

IN THE HIGH COURT OF ANDHRA PRADESH : AMARAVATI

HON'BLE SRI JUSTICE K. SURESH REDDY

CRIMINAL PETITION No.3013 of 2023

ORAL ORDER:

The petitioner herein, who is arrayed as accused No.35 in Crime No.29 of 2021 on the file of CID Police Station, Andhra Pradesh, Mangalagiri, filed the present petition under Section 438 Cr.P.C., seeking pre-arrest bail.

2. The above crime was registered for the offences punishable under Sections 120-B, 166, 167, 418, 420, 465, 468, 471, 409, 201 & 109 read with Sections 34 & 37 I.P.C. and Sections 13(2) read with 13(1)(c)&(d) of Prevention of Corruption Act, 1988. The complaint lodged by the Chairman of Andhra Pradesh State Skill Development Corporation (for short, 'the Corporation') on 07.09.2021 is the basis for registration of the present crime.

3. The averments of the complaint, in brief, are thus:

(i) The 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.

(ii) 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.

(iii) As per the 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. Skillar Enterprises Private Limited, New Delhi with self centric Solomon's Wisdom. The claim of Design Tech is that Skillar Enterprises Private Limited provided training software development including various sub-modules designed for high end software for advance manufacturing of CAD/CAM. M/s. Skillar 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.

(iv) 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. An in-depth scrutiny into the records by A.D.G.G.I. revealed that training software development 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 and 5) M/s. G.A. Sales Private Limited, New Delhi.

(v) 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. Design Tech admitted before the Assistant Director General that he has no evidence to show that services have been received from these companies. After surfacing of 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.

(vi) By filing Memo dated 06.03.2023, the petitioner herein has been added as accused No.35 in the present crime and it is alleged that the petitioner, having colluded with Suman Bose (accused No.6), prepared false cost estimation with an intention to divert the funds of the Corporation and that he played key role in making changes to the draft agreement proposed to have been entered with the Corporation and removed the Bank Guarantee of Money and Performance clauses from the draft agreement in collusion with accused Nos.6 and 8, and that he has also shared the draft agreement to his wife before her inter-state cadre deputation to Andhra Pradesh and posting as Deputy CEO of the Corporation.

4. It may be noted that initially, the petitioner was arrested on 08.03.2023 in Noida, Uttar Pradesh, and after obtaining transit warrant from the Court of Additional Chief Judicial Magistrate-II, Surajpur, Noida, Uttar Pradesh, the police produced him before the Court of Special Judge for SPE & ACB Cases-cum-III Additional District & Sessions Judge, Vijayawada, on 09.03.2023, seeking his remand to judicial custody. However, the Court has rejected to remand the petitioner to judicial custody and set him at liberty.

Questioning the same, the prosecution has filed Criminal Revision Case No.203 of 2023 before this Court. Vide order dated 16.03.2023, this Court set aside the order impugned and directed the Court below to proceed afresh as per law, if a request is made by the investigating authority for remand of the petitioner to judicial custody. Subsequently, the petitioner filed a petition under Section 438 Cr.P.C., in Crl.M.P.No.318 of 2023, before the learned Special Judge for SPE & ACB Cases, Vijayawada, seeking anticipatory bail. The said petition was dismissed by order dated 29.03.2023. Thereafter, the petitioner has filed the present petition before this Court for grant of pre-arrest bail.

5. At the outset, learned Additional Advocate General appearing for the State has taken a preliminary objection stating that the present application under Section 438 Cr.P.C. is not maintainable as the petitioner was already arrested at Noida, Uttar Pradesh, and after obtaining transit warrant from the Court at Surajpur, Noida, he was produced before the jurisdictional court at Andhra Pradesh.

