

HON'BLE SRI JUSTICE SUBBA REDDY SATTI

CRIMINAL PETITION NO. 4451 OF 2022

ORDER:-

This petition, under Section 438 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C."), is filed by the petitioner/A25 for grant of anticipatory bail in the event of his arrest in connection with Crime No.29 of 2021 of CID Police Station, Mangalagiri, registered for the offences punishable under Sections 166, 167, 418, 420, 465, 468, 471, 409, 209, 109 read with 120b of the India Penal Code, 1860 (for short 'IPC') read with 13(1)(c), read with 13(1)(D) of Prevention of Corruption Act, 1988.

2. The above crime was registered basing on the complaint lodged by Chairman of Andhra Pradesh State Skill development Corporation (for short 'Corporation) on 07.09.2021.

3. The averments of the complaint, in brief, are that Corporation was incorporated by virtue of G.O.Ms.No.47 (HE) (EC.A2) Department, dated 13.12.2014. The corporation deputed a team to visit SIEMENS Centers of Excellence, which were already established in Gujarat and to submit report. SIEMENS offers training program in collaboration with various State governments. During negotiations, State Government agreed to establish SIEMENS Center of Excellence, Technical Skill Development Institutions and Skill Development Centers in different clusters. Six clusters have been formed at the inception at the cost of Rs.546,84,18,908/- with SIEMENS and Design Tech providing a grant-in-aid of Rs.491,84,18,908/- i.e. 90% and the Government share thereof is 10% i.e. Rs.55,00,00,000/-. A Memorandum of

Understanding was entered into between the Corporation on one hand and SIEMENS on the other.

4. The tax investigation by Additional Director General, GST, Intelligence, Pune in respect of claims of availing of CENVAT credit by M/s. Design Tech Systems Private Limited and M/s. Skillar Enterprises India Private Limited led to unearthing a huge financial scam involving crores of rupees by M/s. SIEMENS Industry Software India Private Limited and M/s. Design Tech Systems Private Limited. The funds relate to the Corporation/APSSDC.

5. As per Memorandum of Agreement, Design Tech has to provide training software development including various sub-modules designed for high end software for advance manufacturing CAD/CAM. Memorandum of Agreement does not contemplate sub-contract. However, SIEMENS and Design Tech sub-contracted a large part of its work to M/s. Skiller Enterprises Private Limited, New Delhi with self centric Solomon's Wisdom. The claim of DesignTech is that Skiller Enterprises Private Limited provided training software development including various sub-modules designed for high end software for advance manufacturing of CAD/CAM. M/s. Skiller has directly supplied the same to the Skill Development Centers in Andhra Pradesh. Design Tech further claims that royalty and subscription were paid to Skillar since they have developed the software.

6. When the tax authorities confronted Skillar, Skillar claimed that no technical work has been sub-contracted and the training software development including various sub-modules provided are technical material and royalty and subscription have been wrongly

mentioned in the invoices. Additional D.G.G.I., Pune concluded that both service provider and service receiver took contradictory stands regarding nature of service. In depth scrutiny into the records, by A.D.G.G.I. revealed that training development software including various sub-modules shown as supplied by Skillar to Design Tech were purchased by Skillar from 1) M/s. Allied Computers International (Asia) Ltd. Mumbai (for short 'ACI'), 2) M/s. Patrick Info Services Private Limited, M/s. I.T. Smith Solutions Private Limited, 3) M/s. Inweb Info Services Private Limited all based at New Delhi, 4) M/s. Arihanth Traders, New Delhi, 5) M/s. G.A. Sales Private Limited, New Delhi.

7. The companies referred to supra are Shell/Defunct companies and they were issuing invoices without providing any services. All these companies formed into a cartel for siphoning public funds tuning to Crores of Rupees. The Managing Director of M/s. DesignTech admitted before Assistant Director General that he has no evidence to show that services have been received from these companies. After surfacing financial irregularities, directions were given to the Corporation to conduct Forensic Audit and to furnish a copy of the report for taking further action. Accordingly work order was assigned to M/s. Sharat and Associates, Chartered Accountants, Forensic Audit Firm. The audit firm conducted enquiry and submitted report pointing out the flaws in policies, flaws in systems and utilization of funds and analysis of various spending practices and to find out irregularities, misstatements, governance procedures, internal policies evaluation for the financial years 2014-15 to 2018-19. M/s SIEMENS and Design Tech have to oversee the work of the clusters and their

maintenance. However, both of them swindled crores of rupees in dubious manner. Basing on the complaint, CID registered the above crime on 09.12.2021 and petitioner herein is arrayed as A25.

8. Heard Sri A.S.C.Bose, learned counsel representing Eluru Sesha Mahesh Babu, learned counsel or the petitioner and Sri T.M.K.Chaitanya, learned Standing Counsel –cum- Special Public Prosecutor for CID.

