Crl.O.P.No.19247 of 2022

G.K.ILANTHIRAIYAN, J.

The petitioners, who apprehend arrest at the hands of the respondent police for the alleged offences punishable under Sections 406 & 420 of IPC in Crime No. 128 of 2021, seek anticipatory bail.

2. The case of the prosecution is that the defacto complainant, who is carrying on business in Agricultural Commodities, and the petitioner said to have entered into facility arrangement to the tune of Rs.8,00,00,000/- for the purchase of sugar from the defacto complainant. It is the further case of the defacto complainant that the stocks supplied by the defacto complainant were stored in an open Yard and the same were said to have been lifted fraudulently, they paying the goods aggregating to a value of Rs.5,65,74,408/-. It is further alleged that the cheques were returned for the reason 'stopped by the drawer'. Therefore, the petitioner cheated the defacto complainant. Hence, the complaint.

3. The learned counsel appearing for the petitioner submitted that it is completely a commercial transaction between the petitioner and

the defacto complainant and therefore, no offence has been made out for the registration of offence under Sections 406 and 420 of IPC. That apart, the complaint lodged by the defacto complainant, initially an enquiry was conducted and closed. Thereafter, the defacto complainant filed a petition under Section 156(3) of Cr.P.C in Crl.M.P.No.5381 of 2021 before the Judicial Magistrate, who directed to register the FIR and thus the present complaint has been registered as against the petitioner. He further submitted that the defacto complainant initiated arbitration proceedings, as there was a specific clause in the contract and award has also been passed on 26.04.2022, thereby they were directed the petitioner to pay a sum of Rs.4,23,54,530/- with interest at the rate of 3% per month. Further, a sum of Rs.11,42,306/- was ordered towards cost of the arbitration proceedings. All the property Schedules 1 to 5 also attached. Therefore, the entire allegations are civil in nature.

4. It is seen that the defacto complainant offered products as well as services pertaining to inputs, production, transportation, processing and marketing in agricultural as well as allied sectors such as animal husbandry, fisheries, poultry and forestry. While being so, the accused,

Managing Director of the Company viz., Castle Distributors Pvt.Ltd., approached the defacto complainant and entered into a Structured Trade Arrangement Facility aggregating to Rs.8,00,00,000/- on 06.10.2020, whereby the defacto complainant has to procure sugar from identified suppliers under the said agreement. It will bring in 20% of the trade value as advance and balance 80% of the trade value would be funded by the defacto complainant with an understanding that the entire sugar stock would be brought by them at a pre-agreed price from the defacto complainant within a specified time.

5. Accordingly, the defacto complainant procured sugar to the tune of 1426.40 MT ton valued at Rs.5,13,26,381.42 and stored in the warehouse. The accused over phone informed that they had lift the goods upon payment to the warehouse. Further to make the defacto complainant believe, the accused also sent an indemnity letter dated 02.12.2020 and also issued two post dated cheques conveying that they would take full responsibility for the goods stored in the open Railway Yard, as the defacto complainant consistently pestering them for either lifting the goods against payment or move it to a warehouse of the complainant's choice.

6. However, the accused deceived into believing that their intentions and requested for further time to lift the goods. However, without any payment, the accused persons had moved the entire stock of 1426.40 MT from the Railway Yard. On 20.01.2021, the defacto complainant's Manager visited Kolkatta again with an intention to impress upon the accused to lift the stock and settle the issue. However, the stock of sugar were found missing. Therefore, the petitioner committed an offence under Sections 406 and 420 of IPC and it is also evident from the award passed by the Arbitrator. Therefore, the custodial interrogation of the petitioner is very much required.

7. Considering the facts and circumstances of the case, the custodial interrogation of the petitioner is very much required and therefore, this Court is not inclined to grant anticipatory bail to the petitioner. Accordingly, this Criminal Original Petition is dismissed.

30.08.2022

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G.K.ILANTHIRAIYAN, J.

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