Crl. O.P. No.28785 / of 2024

P. DHANABAL.J.,

The petitioners / Accused- 1 and 2, who apprehend arrest in the hand of the respondent police for the offences punishable under Sections 120-B and 409 of IPC in connection with the Cr. No.4 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. The defacto complainant engaged M/s. Big Dreams Constructions Private Limited to execute civil work in various projects from November 2021. 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 embezzlement came to the notice of the defacto complainant upon reconciliation of accounts after January 2024. The reconciliation has

revealed that Rs.14,32,51,455/- 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.13,44,75,282/- were raised by M/s. BDC and were also approved by the 5th accused and others of M/s. Krupa & Co., 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.2,04,20,205/-. Further, Rs.87,76,173/- advance payments made in excess of the tax invoices raised by them was also not returned. The accused persons had misappropriated the company funds in total Rs.2,91,96,378/- by cheating the company with fabricated reports and documents 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.4 of 2024 based on the complaint dated 20.07.2024. The case of the defacto complainant is that the defacto complainant is a private limited company under the name and style of M/s. Ocean Lifespaces India Private Limited and the petitioners had approached the complainant for civil work contract and the

complainant had awarded civil contract works to the accused from November 2021. During the audit of M/s. Big Dreams Company's account for the CPCL, Nagapattinam project, it was found that the complainant company made an advance payment of Rs.14,32,51,455/- and M/s. Big Dreams Company issued tax invoices totallying Rs.13,44,75,282/- from July 2022 to December 2023. However, the actual work completed by M/s. Big Dreams Company amounted to only Rs.11,40,55,077/- and thereby, cheated Rs.2,04,20,205/- and therefore, committed offences under Sections 120-B and 409 of IPC. In fact, the case of the prosecution is totally false. The defacto complainant company engaged the petitioners as subcontractor for several civil 5 works contracts and the petitioners 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 and also calling upon the petitioners to open their books of forensic accounting. The defacto complainant also preferred a frivolus complaint before the Commissioner of Police, Avadi and FIR has been registered with fale allegations. Two complaints were given only after demand notice issued by the petitioners under the Insolvency and Bankruptcy Code and already these petitioners have filed the anticipatory bail petition and the same was dismissed. Already co-accused were released on bail and one of the accused was arrested on 05.11.2024 and A3 and A4 were already released on anticipatory bail and 5th accused

Mujibutheen was arrested on 05.11.2024 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, represented by the accused 1 and 2 to execute civil work in various projects from November 2021. The accused 1 and 2, did not have enough financial resources even to commence the civil subcontracting work and therefore, the defacto complainant company has paid continuous advances for the entire civil subcontracting works entrusted to them. 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. 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. The defacto complainant company has paid Rs.188,24,15,848/- in total from November 2021 till December 2023 to the company

represented by the 1st and 2nd accused. The defacto complainant had entrusted civil subcontracting work valued at Rs.49,50,00,000/- to M/s. Big Dreams Constructions at M/s. Chennai Petroleum Corporation Limited at Ocean 9 mm TPA Cauvery Basin Refinery, CPCL Campus, Panangudi, Nagapattinam by work order dated 11.06.2022 from July 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 3rd accused Raja Sekhara Reddy, Shanmugavadivu, Ganesh, Logesh, Pershipa, Govindaraj and Saraya were deployed by M/s. Krupa & Co., at the defacto complainant's office for finance department and internal audit. The persons of M/s. Krupa & Co., were entrusted with the responsibility of approving invoices of vendor payments and bank transfers for such vendor payments. M/s. Big Dreams Constructions had deployed its employees as Project Managers & Quantity Surveyors at CPCL, Nagapattinam project site of the defacto complainant's company to prepare Bill of Quantities, mostly for the civil subcontract works entrusted to M/s. Big Dreams Constructions.

4.1. As per the reconciliation accounts, it revealed that a sum of

Rs.14,32,51,455/- was paid from June 2022 to December 2023 by the defacto complainant's company for M/s. CPCL, Nagapattinam project to the accused M/s. Big Dreams Construction Pvt. Ltd. in different tranches. As against these advanced payments, tax invoices for Rs.13,44,75,282/- were raised by M/s. BDC from July 2022 to December 2023 and were also approved by the Rajashekhar Reddy and others of M/s. Krupa & Co., 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.2,04,20,205/-. Embezzlement came to the notice of the defacto complainant's company upon reconciliation of accounts after January 2024 and it was found that only Rs.11,40,55,077/- value of civil work out of Rs.49,50,00,000/- value of civil work subcontracted in M/s. CPCL, Nagapattina site was executed by M/s. Big Dreams Constructions Pvt Ltd., However, invoices for Rs.2,04,20,205/- were dishonestly approved by the 3rd accused in collusion with 1 and 2 accused and 5th accused and others. The company funds to an extent of Rs.2,04,20,205/- were misappropriated by the accused persons and further, raised Rs.87,76,173/- advance payments made in excess of the tax invoices raised by them was also not returned despite several requests by the company. In total, the petitioners along with others have misappropriated Rs.2,91,96,378/-. Investigation is at initial stage and therefore, he 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. This case is pertaining to the work entrusted to the petitioners for M/s. CPCL Nagapattinam site. The complainant lodged the complaint alleging that the petitioners' company was entrusted with the work of Rs.49,50,00,000/- for execution of civil subcontract work and as per the accounts, only the work for a sum of Rs.11,40,55,077/- was completed. However, invoices for Rs.2,04,20,205/- 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.87,76,173/- and totally all the accused misappropriated Rs.2,91,96,378/-. 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.4 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.2,04,20,205/- and the advance payments made against the invoices raised by them for a sum of Rs.87,76,173/- and totally all the

accused misappropriated Rs.2,91,96,378/- and it is an admitted fact that the 2nd petitioner is a partner of the Construction company where awarded sub-contract from 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 arrested by the respondent police, the petition against the 1st petitioner is dismissed.

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, Nagapattinam 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 Central Crime Branch, Avadi 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
[2/2]

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

P.DHANABAL,J

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05.12.2024
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