9. Learned counsel for the petitioner would contend that petitioner is Chartered Accountant by profession, and he is offering services to various clients and institutions. He contends that petitioner never received any booties from any companies, which are arrayed as co-accused in the crime. He contends that the respondent is relying on the statement, which was allegedly made by him before GST Intelligence, Pune, however, petitioner already submitted protest petitions to all the authorities concerned. Learned counsel submits that even after lapse of four years, no action was initiated by GST Intelligence wing. Learned counsel further submits that provisions of the PC Act will not apply to the petitioner since petitioner is self-employee and the punishment for other offences is less than seven years and hence, petitioner is entitled for notice under Section 41-A of Cr.P.C. Thus, learned counsel prays to grant pre-arrest bail to the petitioner.

10. Learned Standing Counsel submits that in pursuance of the common intention of A6 and A8, in connivance with A1 and other government officials, an amount of Rs.371,00,00,000/- was released to M/s. Design Tech to execute the SIEMENS project. He further submits that A6 and A8, as per their plan of diverting

funds created a company by name M/s. PVSP IT Skill Projects Pvt. Ltd., New Delhi as a project management company and entered into an agreement for executing the project and diverted Rs.241,00,00,000/- to the said company from M/s. Design Tech Systems Private Limited. He submits that A23 managed to get fake invoices from A24, Sourabh Gupta, Chartered Accountant and A25 i.e. the petitioner herein. He submits that petitioner admitted that he kept M/s. Patrick Info Services, M/s. IT Smith solutions and M/s Inweb Services Pvt. Ltd., of New Delhi under his control for issuing fake invoices. He submits that petitioner purchased shell companies i.e. M/s. Patrick Info Services, M/s. IT Smith solutions and M/s Inweb Services Pvt. Ltd., of New Delhi with an intention to earn easy money and issued bogus invoices in the names of said companies.

11. Learned Standing Counsel further submits that petitioner nominated Deshbir Sharma and Deep Singh as dummy Directors of M/s Patrick Info Services Pvt. Ltd. and he appointed Syam Kumar and Ms. Neelam Sharma, who is wife of the petitioner as dummy Directors of M/s IT Smith solutions Pvt. Ltd. He submits that petitioner prepared invoices in the names of said companies showing provision of services as Training Software Development including various sub-modules for M/s. PVSP IT Skill Projects Ltd. The following are the invoices issued by the petitioner in the name of M/s PVSP IT Skills.

S.No.	Invoice No. & Date	Issued by	Amount (Rs.)	Service Tax (Rs.)	Total (Rs.)
1.	096/5/15-16 Dt.17.12.2015	IT Smith Solutions Pvt. Ltd.	1,50,00,000/-	21,75,000/-	1,71,75,000/-
2.	098/5/15-16 Dt. 23.12.2015	IT Smith Solutions Pvt. Ltd.	1,50,00,000/-	21,75,000/-	1,71,75,000/-

3.	15-16/087 Dt. 20.01.2016	M/s. Patrick Info Services	1,50,00,000/-	21,75,000/-	1,71,75,000/-
4.	15-16/084 Dt.04.01.201 6	M/s. Patrick Info Services	1,50,00,000/-	21,75,000/-	1,71,75,000/-
5.	113, Dt. 01.01.2016	M/s. Inweb Services Pvt., Ltd.,	1,50,00,000/-	21,75,000/-	1,71,75,000/-

12. Learned Standing Counsel submits that infact petitioner sent hard copies of invoices to Sourabh Gupta through his field boy and petitioner received an amount of Rs.8.5 crores, which was sent back to the bank accounts of different companies, which were given by Sourabh Gupta after deducting an amount of Rs.7,50,000/- as commission by the petitioner.

13. During the year, 2017-2018 the GST officials, Pune examined the petitioner where he confessed the offence of managing shell companies by issuing fake invoices without providing any services and after receiving the invoice amount, the same was remitted back to M/s PVSP through the companies furnished by A21, A23 and A25.

14. Investigating Agency summoned the petitioner on 22.12.2021, examined him and recorded his statement. He submits that since there is need to examine further to elicit facts relating to rooting of the amount, etc., petitioner was again summoned on 18.04.2022. He submits that petitioner confessed that on 17.12.2015, an amount of Rs.1,56,75,000/- was credited into the account of M/s. IT Smith Solutions Pvt. Ltd., against the invoice No.096/S/15-16 and out of the amount received, an amount of Rs.25,01,960/- was sent to Argun International on 21.12.2015; an amount of Rs.54,95,864/- was sent to Amsai Stockist and Traders on 21.12.2015; an amount of Rs.15,02,176/-

was sent to Ananta Global on 21.12.2015; an amount of Rs.58,75,675/- was sent to Amsai Stockist and Traders on 22.12.2015 and thus, total amount of Rs.1,53,75,675/- was debited from the above account. He further submits that out of Rs.1,56,75,000/-, credited against invoice No.098/S/15-16, Rs.4,98,280/- and Rs.4,99,470/- were sent to Aakarshan on 23.12.2015; an amount of Rs.3,50,000/- was withdrawn by the petitioner on 23.12.2015 and an amount of Rs.36,50,180/- was sent to Midways International on 28.12.2015; an amount of Rs.29,96,710/- was sent to Argus International on 28.12.2015; Rs.60,18,170/- was sent to Amsai Stockist and Traders on 28.12.2015; an amount of Rs.14,84,940/- was sent to Dolphin on 28.12.2015; and an amount of Rs.5,00,000/- was withdrawn by the petitioner on 28.12.2015. Thus, the total amount comes to Rs.1,62,99,470/-.

