Crl. O.P. No.28784 / of 2024

P. DHANABAL.J.,

The petitioners / Accused- 1 and 2, who apprehend arrest in the hands of the respondent police for the offences punishable under Sections 120-B and 409 of IPC in connection with the Cr. No.73 of 2024, seek anticipatory bail.

2. The case of the prosecution is that the 1st accused maternal uncle, Govindarajan was acquainted with the Managing Director of the defacto complainant's company and the 1st and 2nd accused through Govindarajan approached the defacto complainant's company for civil sub-contracting works. Accordingly, the defacto complainant entrusted civil subcontracting work to the accused 1 and 2 for Rs.187,21,05,707/- between the period from November 2021 to December 2023 in its various projects. M/s. Krupa & Co., an accounting firm, represented by its partner, the 4th accused, acted an as internal auditing firm of the defacto complainant from March 2019 till December 2023. The 5th accused and others were deployed by M/s. Krupa & Co., at the defacto complainant's office for finance department and internal audit. The reconciliation has revealed that Rs.42,76,76,365/- was paid by the defacto complainant's

company for M/s. DP World Phase-I project in different tranches to the accused M/s. Big Dreams Construction Pvt. Ltd., As against these advanced payments, tax invoices for Rs.39,91,89,817/- were raised by M/s. BDC and were also approved by the 5th accused and others of M/s. Krupa & Co., for a sum of Rs.4,44,56,263/- The 4th and 5th accused had dishonestly approved in favour of the accused 1 and 2. All the accused persons conspired together and misappropriated Rs.7,29,42,811/-. Further, in M/s. IOCL, Vallur project, a sum of Rs.23,16,28,517/- has been dishonestly approved by these petitioners in collusion with the accused 1 and 2 and the petitioners/accused had received Rs.15,50,02,296/- without completing the work and hence the case.

3. The learned counsel appearing for the petitioners would submit that the respondent police have registered a false case for the offences punishable under Sections 120-B, 409 of IPC in Cr. No.73 of 2024 based on the complaint dated 02.08.2024. As per the prosecution case, the defacto complainant entrusted civil subcontracting work to the accused 1 and 2 for Rs.187,21,05,707/- between the period from November 2021 to December 2023 in its various projects. M/s. Krupa & Co., an accounting firm, represented by its partner, the 4th accused, acted as an internal

auditing firm of the defacto complainant from March 2019 till December 2023. The 5th accused and others were deployed by M/s. Krupa & Co., at the defacto complainant's office for finance department and internal audit. The reconciliation has revealed that Rs.42,76,76,365/- was paid by the defacto complainant's company for M/s. DP World Phase-I project in different tranches to the accused M/s. Big Dreams Construction Pvt. Ltd., As against these advanced payments, tax invoices for Rs.39,91,89,817/- were raised by M/s. BDC and were also approved by the 5th accused and others of M/s. Krupa & Co., for a sum of Rs.4,44,56,263/- The 4th and 5th accused had dishonestly approved in favour of the accused 1 and 2. All the accused persons conspired together and misappropriated Rs.7,29,42,811/-. Further, in M/s. IOCL, Vallur project, a sum of Rs.23,16,28,517/- has been dishonestly approved by these petitioners in collusion with the accused 1 and 2 and the petitioner/accused had received Rs.15,50,02,296/- without completing the work. In fact, the above said case is totally false. When the petitioner's company commenced on 23.10.2021, the complainant company engaged the petitioner as a Subcontractor for several Civil 5 works contracts and the petitioner had duly completed about 10 projects for the complainant. The proficiency and efficient work flow exhibited by the petitioner garnered approval from the complainant leading the complainant to entrust the petitioner with further projects such as the IOCL compound wall and filing work, all of which are executed successfully. Subsequently, the petitioners' responsibilities expanded to encompass 8 additional sites including Voltas, CPCL, Rane, DP World Phase 2, ZF Oragadam, DP World Cochin, HIET and OLA. The total outstanding dues payable by the defacto complainant to the petitioner under various projects is Rs.22,81,94,821.42. However, in order to evade the liability, the present complaint has been lodged. Already this petitioner issued Form-3 demand notice under the Insolvency and Bankruptcy Code, 2016 dated 15.05.2024 through post as well as email to the complainant on 18.05.2024 and called upon the complainant to pay the sum of Rs.22,81,94,821.42. As a counter blast to the said Form-3, demand notice under the Insolvency and Bankruptcy Code, the defacto complainant unilaterally appointed the sole arbitrator on 20.05.2024 and also preferred arbitration proceedings under Section 9 of the Arbitration and Conciliation Act and obtained interim order restraining the petitioners from disposing the schedule property and also an anti-suit injunction restraining the petitioners from initiating any legal action against the defacto complainant. This criminal complaint is given against this petitioner and others in order to prevent them from facing the civil proceedings and proceedings under the Insolvency and Bankruptcy Code, 2016. The criminal case has been registered only on assumption and presumption in order to safeguard the defacto complainant from civil remedies. Already co-accused A3 and A4 were granted anticipatory bail and the 5th accused Mujibutheen was arrested on 05.11.2024. The earlier application for the anticipatory bail filed by the petitioner was dismissed by this Court on 18.09.2024. Now investigation is almost completed and therefore, he prayed to grant anticipatory bail to the petitioners.

