Crl.O.P.No.17191 of 2022

G.K.ILANTHIRAIYAN, J.

The petitioner, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 420 r/w 34 of IPC in Crime No.56 of 2022, seeks anticipatory bail.

2. The case of the prosecution is that A3/petitioner is wife of A2, whereas A2 being the former Managing Director of EMPEE Distilleries Ltd not legally taken over and being managed by the defacto complainant's company i.e. SNJ Distilleries Pvt Ltd when the EMPEE Distilleries Ltd went into Corporate Insolvency Resolution Process due to mismanagement. A3 being the Director of M/s.South India Hotels Pvt Ltd in connivance with A2 and several others forged loan agreement with back date and created fabricated records to show that M/s.South India Hotels Pvt Ltd held 4 crore and odd shares worth 40 crores of Apollo Distilleries and Breweries Ltd a subsidiary of EMPEE Distilleries Ltd. Further, forged records to show that the above shares were pledged by EMPEE Distilleries Ltd with M/s.South India Hotels Pvt Ltd owned by A3 for a loan amount of 18 crores. Hence, the complaint.

3. The learned counsel appearing for the petitioner would submit that the very same set of allegations made in the present complaint was duly adjudicated by the National Company Law Tribunal (hereinafter called as 'NCLT'), Chennai in MA/731/2019 dated 24.12.2021. The NCLT had given a clean chit in respect of the transaction and held that it is neither preferential nor fraudulent. In fact, aggrieved by the same, the defacto complainant had filed appeal before the National Company Law Appellate Tribunal (hereinafter called as 'NCLAT'), Chennai in CA(AT)(Ins.)No.1 of 2022 and by its order dated 13.01.2022 refused to grant any interim order. Aggrieved by the same, the defacto complainant filed appeal before the Hon’ble Supreme Court of India in Civil Appeal No.469 of 2022. The Hon’ble Supreme Court of India by order dated 04.02.2022 clarified that if shares were sold, the pendency of the appeal would be required to be intimated to the purchaser and no interim order was granted. Therefore, the custodial interrogation of the petitioners are not at all required in this case. He would further submit that the first petitioner is aged about 86 years and prayed for anticipatory bail to the petitioner.

4. The learned counsel appearing for the intervenor / defacto complainant would submit that there are totally 10 accused, in which the petitioner is arrayed as A3. Even the petitioner averred in the petition for anticipatory bail that during the first petitioner's management of EMPEE Distilleries Limited, there was no fraud or misappropriation. It revealed that when the management and administration was under the head of the second petitioner, there was misappropriation and committed fraud by the second petitioner and other accused persons. He further submitted that on 01.11.2018, NCLT initiated Corporate Insolvency Resolution Process and Interim Resolution Professional (hereinafter called as 'IRP') was appointed. Based on the resolution plan submitted by the RP, SNJ Distillers Private Limited participated in the bid and succeeded to take over the Empee Distilleries Ltd. under the management of SNJ Distilleries Private Limited in the year 2020. After taking over the Empee Distilleries, the defacto complainant conducted due diligence in tracking various frauds, cheating, fabrication of documents, forgery with pre-dated documents committed by the accused persons in the said company. It holds the company of Appollo Distilleries and Breweries Private Limited (worth about Rs.125 crores), for which also the defacto complainant had paid the bid amount of Rs.475

crores. But the accused persons created a series of bogus forged loan agreements with South India Hotels Private Limited and pledged 4 crores shares of Apollo Distilleries & Breweries Private Limited (worth about Rs.40 crores). They also created ante-dated documents to show that the above said shares were invoked by South India Hotels Private Limited, which is in fact arrayed as first accused.

4.1 He would further submit that the first accused stated to NCLT that the invoked shares were sold to an entity called M/s.Goodyield Investments Private Limited, which is arrayed as A8, which belongs to A9 and A10, who were previous Directors of the said Company and relatives of the Auditor of the first accused company. It is also revealed from the statements recorded from A9 and A10 that the company called M/s.Good Yield Investments Private Limited was purchased by A4 in the month of June 2019 and until they were in control of the company, they had no dealings with South India Hotels Private Limited. They had not signed any agreement in the month of October 2018 to purchase shares of Appollo Distilleries Private Limited from South India Hotels Private Limited. During that period, their company was assessed only Rs.1,21,680/-. The accused persons also created fake documents i.e. loan agreement dated 28.01.2016, share pledge agreement dated 26.02.2016, loan agreement dated 27.02.2016, loan agreement dated 02.12.2016 and produced before NCLT.

4.2 He would further submit that the petitioners created a series of bogus forged loan agreement with South India Hotels Private Limited and also pledged Apollo Distilleries & Breweries Private Limited shares of 4 crores. But it was not mentioned before the Registrar of Companies in the balance sheet of South India Hotels Private Limited and Empee Distilleries Private Limited during the year 2016 and 2017. The South India Hotels Private Limited i.e. first accused sold the above shares to the tune of Rs.18 crores in favour of Good Yield Investments Private Limited and they entered into share purchase agreement dated 23.10.2018. It was also not mentioned in the balance sheet of first accused and the eighth accused i.e. M/s.Good Yield Investments Private Limited.

5. Mr.A.Damodaran, learned Additional Public Prosecutor appearing for the respondent / police also filed counter and submitted his

arguments.

6. Considering the facts and circumstances of the case and also considering that the age of the petitioner is 74 years, this Court is inclined to grant anticipatory bail to the petitioner.

7. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on her appearance, within a period of fifteen days from the date on which the order copy is made ready, before the learned Metropolitan Magistrate for Exclusive Trial of CCB & CBCID (Relating to Egmore, Chennai on condition that the first petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[a] the petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioner shall report before the respondent police as and when required for interrogation.

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].**

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

26.07.2022

Lpp

G.K.ILANTHIRAIYAN, J.

Lpp

Crl.O.P.No.17191 of 2022

26.07.2022