15. Learned Standing Counsel further submits that petitioner also confessed regarding credit of amounts of Rs.1,56,75,000/- and Rs.52,25,000/- against invoice No.133, dated 28.12.2015 and invoice No.15-16/084, dated 04.01.2016 respectively and also with regard to disbursement of the said amounts. He submits that petitioner also confessed regarding an amount of Rs.2,70,340/- which was sent to M/s. Vijaya Lakshmi Enterprises on 29.01.2016 and petitioner further confessed with regard to the amount sent to Shri Sai Enterprises, Shri Ram Enterprises, Balaji Enterprises, Sairam Trading Company, Manav International, Amsai Stockists and Traders, Maa Lakshmi Enterprises and also with regard to self

withdrawal. The total amount so disbursed comes to a tune of Rs.3,14,71,321/-.

16. Learned Standing Counsel submits that wife of the petitioner, Neelam Sharma acted as director of M/s. IT Smith solutions Pvt. Ltd. and M/s InWeb Services Pvt. Ltd., during the period of committing the offence by the petitioner and the petitioner benefited himself to a tune of Rs.7,50,000/- for diverting the amount derived out of criminal breach of trust i.e. to a tune of Rs.8,50,00,000/- under fake invoices issued by him. He submits that petitioner is a conspirator for criminal breach of trust by colluding with the other accused i.e. A21 and though the petitioner appeared before the Investigating Officer on 22.12.2021 and 18.04.2022, when crucial examination was going on about his modus operandi and his indulgence in creation of the fake invoices, he avoided to appear before the Investigation Officer. Learned Standing Counsel further submits that much information is within the exclusive knowledge of the petitioner and hence, his custodial interrogation is very much required. Thus, prays to dismiss the bail petition.

17. I have given my anxious consideration to the submissions made on either side and perused the record.

18. In **P.Chidambaram vs. Directorate of Enforcement**¹ the Hon'ble Apex Court made it clear that granting anticipatory bail at the state of investigation will frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success

¹ (2019) 9 SCC 24

in such interrogation would elude if the accused knows that he is protected by the order of the Court and grant of anticipatory bail in economic offences would definitely hamper the effective investigation.

18. A perusal of the report lodged by the Chairman of the Corporation/APSSDC shows that as per the scrutiny of records by ADGGI, it is revealed that training software development including various sub-modules shown as supplied by M/s Skillar to Design Tech were purchased by Skillare from 1) M/s. Allied Computers International (Asia) Ltd. Mumbai (for short 'ACI'), 2) M/s. Patrick Info Services Private Limited, M/s. I.T. Smith Solutions Private Limited, 3) M/s. Inweb Info Services Private Limited all based at New Delhi, 4) M/s. Arihanth Traders, New Delhi, 5) M/s. G.A. Sales Private Limited, New Delhi. According to the prosecution, out of five, petitioner purchased three shell companies. The prosecution also got information that wife of the petitioner is one of the Directors in two companies out of three companies purchased by the petitioner. During examination of the petitioner, on 22.12.2021 and 18.04.2022, the prosecution could get some information and the petitioner was supposed to appear before investigating officer for further examination and he is supposed to cooperate with investigation. However, petitioner avoided to appear before investigating officer during crucial period.

19. Though learned counsel for the petitioner contended that no documents were filed by the prosecution regarding the purchase of shell companies referred to supra, by the petitioner, this is not the

stage where this Court goes into all those aspects. All these aspects will be considered during the course of trial.

20. Considering the facts and circumstances referred to supra and the amount involved in this crime is about Rs.371,00,00,000/- keeping in view the gravity of the crime, it being socio-economic offence, petitioner is not entitled for pre-arrest bail.

21. Accordingly, this criminal petition is dismissed.

It is made clear that this order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation as per law and the findings in this order be construed as expression of opinion only for the limited purpose of considering bail in the above crime and shall not have any bearing in any other proceedings.

JUSTICE SUBBA REDDY SATTI

Date : 19 .07.2022
IKN

11

39

HON'BLE SRI JUSTICE SUBBA REDDY SATTI

DISPOSED OF

CRIMINAL PETITION No.4451 OF 2022

19.007.2022

IKN