THE HONOURABLE DR.JUSTICE G.RADHA RANI

CRIMINAL PETITION No.3261 OF 2024

O R D E R:

This Criminal Petition is filed by the petitioner – Accused No.3 under Section 438 of Code of Criminal Procedure, 1973 (for short "Cr.P.C"), to release her on anticipatory bail in Crime No.262 of 2024 of PS.CCS, DD, Hyderabad District, registered for the offences punishable under Sections 406, 409, 420 read with 34 of Indian Penal Code, 1860 (for short, 'IPC').

2. The case of the prosecution in brief was that on 15.09.2023 at 21:00 hrs, the *de facto* complainant Vice President (Finance & Accounts) at Vishal Personal Care Private Limited, Hyderabad lodged a report before the CCS Police stating that their company was involved in manufacturing, marketing and selling of Hair Care, Skin Care, and herbal products under the brand name Banjara's and initially, the Company appointed M/s Alacrity Inc., represented by Mr.Aslam Sheriff and Mrs. Madeeha Sheereen, as its Carry and Forward Agents (CFA) under

an agreement dated 24.06.2015. This agreement was extended until 31.03.2024. He further alleged that CFA was responsible for various activities, including clearing, forwarding, storage, distribution and billing of goods on behalf of the company. In March, 2023, during stock verification/reconciliation process, the company identified significant discrepancies between actual sales and the daily sales reported by the CFA in the DSR report. On further enquiry it was revealed that stock discrepancies had been consistently higher than reported sales realizations over the past few financial years and Mr.Nagesh Yerra, responsible for Logistics & CFA Operations, contacted Mr.Aslam on 13.03.2023 to provide the details of justification for the differential quantities. In response, Mr.Aslam, in an email dated 15.03.2023, admitted the discrepancies and stated that they had been "intentionally created without justification". On 04.05.2023, Mr.Nagesh Yerra issued a notice to terminate the CFA Agreement with effect from 30.06.2023. An audit report conducted by M/s.Matrix Business Services India Private Limited, dated 10.07.2023 revealed differences amounting to

Rs.3,07,84,945 (Rupees three crores seven lakhs eighty four thousand nine hundred forty five only) in the factory outward versus MRN records for the period from 1st April, 2019 to 12th June, 2023. The company had found its agent M/s Alacrity Inc, misappropriated the materials for their wrongful gain and cheated the belief and revenue of the company.

3. Basing on the said report, the above crime was registered against the petitioners for the offences punishable under Sections 406, 409, 420 read with 34 of IPC. M/s.Alacrity Inc, was shown as accused No.1 and Mr.Aslam Sheriff was shown as accused No.2 and Mrs.Madeeha Sheereen was shown was accused No.3. It was also reported that accused No.2 was arrested on 19.02.2024.

4. Heard the learned counsel for the petitioner-Accused No.3 and the learned Additional Public Prosecutor for the respondent-State.

5. Learned counsel for the petitioner/accused No.3 submitted that the *de facto* complainant had resorted to convert a

commercial transaction into a criminal offence. He also invoked the Arbitration Clause in the Agreement, and issued Arbitration notice dated 23.08.2023 to accused No.2 and a reply notice was issued on behalf of the accused No.1 Company through its Advocate on 11.09.2023. The present false case was foisted by the *de facto* complainant on 15.09.2023, as the Company was unable to extort amount from the accused No.1 Company.

5.1. He further submitted that the petitioner/accused No.3 was a sleeping partner in accused No.1 Company. The *de facto* complainant was regularly deputing their Authorised representatives to verify the stocks and checking all stock details at the warehouse of Accused No.1 Company. Accused No.1 used to upload their business data on a daily basis and the same was verified by the *de facto* complainant Company on a regular basis. The *de facto* complainant had never raised any complaints against accused No.1 Company for wrong entries or data manipulation prior to March 2023. The discrepancies raised by the *de facto* complainant in their email dated 13.03.2023 was with regard to transport claims and the same was amicably resolved by the *de facto* complainant and accused No.1 on 27.03.2023, wherein accused No.1 Company paid a final sum of Rs.2,52,468/- (Rupees Two Lakhs fifty Two Thousand Four Hundred and Sixty Eight Only) as full and final settlement of the value of any discrepancies in the transport claim. The *de facto* complainant Company had transactions with accused No.1 Company up to 30.06.2023. He further submitted that accused No.2 was released on bail on 23.03.2024 and relied upon the judgments of the Hon'ble Apex Court in ***Maksud Saiyed Vs. State of Gujarat and others***[1] and ***Ravindranath Bajpe Vs. Mangalore Special Economic Zone Limited and others***[2] on the aspect of vicarious liability of the directors in a company and prayed for grant of anticipatory bail to the petitioner/accused No.3.

6. Learned Additional Public Prosecutor opposed grant of anticipatory bail to the petitioner/accused No.3 stating that Section 34 was also invoked which shows that there was a

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[1] (2008) 5 Supreme Court Cases 668
[2] (2022) 15 Supreme Court Cases 430

common intention between accused Nos.1 to 3, the amount misappropriated was more than 3 Crores and prayed to dismiss the anticipatory bail application filed by the petitioner.

7. Perused the record.

8. Considering the contention of the learned counsel for the petitioner that the petitioner was a mother of five children and considering that the petitioner being a woman and the contents of the complaint also would not disclose her active participation in any of the transactions between the *de facto* complainant and the firm which was arrayed as accused No.1 and all the e-mails and other correspondence was transacted by the *de facto* complainant with accused No.2 who was the Managing Partner of the said firm and as it was also contended that the agreement between the petitioner and *de facto* complainant was terminated on 30.06.2023 and a notice was issued by the *de facto* complainant invoking the Arbitration Clause but suppressing the same, he lodged a criminal complaint and accused No.2 was already arrested and enlarged on bail, it is

considered fit to grant anticipatory bail to the petitioner/accused No.3.

9. Accordingly, the Criminal Petition is allowed directing the petitioner/accused No.3 to be released on anticipatory bail subject to the following conditions:

i) The petitioner-Accused No.3 is directed to surrender before the Station House Officer, PS Central Crime Station DD, Hyderabad District, within a period of (15) days from the date of this order. On such surrender, the said Station House Officer shall release the petitioner on bail, on her executing a personal bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) with two sureties for a like sum each to the satisfaction of the said Station House Officer.

ii) The petitioner/Accused No.3 shall abide by the conditions stipulated in Section 438(2) of Cr.P.C.

iii) The petitioner/Accused No.3 shall appear before the SHO as and when directed and shall cooperate with the Investigating Officer.

Miscellaneous applications, pending if any, shall stand closed.

Dr. G.RADHA RANI, J

Date: 26th March, 2024
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