Management Agreement between GOPL and GEVPL. It is the further submission of the learned senior counsel that only on reconciliation of the payments made by GOPL to GEVPL, the misappropriation of funds of GOPL came to light and a further enquiry and investigation by GOPL revealed A-1 had been instrumental in misappropriating the funds by diverting it to various shell companies which ultimately landed in the company of A-2 an A-3, which was thereafter transferred to the account of A-1.

24. It is the further submission of the learned senior counsel that the chartered accounts, both external and internal, though had certified the various transactions, in view of the large scale misappropriation involved and the chartered accountants nexus with the said misappropriation also being probed into and action being taken against the said firms as well, the case of the accused/petitioners that the chartered accounts, both internal and external have audited the statement of accounts and found no discrepancies in the same and

have approved the said statement would not in any way enure to the benefit of the accused/petitioners.

25. It is the further submission of the learned senior counsel that the Board of Directors of the defacto complainant company had acted on the directions of A-1, on the belief which was reposed on A-1, but A-1, misusing the knowledge which he had of the Development Management Agreement, to the detriment of the company, had siphoned off the funds to various shell entities.

26. It is the further submission of the learned senior counsel that a probe into the various banking transactions between the company and the contractors led to unearthing of information relating to AMN Earthmovers, to which account the funds paid to the contractors were diverted, which were again diverted to the account of A-1. It is the further submission of the learned senior counsel that even according to A-2, the consultancy firms of Suyambu Properties and JKS Constructions were not in a position to handle the contract works of GOPL, yet they were given the contract works by A-1, acting on behalf of the company and the said entities, thereafter, had sub-contracted the works to AMN Earthmovers,

which clearly shows that A-1 had masterminded the act in such a manner that AMN Earthmovers receive the contract without it being part of the contracting process.

27. It is the further submission of the learned senior counsel that the contention of the petitioners that the taxes have been properly paid is a whole misrepresentation as even according to them, the appropriate tax authorities have initiated necessary action against the petitioners relating to evasion of taxes.

28. It is the further submission of the learned senior counsel that the allegation of the petitioners relating to Foreign Corrupt Practices Act is nothing but a veil created by the petitioners to divert the issue relating to the misappropriation of funds. It is the submission of the learned senior counsel that many of the companies are shell entities created by A-1 for the specific purpose of siphoning off the funds from GOPL to the various shell entities to ultimately fall in the account of A-1. It is the further submission of the learned senior counsel that payments have also been made to other companies, viz., Salem Stainless

Steel Suppliers, M/s,High Hills Associates LLP, and M/s.Four Star Estate LLP towards the purchase of steel, worth about Rs.36 Crores, but in actuality no steel was delivered to GOPL, but on the basis of fake bills, the amounts have been paid by A-1.

29. It is the further submission fo the learned senior counsel that a search was conducted in the premises of Salem Stainless Steel Suppliers and unaccounted money transactions amounting to Rs.200 Crores was unearthed.

30. It is the further submission of the learned senior counsel that A-1 and A-7 had applied for Resident Canadian Visa during March, 2020 and the present crime having come to light at the right point of time and the act of the petitioners in the said crime was brought to light, due to the pandemic situation, the visa process could not be completed, the petitioners were not able to move out of the country. There is a great flight risk if anticipatory bail is granted to the petitioners as it would be horribly difficult to secure their presence once they move away from the jurisdiction of this Court.

31. It is the further submission of the learned senior counsel that very many properties, numbering not less than 24, to the tune of about Rs.150 crores were purchased by the petitioners in their name between the year 2017 and 2020, during which time they had misappropriated the money and it would have been a physical impossibility for the petitioners, during the aforesaid period, to have purchased such a vast extent of properties on the remuneration received by A-1.

32. It is the further submission of the learned senior counsel that only on registration of the case by GOPL, the investigation by CBI relating to Suyambu Projects and JKS Constructions, etc., came to light and prior to that point of time, the company was not aware of the CBI investigation in the matter. It is the further submission of the learned senior counsel that A-1 suppressed the registration of the case by CBI to the company and till date, A-1, A-2 and A-3 are absconding and they could not be apprehended.

33. It is the further submission of the learned senior counsel that all acts of the auditors with regard to approving the payments made to the shell entities

were based on the oral/written communication from A-1, as it is the customary practice of GOPL to act on the instructions given by A-1, which statement has been obtained from the internal auditors of GOPL.