6. It is to be noted that the above objection was taken before the Court of Special Judge for SPE & ACB Cases, Vijayawada, also, when the petitioner earlier filed Crl.M.P.No.318 of 2023 before the said Court for grant of anticipatory bail. Perusal of the order dated 29.03.2023 passed by the Court below in the said application would show that the Court below, having elaborately dealt with the said preliminary objection raised by the

prosecution, overruled the said objection and held that the petition for anticipatory bail is maintainable. Be that as it may, it is brought to the notice of this Court that as against the order passed by this Court in Crl.R.C.No.203 of 2023, setting aside the order of refusal to remand and directing the Court below to proceed afresh as per law, the petitioner has preferred a Special Leave Petition in SLP (Crl.) Diary No.13156 of 2023 before the Hon'ble Supreme Court. Thus, this Court is not inclined to go into the issue of maintainability of anticipatory bail application in the backdrop of his arrest and subsequent refusal by the Court to remand him to judicial custody, which is *sub-judice* before the Hon'ble Supreme Court. Hence, without going into the preliminary objection raised with regard to maintainability of the present application, this Court would like to decide the application on merits.

7. Sri C.V. Mohan Reddy, learned senior counsel assisted by Mr. C. Prakash Reddy, learned counsel for the petitioner, argued that the petitioner has no role in the costing of men and material and he has to only collate and integrate the information provided and communicate it to the management and, thus, he was involved in the project only in a limited capacity at the instance of his employer. It is further contended that the petitioner was only marked with various correspondences from other team members and the entire exercise was based on the project model decided by the Managing Director and other members. Further, the petitioner was never involved in deliberations for fixing either profit margins or project estimation and his

opinion was never solicited before finalization. So far as the allegation of dropping critical clauses of bank guarantee from the MOU for supply and performance is concerned, it is contended that the petitioner had no role in it and it was the Managing Director and Sales Head, who corresponded in that regard and the MOU clauses were deliberated by various team members of SIEMENS India. It is further contended that the petitioner did not pursue with the State Government of Andhra Pradesh for posting of his wife (A-36) in any capacity and even otherwise, the petitioner's wife is not holding any responsibilities financial or otherwise in Siemens Project. In the circumstances, it is prayed that the petitioner may be granted pre-arrest bail in connection with the subject crime.

8. On the other hand, learned Additional Advocate General appearing for the State would contend that the petitioner conspired with other accused and played prominent role in getting the MOU prepared by inflating the project cost and removing bank guarantee clause. It is also contended that at the instance of the petitioner, his wife/A-36 was deputed as Deputy CEO of the Corporation. The petitioner, being privy to the conspiracy, which resulted in misappropriation of huge public funds of about Rs.371 crores through various shell companies, is not entitled for grant of anticipatory bail. He further submits that the SIEMENS has also taken up internal investigation in the matter, which revealed that the ex-CEO of SIEMENS, Mr. Bose, and his team, played an active role in a scheme with the purpose of misusing public funds.

Learned Additional Advocate General further submits that the investigation is still in progress and further evidence has to be collected in the matter to trace the track of misappropriated funds and, therefore, prays for dismissal of the present application.

9. This Court has considered the matter and perused the entire material available on record. The allegation levelled against the petitioner is that he, being the Project Head, involved in inflation of valuation, manipulation of MOU/agreement entered into between the State Government and SISW and Design Tech Private Limited, and thereby played a prominent role in misappropriation of huge public funds to a tune of about Rs.371 crores. As can be seen from the record, the prosecution has collected various e-mails exchanged amongst the present petitioner, accused Nos.6, 8 & 9 and the assistants of Mr. Bose, Ex-CEO of SISW.

10. In **P. Chidambaram v. Directorate of Enforcement** reported in **(2019) 9 SCC 24**, the Hon'ble Supreme Court has held that granting of anticipatory bail at the stage of investigation will frustrate the investigating agency in interrogating the accused and in collecting useful information and materials which might have been concealed and grant of anticipatory bail in economic offences would definitely hamper the effective investigation. Further, in **State of Bihar v. Amit Kumar alias Bachcha Rai** reported in **(2017) 13 SCC 751**, the Hon'ble Supreme Court held that socio-economic

offences constitute a class apart and need to be visited with a different approach in the matter of bail.

11. In the circumstances, keeping in view the allegations levelled against the petitioner attributing prominent role to him in the offence and the offence being a socio-economic offence pertaining to a big conspiracy allegedly designed to misappropriate huge amount of public funds to a tune of about Rs.371 crores, this Court is of the opinion that it is not a fit case for grant of anticipatory bail to the petitioner at this stage.

12. Accordingly, this criminal petition is dismissed.

K. SURESH REDDY, J

Dt: 31.07.2023
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