4. The learned counsel appearing for the intervenor has sought for adjournment and already this Court adjourned twice. Today also not ready and sought for adjournment. Therefore, this Court perused the intervening application filed by the intervenor. The intervenor has stated in his petition that the defacto complainant engaged M/s. Big Dreams Constructions Private Limited to execute civil work in various projects from November 2021. The accused persons had raised invoices to the defacto complainant's company upon completion of work (stage wise), for which the payments were made by the defacto complainant's company, mostly in advance. The defacto complainant entrusted civil subcontracting work to

the accused 1 and 2 for Rs.187,21,05,707/- between the period from November 2021 to December 2023 in its various projects. Out of Rs.187,21,05,707/-, the total civil work entrusted to the accused, DP World Phase I and Indian Oil Corporation Ltd., Kondakkarai, Vallur Village project forms part of subcontracting work. The defacto complainant entrusted Rs.43 crores value of civil subcontracting work to M/s. BDC at M/s. DP World Private Limited (Phase I), Vallur Village, Ponneri Taluk, Tiruvallur District from November 2021 to December 2022 and also entrusted the civil subcontracting work of Rs.32 crores at M/s. Indian Oil Corporation Limited, Kondakkarai, Vallur Village, Ponneri Taluk, Tiruvallur District from May 2022 to December 2023. M/s. Krupa & Co., an accounting firm, represented by its partner, the 4th accused, acted an as internal auditing firm of the defacto complainant from March 2019 till December 2023. The 5th accused and others were deployed by M/s. Krupa & Co., at the defacto complainant's office for finance department and internal audit. M/s. Krupa & Co., was entrusted with the responsibility of of approving invoices of vendor payments and bank transfers for such vendor payments. The 4th accused had also deployed personnel at the IOCL Project site as Quantity Surveyors to prepare Bill of

Quantities for the work executed, mostly for the sub-contract civil works entrusted to M/s. BDC.

4.1. The embezzlement came to the notice of the defacto complainant upon reconciliation of accounts after January 2024. The reconciliation has revealed that Rs.42,76,76,365/- was paid by the defacto complainant's company for M/s. DP World Phase-I project in different tranches to the 1 and 2 accused M/s. Big Dreams Construction Pvt. Ltd., As against these advanced payments, tax invoices for Rs.39,91,89,817/- were raised by M/s. BDC and were also approved by the 5th accused and others of M/s. Krupa & Co., for a sum of Rs.4,44,56,263/- with respect to M/s. DP World Phase-I, were dishonestly approved by the accused 4 and 5 in favour of the accused 1 and 2. Against the advance payments made to M/s. BDC using fake purchase orders dated 27.07.2021 in collusion with the 1 to 3 accused. All the accused persons conspired together and misappropriated Rs.7,29,42,811/- for their personal gains in this project site. Similarly it was revealed that only a sum of Rs.23,16,28,517/- value of civil work subcontracted in M/s. IOCL, Vallur Project site was executed by M/s. BDC. However, Rs.31,36,88,002/- was transferred in different tranches to the 1st and 2nd accused as advance and invoices for the entire value were dishonestly approved by the accused 4 and 5 in collusion with the accused 1 to 3. The company funds to the extent of Rs.8,20,59,485/- were misappropriated by the accused. The accused 1 and 2 being the Promoter Directors of M/s. Big Dreams Constructions Pvt Ltd., has major role in misappropriating the company funds of Rs.15,50,02,296/-. The earlier anticipatory bail application filed by the petitioners were dismissed by this Court vide order dated 18.09.2024. Thereafter, there is no any change of circumstances and therefore, he prayed to intervene in the anticipatory bail application and strongly opposed to grant anticipatory bail to the petitioners.

