

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NO.365 OF 2022

ORDER:-

This petition is filed under Section 438 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") seeking pre-arrest bail to the petitioner/A.2 in the event of his arrest in connection with Crime No.245 of 2020 of Raidurgam Police Station, Cyberabad Commissionerate, registered for the offences punishable under Sections 420, 406, 409, 468, 471 and 506 read with 34 of the Indian Penal Code.

2. The case of prosecution is that A.1 and A.2 being Facilities Manager and Building Manager respectively, colluded with the other accused and cheated M/s.Divya Sree NSL Infrastructure Pvt. Ltd. Company and misappropriate the money claiming full amount less than the manpower specific in the work order. Basing on the said report, the present crime is registered.

3. Heard Mr.M.V.Subba Reddy, learned counsel for the petitioner, and learned Assistant Public Prosecutor for the respondent-State.

4. Learned counsel for the petitioner submits that Section 409 IPC has no application as far as this petitioner is concerned. The petitioner is only a manager in the Company. He submits that in the complaint itself stated that from February 2019 onwards, the Company installed retina eye/finger print attendance system for the workers and it was found that 30% to 40% of the workers were absent, and yet the accused claimed

payments covering the absentee workers. It is strongly suspected that this was the case even prior to the installation of the bio-metric attendance system at the SEZ. He submits that basing on the suspicion, without there being any evidence, they have calculated the amounts, the present complaint is filed. He further submits that even assuming all these allegations are to be correct, the entire record and all the material are available with the prosecution/police. The petitioner is ready to cooperate with the investigation. This Court has already granted pre-arrest bail to A.3 to A.5, vide Crl.P.No.7068 of 2020, dated 27.01.2021. Hence, the petitioner's case may be considered for grant of pre-arrest bail.

5. Learned Assistant Public Prosecutor does not dispute the fact that bail was granted to A.3 to A.5. He submits that the petitioner is Manager and there are clear allegations against him. He further submits that investigation is still pending and so far three witnesses examination. In view of the magnitude of the amount, the petitioner is not entitled for pre-arrest bail.

6. The Apex Court in **Siddharam Satilingappa Mhetre v. State of Maharastra and others**¹, has considered the factors and parameters that have to be taken into consideration, while dealing with the anticipatory bail, are as under:

¹ (2011) 1 SCC 694

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or other offences;
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;
- (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the

prosecution, in the normal course of events, the accused is entitled to an order of bail.

7. Taking into consideration the allegations in the complaint, where it appears that the incident has happened from 2011 to 2019, the parameters laid down by the Apex Court in Siddharam Satilingappa Mhetre (supra) and the entire material is already seized and is in possession of the prosecution, there cannot be any apprehension that if the petitioner is enlarged on bail, he may tamper with the evidence, this Court deems it appropriate to grant pre-arrest bail to the petitioner/A.2.

8. Accordingly, this Criminal Petition is allowed. Petitioner/A.2 shall surrender before the Station House Officer, Raidurgam Police Station, Cyberabad Commissionerate, in connection with Crime No.245 of 2020 within one week from today and on such surrender and executing a personal bond for a sum Rs.20,000/- (Rupees twenty thousand only) with two sureties for a like sum each to the satisfaction of the said Station House Officer, he shall be released on bail. It is made clear that no further extension of time will be granted.

Miscellaneous applications pending, if any, shall stand closed.

LALITHA KANNEGANTI, J

Date :03.02.2022

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