34. According to the Development Management Agreement, GEVPL was to deliver a fully completed and approved project and to substantiate the same reliance was placed by the learned senior counsel on clauses 5 and 8 and Schedule IV of the agreement. However, A-1, by representing the entities to whom payments have been made as affiliates or approved vendors of GEVPL, had sanctioned the payments, which were ultimately diverted to the account of AMN Earthmovers and, thereafter, to the account of A-1. It is the submission of the learned senior counsel that the present story of A-1 that money was paid to the consultancy firms, which are under the CBI scanner was only for the purpose of getting necessary approvals from the various government departments is nothing but a figment of imagination to absolve the petitioners of the crime. The above concoction by A-1 is only for the purpose of extricating himself and the other petitioners from the calculation crime of misappropriation of a huge volume of money, which rightfully belong to the defacto complainant.

35. Mr.Sathish Parasaran, learned senior counsel appearing for the intervener in Crl. O.P. No.10529/21 submitted that even according to the petitioner, the petitioner's son, viz., A-1 has made the payments, but it is sought to be distinguished by A-2 as if the project team has paid the money. It is the further submission of the learned senior counsel that the very ground on which the whole of the petitioner's case rest on the deduction of TDS from the amount paid towards the fulfilment of contractual obligations. It is the submission of the learned senior counsel that the amounts have been transferred to shell entities and not to the concern, which performed the contract and A-1 being the signatory, who authorised the payment, mere deduction of TDS would not suffice to hold that the amounts so authorised for payment to the shell entities are not misappropriation.

36. It is the further submission of the learned senior counsel that the whole of the petitioners case rests on the premise that the company is trying to absolve itself from prosecution and the promoters of M/s.Xander are trying to save their skin from prosecution under the Foreign Corrupt Practices Act.

However, there is no iota of material to suggest that such a contention could survive except for the investigation by CBI into the affairs of certain consultancy firms, which were engaged by the defacto complainant company. It is the submission of the learned senior counsel that engagement of the companies, which are under the net of CBI would not be suffice to mark the defacto complainant company as an entity which was aiding in paying bribe to obtain NOC from the government authorities. The above projection by the petitioners is only to mislead the court and also the investigative machinery from investigating their fraudulent act of misappropriation of several crores of money.

37. It is the further submission of the learned senior counsel that even according to the petitioners there were transaction between the petitioners, which is sought to be given a colour of loan transaction. However, the quantum of money transferred between the crucial period between the various petitioners requires a deeper investigation, when misappropriation to the tune of several crores has been alleged by the defacto complainant company. Learned senior counsel laid emphasis on the various properties purchased in the names of the petitioners during the crucial period between 2017-2020 amounting to several

crores and submitted that even according to the petitioners the salary of A-1 is not anywhere near the purchase price of the properties and that all the properties have been purchased only during the period in question and that the list of properties pertain only to those purchased in Tamil Nadu and is not inclusive of the properties purchased in Mumbai.

38. Insofar as the other aspects of the matter are concerned relating to the role of the petitioners, Mr.Sathish Parasaran, learned senior counsel adopted the arguments advanced by Mr.P.S.Raman, learned senior counsel.

39. Mr. P.Kumaresan, learned counsel appearing for the intervener in Crl. O.P. No.10527/2021, while adopting the arguments advanced by the respective learned senior counsel appearing for the intervener, further submitted that even according to the petitioner/A-7, she is claimed to be a housewife, yet she has accounts in seven banks with a bank balance running to several crores of rupees. It is the specific claim of A-7 that she is a housewife and is not in anyway connected with the affairs of GEAPL/Varficus Venture Pvt. Ltd., as claimed by the defacto complainant company and that being the case, no material whatsoever is

placed by the petitioner to claim the manner in which the funds have been parked in her account, though it is the pointed case of A-7 that the money trail in no way points to her as a person, who is in receipt of any amount. However, it is the specific case of the defacto complainant company that the money was diverted from the petitioners/A-1 to A-3 to the account of A-7 and in the absence of any explanation and material by A-7, her stand that she is in no way connected with the misappropriated amount does not have any legal legs to stand.

40. Therefore, it is prayed by the respective learned counsel for the interveners that in view of the quantum of money involved in which the petitioners are in the middle of the grave allegation of having misappropriated the same, granting anticipatory bail to the petitioners at this point of time would be detrimental to the whole investigative process, as there are all chances of the petitioners impeding in the investigation with the aid of the money at their disposal and, therefore, this Court may not grant anticipatory bail to the petitioners.

41. Learned Government Advocate (Crl. Side) appearing on behalf of the official respondent, referring to the status report submitted that the petitioners connived with each other and created fictitious entities and siphoned off huge amounts as if the materials have been supplied and payments have been released and created fake and forged bills. It is further averred in the status report that the petitioner in Crl. O.P. 11102/21 had previously worked in one of the entities, which is a family business of the petitioner, to which amounts were transferred and that the said transaction is wholly fake. It is the further submission of the learned Government Advocate (Crl. Side) that bribe money was paid to various government officials for obtaining No Objection Certificate, which also requires deeper investigation and the act of the petitioners in the same also cannot be ruled out.

