Crl.O.P.No.25027 of 2022

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The petitioner who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 465, 467, 468 & 471 of IPC and Section 66 C of Information Technology Act 2000 in Crime No.285 of 2022 on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution is that the *de-facto* complainant One Prasath Varadarajan has lodged a complaint against one Suresh Thekkedath Padmanabhan and the petitioner herein. As per the complaint the said Suresh Thekkedath Padmanabhan is the Managing Director and shareholder of M/s. Inter-Continental Logistics Limited and M/s. Cargo International (India) Private Limited. M/s Inter-Continental Logistics Limited was incorporated on 15.05.2006 under the Companies Act, 1985, England and its registered Office is at Elite House, Stockfield Road, Acocks Green, Birmingham, West Midlands, B27 6AT in United Kingdom. M/s. Cargo International (India) Private Limited, was incorporated on 09.09.2009 under the Companies Act, 1956, with its

Registered Office at No.G3/1, G3/2 & G-2, Door No.180, Kodambakkam High Road, Nungambakkam, Chennai – 600 034. On 20.04.2011, the *de-facto* complainant replaced Mr.Uday Ram Jothy as a Director in the Indian Company. The *de-facto* complainant and one Mr.Srinivasan Ramkumar are holding 20% share (10% each) in M/s. Cargo International (India) Private Limited. On 04.10.2018, they expressed their desire to resign from the Directorship and offered to transfer their shareholding to Mr.Suresh Thekkadath Padmanabhan or his nominee without fixing any price. On 26.11.2018, officially they started to handover the day-to-day affairs of the Company with effect from 26.11.2018, including the bank transactions to Mr.Suresh Thekkadath Padmanabhan and Mr.Vignesh Natarajan/petitioner herein who had been inducted as a Director of the Company with effect from 26.11.2018. It was after their resignation, that Mr.Suresh Thekkadath and the petitioner herein, illegally used Mr.Prasath Varadarajan's/*de-facto* complainant digital signature in Form 15A of the Income Tax and back-dated invoices for already paid out Bill of Lading, transferred monies to M/s.Inter-Continental Logistics Limited, Birmingham, London, on 05.12.2018.

The digital signature of Mr.Prasath Varadarajan/*de-facto* complainant was used illegally. The allegation made is that the Yes Bank Account No.041861900000830 of M/s. Cargo International (India) Private Limited was used for suspicious and illegal transfer of monies, causing huge loss to the Company, whereby the *de-facto* complainant has suffered a financial loss being 20% shareholders in the company. For carrying out the above activity, the digital signature of the *de-facto* complainant was used in Form 15 CA of the Income Tax Act and payment made in respect of the bogus invoices raised by M/s. Inter – Continental Logistics Limited. A monetary loss (being 20% shareholders in the Company) is calculated at Rs.14,81,780/-. Hence, the complaint.

3. The learned counsel for the petitioner would submit that a case of dispute between the Directors of the Company has been exaggerated and false complaint has been given. He would further submit that in fact the *de-facto* complainant is the person who had committed misappropriation and cheated the Company to the tune of Rs.6,53,96,555/- in respect of which, one of the Directors Suresh

Thekkadath Padmanabhan had filed Company Petition in C.P.No.519 of 2019 before the National Company Law Tribunal (NCLT), Chennai Bench. He would further submit that the petitioner and the other co-Director have conducted Forensic Auditing and the Forensic Auditor has reported that the *de-facto* complainant had committed misappropriation of the above amount and it was also mentioned in the C.P. Petition. The matter was filed during the year 2019 and when the matter was listed for hearing on 10.08.2022, the *de-facto* complainant side took adjournment on the guise of going for a settlement out of Court, whereas they have filed a complaint dated 06.09.2022 before the respondent police and within a short span, 3 notices were issued to the petitioner for appearance and immediately thereafter the respondent police has registered the case. He would further submit that thereafter 2 accounts of the petitioner's company having amounts to the tune of Rs.50,00,000/- have been frozen by the respondent police. He would further submit that the petitioner and the other Directors are the real victims and a dispute between Directors of the Company has been exaggerated and the respondent police without conducting proper enquiry has registered a case. He would further submit that the petitioner's Company had also filed a C.M.P.No.2890 of 2022 before the learned Metropolitan Magistrate for CCB & CBCID cases, Egmore, Chennai against the *de-facto* complainant for committing misappropriation of funds and despite the Order passed by the learned Metropolitan Magistrate for CCB & CBCID cases, Egmore, Chennai dated 21.07.2022 directing AC, EDF Wing CCB to register an First Information Report, the EDF wing, Central Crime Branch has not registered a case. He would further submit that the learned Magistrate after perusing the entire materials and finding *prima-facie* materials had issued direction for registration of case as against the *de-facto* complainant. He would further submit that as far as the complaint of the *de-facto* complainant, the entire case is borne out by records and there are disputes pending between the parties before the National Company Law Tribunal, Chennai from the year 2019 and the matter is also alleged to have taken place during the year 2018. Hence, he prays to grant anticipatory bail to the petitioner.

4. The learned Government Advocate (Crl.side) appearing for the

respondent would submit that the petitioner forging the digital signature of the other Director of the Company had caused loss of Rs.14,81,780/-. He would further submit that investigation is pending. Hence, he vehemently opposed to grant anticipatory bail to the petitioner.

5. The learned counsel for the intervenor would submit that the petitioner in a calculated manner have committed siphoning of funds based on the fabricated invoices and by forging the digital signature causing loss of Rs.74,00,000/-. However, he would admit that the Company Petition is pending before the National Company Law Tribunal and the *de-facto* complainant side is also contesting the same. He would further submit that the Forensic Audit has not been properly conducted and the above Report of the Forensic Audit is manipulated so as to suit the petitioner's case. Hence he vehemently opposed to grant anticipatory bail to the petitioner.

6. Heard the learned counsel. Perused the materials available on record. There seems to be a dispute between Directors in the Company and proceedings are already pending before the NCLT. Taking into

consideration the facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

7. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date on which the order copy made ready, before the **learned XIV Metropolitan Magistrate, Egmore, Chennai**, on condition that the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five 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.

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[b] the petitioner shall report before the respondent police everyday at 10.30 a.m., until further orders.

[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.

26.10.2022
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