THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI

Criminal Petition No.451 of 2023

ORDER:

This Criminal Petition is filed under Section 438 CrPC seeking anticipatory bail to the petitioner/A2 (M. Bala Murali) in the event of his arrest in Crime No.329 of 2022 of Madanapalle II Town P.S., Madanapalle Mandal, Annamayya District, registered for the offences punishable under Sections 120-B, 166, 170, 119, 467, 468, 471, 406, 409, 420 read with 34 IPC.

2. Heard learned counsel for the petitioner and the learned Assistant Public Prosecutor representing the respondent/State.

3. The case of the prosecution is that the accused Nos.1 to 3 were working as Sub Treasury Officers, at Madanapalle, Thamballapalle, Piler respectively at the time of commission of the offences, used the services of M/s. YSR & Co., a tax consultancy firm, and filed Form-24 G with incorrect data by colluding with A4 & A5 who are the partners of the firm and took the assistance of the petitioner/A6, a Senior Accountant in STO, Punganur, for wrongful gain through claim of fraudulent income tax refunds by using AIN/PAN/TAN, digital signatures to claim bogus refunds and caused revenue loss to the government of India estimated at Rs.3,47,00,000/-.

4. Learned Assistant Public Prosecutor filed a detailed counter showing the nexus of the petitioner to the commission of the offence.

5. The brief averments of the counter are:-

A-1 is the Sub Treasury Officer (STO), Madanapalli, A2 is the STO, Tamballapalli, A3 is the STO, Piler, A4 is the Tax Consultant running YSR & Co Tax Consultancy Services, A5 is the wife of A4 and Tax Consultant and A6 is the Senior Accountant at the office of the STO, Punganur. As per the report lodged by the Income Tax Officer, the preliminary enquiry revealed that A1 to A3 who are working as STOs in their respective places are responsible for filing monthly Form-24G statements which are used for crediting the tax deductions into the Central Government account. In this process, they used the services of a tax consultancy where A4 to A5 are partners of the Firm. A1 to A3 in collusion with A4 & A5 filed wrong Form-24G with incorrect data and with wrong TAN numbers and availed bogus income tax refunds from the Government, thereby, causing loss to the government exchequer to a tune of Rs.3,47,00,000/-. After registration of the FIR, the Income Tax Department conducted its internal enquiry and submitted detailed enquiry report, dated 26.01.2023, stating that 57 fraudulent G-

Oltas transfer vouchers have been analyzed. The points analyzed during the internal enquiry are as follows:

(a) Apart from actual TDS data, some bogus entries were made in the form-24G statements filed allotting TDS to various TANs. In many cases, the bogus entry value is even more than the aggregate of the actual TDS amounts of all the DDOs under the AIN of the month.

(b) Some are genuine TANs pertaining to STOs and DDOs. Some are bogus TANs like VPNS2258OF (STO, Tamballapalle), VPNS22579E (STO, Madanapalle), VPNS22582A (STO, Piler), VPNS22581G (STO, Vayalpad). Even one non-government TAN (VPNK03169F) in the name of 'Kisna Associates', Madanapalle was used to allot bogus TDS amounts.

(c) Wrong DDO names were mentioned against the TANs in Form-24G statements.

(d) The TANs not belonging to the jurisdiction of the AIN holder were also used in Form-24 statements.

(e) Some of the fraudulent G-Oltas transfer vouchers are fully consumed. Some are partially consumed and some are not yet consumed.

6. The specific role played by each accused in committing the offence is detailed in the counter. It is further stated in the counter that the investigation is at premature stage and further, there is necessity to examine the actual culprits and also to collect the documentary evidence to unearth the truth and to find out the other culprits involved in the crime and the conspiracy behind the crime.

The petitioner, being a Sub Treasury Officer, has colluded with the government officials and facilitated in getting the bogus refunds. Hence, the petition is liable to be dismissed.

7. Learned counsel for the petitioner submitted that on coming to know about the misdeeds committed by the STO, he himself has given complaint to the police and when they failed to take action, he lodged a private complaint also and all the details explaining the allegations made against him are vividly mentioned in the complaint. He further submitted that when the amount is deposited into his account, immediately, he transferred the amount on 13.02.2021, 15.02.2021 and finally, on 16.02.2021 by instructing the accused to remit the same in TD account without any delay. Therefore, he was unnecessarily and falsely implicated in this offence.

8. Learned Assistant Public Prosecutor submitted that knowing the action proposed against him, he carefully planned and started creating evidence as if he was innocent and there is no truth in the complaint given by him. He further submitted that the investigation so far made has clearly established the complacency of the petitioner in the commission of the offence as mentioned in detail in the counter. He further submitted that it is only to overcome the accusations, he has come up with all excuses and that in matters of

economic offences, involving huge conspiracy, the petitioner is not entitled to anticipatory bail. He further submitted that in cases of socio economic offences, a different approach is needed in matter of bail and relied on the decision of Supreme Court in **State of Bihar v. Amit Kumar**[1].

9. Perused the record.

10. At this juncture, a detailed and deep enquiry into the defence cannot be made. The misuse of the PAN/TAN AND TIN numbers as explained in the counter *prima facie* make out the case against the petitioner as well. The innocence as pleaded by initiating some actions cannot be accepted *ex facie* in view of the fact that such steps can be taken in contemplation to counter likely allegations. On consideration of the case against the petitioner on one hand and the case argued by the petitioner on the other hand, it is not a fit case to grant anticipatory bail to the petitioner.

11. Accordingly, the Criminal Petition is dismissed.

Pending miscellaneous applications, if any, shall stand closed.

B.S.BHANUMATHI, J

29.03.2023
RAR

[1] (2017) 13 SCC 751