42. It is further averred by the respondent that A-2 and A-3 are husband and wife, who had been running a partnership firm in the name of M/s.High Hills Associates LLP and hatching a conspiracy with A-1, had planned to misappropriate funds pertaining to the defacto complainant company. It is further averred that in furtherance to the said conspiracy, unapproved purchase

orders were prepared at the dictates of A-1 and by creating bogus invoices, with the help of the staff of the defacto complainant company created false entries in very many movement registers and created bogus bills and siphoned off huge sums of money, which were transferred to various fictitious entities and, thereafter, returned to the account of A-2 and A-3.. The above said modus was used by A-1 in not only misappropriating funds from High Hills Associates LLP, but also from Salem Stainless Steel Pvt. Ltd., to the tune of about 7.5 Crores.

43. It is therefore the averment of the respondent that custodial interrogation of the petitioners is necessary, but for which the beneficiaries in the receipt of illegal gratification for the purpose of granting environmental clearance could not be unearthed and that the petitioners are also not being co-operative with the investigation and in the event of allowing the petitioners to be out on anticipatory bail, much prejudice would be caused to the investigation, as they would tamper with the evidences and, therefore, it is prayed for dismissal of the present petitions.

44. By way of rejoinder to the said submissions, learned senior counsel appearing for the petitioners submitted that A-2 and A-3 have been in business for quite a long time and that A-1 was also earning well and that he had accumulated his assets through his earnings and not by way of the alleged misappropriation and the said fact would stand fortified by the action taken by the income tax department in attaching the properties belonging to A-1. It is further the submission of the learned senior counsel that the allegation levelled by the defacto complainant company that the Canadian Resident Visa was applied by A-1 and A-7 for the purpose of evading the jurisdiction of this Court is nothing but an imagination which is not supported by any material on record.

45. Learned senior counsel appearing for the petitioners, therefore, submitted that the allegations against the petitioners are not substantiated by any material by the investigating agency and further in view of the fact that the investigating officer himself has opined in the other connected case pertaining to the same crime number that bribe amounts have exchanged hands and the defacto complainant is at the centre of the said allegation as the consultancy firms, which it had engaged being probed by the CBI and only to wriggle out of

the same, and to safeguard their interests, the defacto complainant company has diverted the issue to the petitioners and, the petitioners, being law abiding citizens, would plead the mercy of this Court to enlarge them on anticipatory bail and that they would comply with the stringent conditions that this Court may impose for granting the said relief and, accordingly, pray for allowing the petitions.

46. This Court paid its undivided attention to the submissions advanced by the learned senior counsel as also the other learned counsel on either side and also perused the materials available on record.

47. It is fairly admitted by the learned counsel for the parties that in respect of the very same crime number, viz., Crime No.92 of 2020, earlier two petitions in Crl. O.P. Nos.1780 and 4904/2021 were filed of which Crl. O.P. No.4904/2021 was filed by A-3, the petitioner in Crl. O.P. No.11102/2021, which were dismissed by this Court. Crl. O.P. No.1780/21 pertained to certain other persons accused in the same crime numbers, who were also suppliers, who are alleged to have received the amounts on the basis of fake bills prepared by them

and in view of the nature of allegations involved, this Court had dismissed the said petitions.

48. At the very outset, this Court would like to state that the amount involved in the present case is of a huge magnitude that a proper and full fledged investigation is a mandatory requirement to bring the offenders to justice.

49. Though it is the contention of the learned senior counsel for the petitioners that to prevent A-1 from acting as whistle blower and to cover up the fraudulent acts of the defacto complainant company in giving bribes to the government authorities for obtaining No Objection Certificates, the petitioners have been made the scapegoat in this case; however, it should not be lost sight of that the act of bribe, alleged by the petitioners against the defacto complainant company, in which the A-1 is the Managing Director since May, 2017 has been spanning a period of three years, during the very tenure of A-1 as its Managing Director. However, it is the claim of A-1 that only in the year 2020, when he was inclined to blow the lid of the deal relating to payment of bribes, vindictive action

has been initiated by the defacto complainant against A-1 and the other petitioners.

50. It should equally not be lost sight of that the other petitioners, viz., A-2, A-3 and A-7 have also been implicated in the offence, on the very allegation that they aided A-1 in siphoning off the funds through their establishments/accounts, which ultimately reached the account of A-1. Even according to the prosecution, very many documents and amounts in credit of the accounts of A-2 and A-3 have been unearthed relating to shell transactions between A-2 and A-3 with the other companies, who are contractors for GOPL. All the above transactions have arisen during the period in question, viz., 2017-2020, which is the period in which allegation of misappropriation is levelled by the defacto complainant company against the petitioners.