5. The learned Government Advocate (Criminal Side) appearing for the respondent police would submit that the petitioners' company is a sub contractor of the defacto company and the defacto complainant entrusted the Civil sub-contract works to the petitioners' company namely M/s. Big Dreams Constructions Private Limited and so many civil works were executed by them. The complainant lodged the complaint alleging that the petitioners' company was entrusted with the work of Rs.43 crores for execution of civil subcontract work and as per the accounts, only the work for a sum of Rs.23,16,28,517/- was completed. However, invoices for

Rs.8,20,59,485/- were dishonestly approved / validated by the accused 4 and 5 in collusion with the accused 1 to 3 and also the advance payments made against the invoices raised by them for a sum of Rs.7,29,42,811/- and totally all the accused misappropriated Rs.15,50,02,296/-. Therefore, the defacto complainant lodged a complaint and based on the complaint given by the defacto complainant, they have registered the FIR in Cr. No.73 of 2024 for the offences under Sections 120-B and 409 of IPC and as per the FIR, the accused have misappropriated an huge amount and the investigation is under process. Already this Court dismissed the anticipatory bail application against these petitioners vide order dated 18.09.2024. One of the accused was arrested and remanded to judicial custody on 06.11.2024 and subsequently the 1st petitioner was also arrested and remanded to judicial custody and the respondent police have collected the records and all the offences are arising out of records and therefore, he strongly opposed to grant anticipatory bail to the 2nd petitioner.

6. Heard both sides' arguments and perused the materials available on record.

7. Considering the representations made on either side, considering

the fact that in this case, the alleged offences are arising out of civil construction contract between the parties and according to the defacto complainant, without executing the work, the accused 1 and 2 raised funds to an extent of Rs.7,29,42,811/- and Rs.8,20,59,485/- totalling to a sum of Rs.15,50,02,296/- and it is an admitted fact that this petitioner is a partner of the construction company, which acted as sub-contractor for the complainant and already the co-accused, who are the Chartered Accountants were granted anticipatory bail by this Court and the alleged offences are borne out of records, thereby there will be no chance of tampering evidences and already this Court dismissed the earlier anticipatory bail application filed by the petitioners on the ground that investigation is at initial stage and now the material part of investigation is completed and already the other co-accused were arrested by the respondent police and no previous case is pending against the 2nd petitioner, this Court is inclined to grant anticipatory bail to the 2nd petitioner subject to the following conditions. Since the 1st petitioner was already arrested, this petition is dismissed as against the 1st petitioner.

7. Accordingly, the 2nd petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen (15)

days from the date on which the order copy made ready, before the learned **Judicial Magistrate No.I, Poonthamalli o**n condition that the 2nd petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Magistrate concerned and on further condition that:

[a] the 2nd petitioner shall report before the respondent police daily at 10.00 a.m. until further orders.

[b] the 2nd petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence;

[c] the 2nd petitioner shall not leave India without the previous permission of the Court;

[d] the 2nd 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 2nd petitioner in accordance with law as if the conditions have been imposed and the 2nd 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 abscond, a fresh FIR can be registered under Section 269 B.N.S.2023.

05.12.2024

mjs

To
1.The Judicial Magistrate No.I, Poonthamalli
2. The Public Prosecutor, High Court, Madras.
3.The Inspector of Police, The Central Crime Branch, Avadi.

P.DHANABAL,J

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CRL O.P. No.28784 of 2024

05.12.2024