IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.11.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO.20732 OF 2021

Pavithra ..Petitioner/Accused No.5

- Vs -

State, rep. By its
Assistant Commissioner of Police
EDF-III, Central Crime Branch-II
Vepery, Chennai. ...Respondent/Complainant

Criminal Original Petition has been filed under Section 439 Cr.P.C., prayed to enlarge the petitioner on bail in CCB-II Crime No.92 of 2020 on the file of the respondent police.

For Petitioner : Mr. H.Manivannan

For Respondent : Mr.A.Gopinath, GA (Crl. Side)
Mr.P.S.Raman, SC,
for Mr.Rajendar Singh
for Intervener

ORDER

The petitioner, who is arrayed as A-7 in the present crime, along with other accused, is alleged to have committed offences u/s 409, 420, 465 and 468 IPC @ 403, 471, 477-A, 120-B, 465, 468, 420 and 409 IPC and was arrested and remanded to judicial custody on 25.8.2021. Bail petition in Crl. O.P. No.10527/21 was filed and this Court, vide order dated 22.7.2021 dismissed the said bail petition along with the other petitions preferred by the other accused. The present petition is the second bail petition filed by the petitioner to enlarge her on bail.

2. It is the case of the prosecution that 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.

3. 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.

4. 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.

5. 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 accused, including the petitioner, in Crime No.92/20 by the respondent.

6. Learned counsel appearing for the petitioner submitted that the petitioner is in no way connected with the said offence

and she has been falsely implicated in the present case. It is the further submission of the learned counsel appearing for the petitioner that the petitioner was holding the post of non-executive director only for a period of seven months and even during the said period she had no role to play in the day to-day administration of the concern and that the petitioner was not involved in any financial transaction. It is the further submission of the learned counsel for the petitioner that the petitioner has not obtained any Canadian Visa, as has been submitted before this Court in the earlier petition filed for anticipatory bail. The Canadian visa obtained is only for a single trip period and not a resident visa and, therefore, there is no apprehension that the petitioner would move out of the jurisdiction of this Court clandestinely. Further, the petitioner, being a lady, has been under incarceration since 25.08.2021 and this Court may leniently consider her case and enlarge her on bail with any stringent conditions.

7. Per contra, learned senior counsel appearing for the intervener submitted that in the earlier petition, stand was taken by the petitioner that she is a housewife, however, in the present petition the petitioner has taken a stand that she was a non-executive director for a brief period of time. It is the further submission of the intervener that irrespective of the fact that the petitioner being a housewife or a non-executive director, she has around 75 bank accounts and money trail to the tune of more than Rs.16 Crores has flown into those accounts and the bank balance of the petitioner runs into crores of rupees. It is the further submission of the learned senior counsel for the intervener that even if it is the specific claim of A-7 that she is a housewife and is not in anyway connected with the affairs of the company, no material whatsoever has been placed by the petitioner to claim the manner in which the funds have been parked in her account. It is the further submission of the learned counsel for the petitioner that in the absence of any explanation and material by A-7, her stand that she is in no way connected with affairs of the company is wholly unsustainable, as the amount, which is lying in the said accounts speak volumes about the complicity of the petitioner in the offence. Therefore, learned senior counsel for the intervener prays for dismissal of the present petition.

8. This Court paid its earnest attention to the submissions advanced by the learned counsel on either side and perused the materials available on record.

9. A perusal of the materials available on record reveal that a large scale misappropriation had been committed by swindling the funds of the company by diverting and siphoning it off through various channels to accounts, which have been

created for the specific purpose. This Court, even in the earlier round of litigation, wherein anticipatory bail was sought for, considering the overall ramification and the gravity of the offence had declined anticipatory bail. It should not be lost sight of that the petitioner herein, viz., A-7 has also been implicated in the offence, on the very allegation that she aided A-1 in siphoning off the funds through the establishments/accounts, which ultimately reached the account of A-1. It is the stand of the intervener that more than 75 shell accounts have been opened in the name of A-7 and large volumes of money to the tune of crores of rupees have been diverted to the said account, which stands in the name of A-7. Though it is the contention of the petitioner that she was only a non-executive director for a very short span of time and that thereafter, she has been continuing only as a housewife, however, there is no explanation on the part of the petitioner to show as to how the amounts have got deposited in her accounts. 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 petitioner and the other accused.

10. Though contention is advanced that A-1 and A-7 had applied for Canadian resident visa, which according to the learned counsel is only a single entry visa, this Court, however, is not entering into the same, as the said issue has already been deliberated upon by this Court.

11. This Court had earlier dismissed the petition for anticipatory bail filed by the petitioner and subsequent to the arrest of the petitioner on 24.08.2021, the present petition for bail has been filed by the petitioner. However, the present petition cannot be entertained affirmatively in favour of the petitioner for the simple reason that there is no change in circumstance between the time when anticipatory bail was rejected to the present time when bail is sought for by the petitioner, except for the arrest of the petitioner. The circumstances, which prevail on date, does not warrant reconsideration of the earlier order passed by this Court. Mere arrest and remand of the petitioner alone cannot be a ground to consider the case of the petitioner for enlargement on bail. Unless and until any circumstance of important nature is placed before this Court, the investigation having not been completed and is still under way, the gravity of the offence coupled with the enormity of the misappropriation definitely does not lean in favour of the petitioner for grant of bail.

12. 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 there being no

compelling change of circumstance and the further fact that investigation is still in progress and that the amount involved is of monstrous proportion, acceding to the request of the petitioner for granting 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 petitioner tampering with the evidences.

13. For the reasons aforesaid, this Court is not inclined to grant bail as sought for and, accordingly, the criminal original petition is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

GLN

To

1. Assistant Commissioner of Police
   EDF-III, Central Crime Branch-II
   Vepery, Chennai.

2. The Superintendent of Police,
   Central Prison for Women (Spl.Women Prison)
   Puzhal, Chennai.

3. The Public Prosecutor,
   High Court, Madras.

CRL.O.P.NO.20732 OF 2021

AK-II(CO)
RGA(26/11/2021)