51. Further, it is to be borne in mind that A-1 was the Managing Director of the company at the relevant point of time, who was signatory to the very many transactions, which are pointed out to be shell transactions for the purpose of misappropriating the funds of the company. However, counter allegations have

been made by A-1 to the effect that only for the purpose of preventing A-1 from speaking out the truth as to the bribes that have been paid out to the various government officers, to seal the lips of A-1, the company has resorted to registration of the case. However, at this point of time, this Court cannot go into the veracity of the allegations and counter allegations made by the parties. The fact remains that a large volume of money is said to have been misappropriated or has vanished from the books of accounts of the company, as alleged, which is said to have been misappropriated either by A-1 or shelled out in the form of bribe for obtaining NOC. Both the allegations and counter allegations are of such a magnitude that a deeper investigation is the need of the hour.

52. It is also to be borne in mind that monies have flown into the accounts of the concern in which A-2 and A-3 are partners/directors. The status report filed by the respondent investigating agency reveal that a mammoth fraudulent act has been perpetrated in this regard by the other petitioners in connivance with A-1. The status report filed by the respondent/investigating agency, *prima facie,* reveals that there are materials to infer the involvement of the petitioners

in the commission of the offence. Equally, there is also an allegation as to the payment of bribe to various government officials for the purpose of grant of NOC.

53. The prosecution has submitted that interrogation of the petitioners is very much necessary to unearth the actual fact in the present case. However, it is submitted by the investigating agency that the petitioners are inaccessible for interrogation at the address provided by them. Though the petitioners claim innocence and submit that they are very much accessible, however, the stand of the petitioners that they are Ceaser's wife, cannot be accepted when it is the pointed case of the respondent investigating agency that they are inaccessible for interrogation. The investigating agency as well as the defacto complainant company strenuously submit that the petitioners are not co-operating in the proper conduct of investigation.

54. Further, it is also to be pointed out that A-7 is stated to be a housewife, yet according to the defacto complainant company, she has seven running accounts in her name with various banks. This Court is not inferring anything from the said submissions, but merely would like to point out that A-7, if

she is innocent as really projected by her, nothing prevents her from appearing before the investigating agency and explaining the details of the transactions that finds reflected in her account. Her continued absence casts a doubt, which cannot be said to be wrong. Further, the contention that A-1 and A-7 had applied for Canadian resident visa is not disputed, but it is submitted that mere application for visa ought not be taken as an evidence of guilt. This Court, even on this aspect is not inferring anything, but merely points out that the apprehension of the respondents that there is likelihood of flight risk if the petitioners are left out on anticipatory bail cannot be brushed aside lightly.

55. It is further to be pointed out that the petitioners do claim that the defacto complainant company, only to shield itself from the corrupt acts, which they have done through the consultancy firms against which CBI investigation has been mooted, has turned the table against the petitioners by making them as the persons, who had misappropriated the money. The said angle of the case also requires a much deeper examination as even according to the prosecution, bribes have been given to government officials, which needs to be established with the aid of relevant materials.

56. Though elaborate and vociferous submissions were advanced by the learned senior counsel on either side touching upon very many issues of factual nature, however, it is to be pointed out that at the present point of time, this Court is dealing only with the issue relating to grant of anticipatory bail to the petitioners. This Court cannot advert to and appreciate the materials in toto, as it is not the function of this Court at this point of time. Only this Court is required to look into the *prima facie* aspect to satisfy itself with regard to grant of anticipatory bail. Further, it is to be pointed out that this Court cannot enter into appreciating the individual materials, for or against the petitioners, to come to a conclusion but only to satisfy itself whether on the facts placed, a *prima facie* case exists for granting anticipatory bail to the petitioners.

57. In view of the above position, as pointed out above, and taking into consideration the stand of the respondents and also the contentions advanced on either side and also taking into consideration the apprehension raised by the respondents with regard to the flight risk of the petitioners and the further fact that investigation is still in progress and that the amount involved is of monstrous

proportion and allegations and counter allegations of varying nature having far reaching ramifications are involved, acceding to the request of the petitioners for granting anticipatory bail, would very much hamper the investigation and would put spokes in the wheel of the investigative machinery as there are umpteen possibilities of the petitioners tampering with the evidences.

58. For the reasons aforesaid, this Court is not inclined to grant anticipatory bail to the petitioners in all the petitions. Accordingly, all the criminal original petitions are dismissed.

22.07.2021

Index : Yes / No
Internet : Yes / No
GLN

To

The Asst. Commissioner of Police
EDF-III, Central Crime Branch
Vepery, Chennai.

M.DHANDAPANI, J.

GLN

PRE-DELIVERY ORDER IN CRL. O.P. NO.10527, 10529, 10531 & 11102 OF 2021

Pronounced on 22.07.2021