Crl.O.P.No.1722 of 2023

T.V.THAMILSELVI, J.

The petitioners, who apprehend arrest for the alleged offence under Sections 452, 294(b), 506(ii), 354(A) of IPC r/w 8 of POCSO Act 2012 in Cr.No.40 of 2022 on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution is that defacto complainant's husband one Vishal, are having two female children namely Sheri aged about 19 years and Dheeksha aged about 13 years. The defacto complainant's husband was employed at Vigro Polymers India Ltd from 2009 and during his employment at the above said company, Vishal had also started their own company in the name "Ashirwad Enterprises" and without quitting the earlier job, he also took care of his own company. During 2021 the defacto complainant and her husband were taken to Virgo Polymers India Ltd., situated at Shenoy Nagar in respect of an outstanding amount of Rs.2.05 Crores to be paid to the company and the petitioner's earlier company's employer have threatened the defacto complainant to sell their house to repay the amount. Hence, the complaint.

3.Heard both sides

4. The learned intervenor raised objection stating that the father of the victim/Vishal D Bothra, though originally was the employee of the A1's Company, later in support of this company, he started a new company in the name and Style of "Ashirwad Enterprises". Many of the customers now approached the petitioners stating that the Vigro Polymers India Ltd., has foisted the case, as if the defacto complainant misappropriated the funds and also the outstanding amount is said to be about Rs.2.05 Crores. He has gave a false FIR against the Vigro Polymers India Ltd. According to the defacto complainant the petitioners viz., Thomas is a General Manager and Mariraj, Public Relation Officer and Muthaiah all came to their house on 17.06.2021 and forcibly obtained some of the documents and also misbehaved with the daughters of the defacto complainant aged about 13 and 19 years. Further it is the defacto complainant's case that her daughters were threatened by the accused. Due to the alleged misbehaviour of these petitioners, the girls were mentally depressed and they were given psychiatric treatment & at that time only before the doctor they have mentioned about the alleged incident. Hence, the FIR was lodged. It is false to say that the defacto complainant has

swindled the company funds to the tune of nearby about Rs.3Crores. Aggrieved by the new company started by the defacto complaint, the Vigro Polymer India Ltd., represents by this company director Mr.Vivek Ramasisariya, instigated this accused to obtain documents forcibly from the parents of the victim girls and also cause sexual harassment to the victim girls. Hence, the complaint was lodged after the victims were recovered from the mental depression. Further more the Vigro Polymers India Ltd., has foisted a false case against the defacto complainant and her family members for unlawful infringement. So, according to the defacto complainant, if they released on bail they will tamper the evidence and threaten the witnesses because they are more influenced persons. Hence, he prays to dismiss the anticipatory bail to the petitioners.

5. The learned counsel for the petitioners submit that the defacto complainant's husband left the company. Infact visually by way of reply he submits that Vishal D Bothra husband of the defacto complainant was responsible for all the collections against the sales and authorised to collect cash against any sale of material from the company and he was employed as

Customer Relationship Officer,Sales Department for a monthly salary. The investigation report and audit report clearly reveals that as per the complaint received from few customers nearby about Rs.90,00,000/- was outstanding dues as per the invoice but when the company spoke to the customers, they had stated that Vishal D Bothra had dealt with the customers belonging to this company and apart from that he took misappropriate funds belonging to the company and made a heavy investment with "Ashirwad Enterprises" in Kolathur and in the name of his wife Arathi's brother Paul Fransis Xavior @ Alex. Hence, the company's amount of Rs.3.4 Crores was looted by committing theft of around 108 metric tonnes of stocks. Thereby, the company suffered a loss. Hence, they gave a complaint before the police on 23.06.2021, thereafter, they filed a suit for recovery of the money from the Vishal D Bothra in C.S.No.83 of 2021 in I.A.No.2100 of 2022. They sought for a direction against the defacto complainant and his family to furnish the security for the suit claim of Rs.3,05,40,460/- failing which their property sought for attachment. Accordingly notice was served as they failed to furnish security amount, their property was attached on 31.10.2022. Thereafter, aggrieved by this complaint, the defacto complainant instigated the daughters and filed a frivolous complaint against these petitioners, thus FIR was lodged 28.12.2022.

6.The learned Government Advocate (Crl. Side) reiterating the contents of the learned counsel for the petitioner submits that admittedly civil dispute with regard to alleged misappropriation of company's funds to the tune of more than Rs.3 Crores against the defacto complainant's husband is pending. However, the present FIR is lodged by defacto complainant based upon the statement given by their minor daughter. Hence, he opposes to grant of anticipatory bail.

7. Considering all the submissions and a perusal of the available record reveals that at the earliest occasion, the husband of the defacto complainant was working under the company where the accused persons were employed in Vigro Polymer India Ltd., for monthly salary and there is some dispute between them. The husband of the defacto complainant was said to be misappropriated the company funds to the tune of Rs.3 Crores and subsequently started another company in the name of his wife namely

"Ashirwad Enterprises" and when questioned about the misappropriation on 17.06.2021, there was an undertaking letter given by the defacto complainant's husband that he is ready to settle the issue and copy of the letter is enclosed on page no.1. It reveals that some money dispute in pending between the defacto complainant and Vigro Polymers India Ltd., a company belonging to the petitioners. The learned intervenor submits that the alleged undertaking letter was forcibly obtained by the company officials on 17.06.2021, but they have not given any complaint to that effect till date. Fact also remains that the petitioners' company filed a suit for recovery against the defacto complainant and their family members, notice also served, their property was also attached on 30.12.2022. After receipt of the notice the present FIR came into picture. The victim girls were examined by the investigation officer and 164 statement also recorded by Magistrate. Even a perusal of the 164 statements, the victims stated that on 17.06.2021 the accused persons abused them. But the fact remains that on that date itself, the parents of the victim girl were present in the same house. However, there is no explanation offered on the intervenor as to why the defacto complainant had not given any complaint immediately against the company officials.

Therefore, prima facie it reveals that due to the filing of the civil suit, the present FIR is lodged. Thus, the defacto complainant is abusing the process of law. Her intention is clear that she is trying to register a case against the company officials under POCSO Act. The intent of the legislature of POCSO Act not to be misused to achieve parents' personal agends and the Courts are not to encourage such type of activities. Hence, this Court is inclined to grant anticipatory bail to the petitioners.

8.Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned **XIII MM , Egmore**, on condition that the petitioners shall execute a bond for a sum of **Rs.10,000/- (Rupees Ten Thousand Only)**, with two sureties each **out of which one surety will be a blood related surety** 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 and on further condition that:

(a)the petitioners and the sureties shall affix their photographs and left thumb impression in the surety bond and the Court concerned may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(b)the petitioners shall report before the respondent police, on every Saturday at 10.30 a.m for a period of eight weeks and thereafter, as and when required for interrogation;

(c)the petitioners shall not tamper with evidence or witness either during investigation or trial;

(d)the petitioners 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 petitioners in accordance with law as if the conditions have been imposed and the petitioners 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];*** and;

(f)if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

31.01.2023

vsn

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