HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITIONS No. 8654 AND 8655 of 2021

COMMON ORDER:

Both these Criminal Petitions under Sections 437 and 439 Cr.P.C. are filed by petitioners – Accused Nos. 3 and 4 respectively in Crime No. 161 of 2021 on the file of CCS Police Station, Hyderabad, registered for the offences punishable under Sections 406 and 420 IPC., seeking bail.

2. The case of prosecution is that complainant through his father, Jupudi Vijaya Kumar came to know about Adwaitha Global Business Pvt. Limited, operating under the command and control of Karimulla Shaik (Accused No.2) and Accused Nos. 3 and 4. Believing their words, the complainant mobilized funds from various sources and made investments to a tune of Rs.93,03,090/- and as a token of acknowledgment, Accused No.2 executed a corporate guarantee for loan on 30.07.2019 in the capacity of CEO of Accused No.1 - company, Accused No.3 executed a Support Finance agreement in the name of Nisarga Corporation and Accused No.4 issued a cheques bearing No. 000240 of Andhra Bank held in the name of Nisarga Corporation for an amount of Rs.36,33,090/-. When the complainant deposited the cheque, it was bounced. Through reliable sources, complainant came to know that the said persons have cheated other investors in similar manner and also came to know that Accused No.2 is known for organizing floating shell companies associated to financial services, manufacturing, gold trading, etcetera. In total, the accused collected crores of rupees from number of innocent persons and did not to pay profits on investments as well as capital.

3. Learned counsel for petitioners Sri Jayendra Balaji (Criminal Petition No. 8654 of 2021) and Sri Venkata Rangadas Kanuri (Criminal Petition No.8655 of 2021) submit that Accused No.2 is CEO of Adwaitha Global Business Private Limited and as per the complaint, complainant had invested the amount in the month of January 2020. He submits that they entered into an investment agreement and as per clause (3) of the said agreement, there is a locking period of three years for investor, during which period, investor cannot give notice for return of the investment. They submit that even as per the case of complainant, they deposited the amounts in the month of January and investment agreement was entered on 27.02.2020, as per that, they cannot ask for return of investment for a period of thee years. They further submit that absolutely there is no cause of action for complainant and this is purely a contractual matter and to settle those disputes, the present complaint is filed. They further submit that Accused No.4 has nothing to do with this company and to save her brother, she issued a cheque to complainant and as such, she is implicated in this case alleging that she is also a Director of the company. Learned counsel submit that though the offences are punishable under Sections 406 and 420 IPC., without giving notice under Section 41-A Cr.P.C. and also without following the guidelines issued by the Hon'ble Supreme Court in ***Arnesh Kumar v. State of Bihar***[1]**,** petitioners were arrested at the behest of complainant. Even in the remand report, reasons stated are stereotype and they could not make out a ground for arresting accused without following the procedure under Section 41-A

[1] (2014) 8 SCC 273

Cr.P.C. They submit that petitioners have been languishing in jail for the last 55 days, hence, they are entitled for grant of bail.

4. Learned Assistant Public Prosecutor submits that there are several complaints that Accused No.1 company cheated innocent investors. He further submits that in the remand report, it is clearly mentioned that there is every likelihood of these petitioners leaving the country. It is submitted that in the remand report, it is mentioned that when police tried to issue notice under Section 41-A Cr.P.C., petitioners refused to receive the same and for the reasons contained therein, they have been arrested. Learned Assistant Public Prosecutor submits that investigation is still pending and if petitioners are enlarged on bail, they may influence the witnesses and further, they may hamper the investigation process. He submits that as per the agreement, returns to the investor has to be paid on monthly basis and as the company failed to return monthly @ Rs.60,000/- to the beneficiaries, i.e. complainant, they have come up with the complaint.

5. Heard learned counsel on either side. As per the agreement, investor has locking period of three years and as per Clause (4), investor has to return the amount of Rs.60,000/- every month to the beneficiary. Learned counsel for petitioners submit that due to pandemic, they could not pay the amount for about 3 to 4 months.

6. Taking into consideration the fact that petitioners are languishing in jail from the last 55 days, this Court deems it appropriate to grant bail to them, on certain conditions.

7. The Criminal Petitions are therefore, allowed. Petitioners – Accused Nos. 3 and 4 shall be enlarged on bail in connection with Crime No. 161 of 2021 on the file of CCS Police Station, Hyderabad, on each of them executing a personal bond for a sum of Rs.20,000/- (Rupees twenty thousand only) with two sureties for a like sum each to the satisfaction of XII Additional Chief Metropolitan Magistrate, City Criminal Courts, Nampally, Hyderabad. Petitioners shall appear before the police as and when required and police shall issue prior intimation to them. Petitioners shall also not leave the country without permission from the Court concerned.

8. The submission with regard to non-compliance of procedure under Section 41-A Cr.P.C. and guidelines of the Apex Court is concerned, this Court in several cases has observed that police are simply stating that accused refused to receive the notices under Section 41-A Cr.P.C., hence, for the reasons stated in the remand report, they have chosen to arrest them. This Court is not able to appreciate the manner in which police are giving a go-bye to the guidelines issued by the Hon'ble Apex Court and interpreting the same as per their convenience. When police chose to issue notice under Section 41-A, if accused refuses to receive the same, there is a procedure to serve notice by sending it through e-mail or affixing the same on the door of the premises where accused office / residence is situated. Once they say that they have chosen to issue notice, they cannot, at the same time, arrest accused. In these remand reports, first they took a decision to arrest accused and then, they narrated that when they wanted to issue notice under Section 41-A Cr.P.C., accused refused. That

itself shows that there was no intention on the part of the officer to issue notice under Section 41-A Cr.P.C.

9. The Director General of Police therefore, shall sensitize the officers about compliance of Section 41-A Cr.P.C. It is not a mere ritual and they are bound to follow the guidelines issued by the Hon'ble Apex Court in ***Arnesh Kumar's case*** (supra) scrupulously and in its true spirit. The purpose sought to be achieved with the amendment and by issuing the guidelines will be frustrated with this kind of implementation. Police officer while arresting accused as well as judicial officer while remanding accused has to remember that they are discharging a solemn duty and dealing with the liberties. The officer shall also be sensitized about the consequences that follow in case of non-compliance of the procedure and guidelines. If the procedure is followed as per the whims and fancies of the officer, people will lose confidence in the system. Periodically, there shall be review on compliance of Section 41-A Cr.P.C. and implementation of guidelines. The Director General of Police shall file a report before the Registry after eight weeks from today about the follow-up action taken pursuant to this order.

10. Registrar (Judicial) is directed to communicate a copy of this order to the Director General of Police.

LALITHA KANNEGANTI, J

30th November 2021

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