



Crl.OP.No.25533 of 2023

Crl.O.P.No.25533 of 2023

WEB COPY

C.V.KARTHIKEYAN,J.

The petitioner seeks anticipatory bail in Cr.No.216 of 2023 registered by the respondent police for the offences under Sections 406 and 420 of IPC.

2. The first petitioner is the Director of a company called Cargo International India Private Limited which was incorporated in the year 2009 under the Companies Act, 1956. The second petitioner/second accused is the Chief Executive Officer of the said company. The defacto complainant is the Power of Attorney Agent of yet another Director. It is the case of one Director alleging that the petitioners herein, has suppressed accounts from being properly audited and projecting loss to the company. It is contended that in the year 2018, the defacto complainant was a Director, there was profit shown in the books of accounts. It is also stated that the defacto complainant is now a share holder of the company of the shares and has a right to maintain the complaint.



Crl.OP.No.25533 of 2023

WEB COPY

3. It is stated that this particular company was promoted by a British National and it is complained by the learned counsel for the petitioners that the defacto complainant/ex-director/share holder had been inducted by the promoter along with another Director called Varadharajan and after they had resigned in the year 2018, it is alleged that it was found that both of them had started a parallel company doing the same nature of business/ logistics of ship movements called M/s.Aerotrans Global Forwarding India Private Limited.

4. It is thus seen that a complaints are levied as against the petitioners herein and to good measure, the petitioners also have a cause against the defacto complainant. The central issue is about the audit of accounts of the company. It is common knowledge that there are Internal Auditors and Statutory Auditors.

5. The learned counsel for the petitioners stated that he had called upon the Statutory Auditor to give the correct statement of the financial situation of the company. It is however stated that the Statutory Auditor



Crl.OP.No.25533 of 2023

had complained that he was not furnished with the books of accounts.

WEB COPY

There is also a responsibility of the Internal Auditors to examine the audit of the functioning of the company on what could be called on a date to date or monthly basis.

6. It is also stated that with respect to all these aspects, the petitioners also filed CT/519/2019 before the National Company Law Tribunal and among other reliefs sought before the National Company Law Tribunal is one for appointment of an auditor to examine the entire accounts.

7. In the midst of all this, the respondent/investigating agency has not been able to conduct or even commence investigation. They only have in their hands the complaint given by a Power of Attorney Agent of Ex-director who complains that the petitioners have projected a loss to the company, when there was a substantial profit in the year 2018, when the defacto complainant was a Director.



Crl.OP.No.25533 of 2023

WEB COPY

8. There are issues which would require further investigation, but, more importantly since the National Company Law Tribunal is seized of the matter and there is a relief sought to appoint an auditor, it is only appropriate that the said auditor, if at all appointed, examines the books of accounts and presents a statement. On the basis of it, further investigation could be done.

9. In view of all these facts, this Court is inclined to grant anticipatory bail to the petitioners, subject to the following conditions:

10. 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 on which the order copy made ready, before the *learned XIV Metropolitan Magistrate, Egmore, Chennai* on condition that each of the petitioners shall execute separate bonds for a sum of **Rs.10,000/- (Rupees Ten Thousand only)** with two sureties, 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



CrI.OP.No.25533 of 2023

WEB COPY

concerned, failing which, the petition for anticipatory bail shall stand dismissed 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 Magistrate 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 every day at 10.30 a.m., for a period of two weeks and thereafter on issuance of notice under Section 41A of Cr.P.C.

[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]**.



Crl.OP.No.25533 of 2023

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

11. It is made clear that the petitioners shall cooperate with the investigating agency and it was also ensured that if an auditor is actually appointed by the National Company Law Tribunal, they should facilitate the auditor to have access of books of accounts and furnished all informations to the said auditor if at all appointed. If there is any complaint of non cooperation either with the investigating agency or non furnishing of books of accounts to the auditor, then either the defacto complainant or the respondent/investigating agency are at liberty to seek cancellation of this Order.

12. With the above directions, this Criminal Original Petition is ordered.

17.11.2023

Vv



WEB COPY



CrI.OP.No.25533 of 2023

C.V.KARTHIKEYAN,J.

Vv

CrI.O.P.No.25533 of 2023

17.11.2023