

**IN THE HIGH COURT OF ANDHRA PRADESH : AMARAVATI**

**HON'BLE SRI JUSTICE K. SURESH REDDY**

**CRIMINAL PETITION No.7497 of 2023**

**ORDER:**

Heard Mr. Siddharth Aggarwal, learned Senior Counsel, and Mr. Siddharth Luthra, learned Senior Counsel, assisted by Mr. Kumar Vaibhaw, Mr. Vishwajeet Singh Bhati, Mr. Ayush Shrivastava, Mr. Ginjupalli Subba Rao and Ms. S. Pranathi, learned counsel, appearing for the petitioner, and the learned Advocate General for the State.

2. Accused No.25 in Crime No.24 of 2021 on the file of CID Police Station, A.P., Amaravati, Mangalagiri, filed this petition under Section 438 Cr.P.C., seeking pre-arrest bail in connection with the said crime.

3. The aforesaid crime has been registered for the offences punishable under Sections 166, 167, 418, 465, 468, 471, 409, 506 read with 120-B I.P.C. and Section 13(2) read with 13(1)(C)(D) of the Prevention of Corruption Act, 1988.

4. As can be seen from the record, the Chairman, Andhra Pradesh State Fibernet Limited (APSFL), submitted a report on alleged illegalities which took place in awarding the tender of A.P. Fiber Grid Phase-I and alleging that Sri Vemuri Hari Krishna Prasad (A1), who was appointed as member of the tender evaluation committee, colluded with M/s. Tera Software Limited (A3), represented by its Managing Director, Sri Tummala Gopichand, officials of APSFL and the Government of Andhra Pradesh, to ensure that the tender for Rs.321 crores is illegally awarded to M/s. Tera Software Limited, though it

lacked the necessary qualifications. The said report was forwarded to the Secretary to Government of A.P., Energy Department, by the Managing Director of APSFL, vide letter dated 23.02.2021, and the Government, vide G.O.Rt.No.85, Energy (Vigilance) Department, dated 11.07.2021, has entrusted the matter to the Crime Investigation Department of A.P. for detailed investigation and directed the Additional Director General of Police, C.I.D., to investigate into the alleged irregularities. In pursuance thereof, the Secretary to Government, Energy Department, by letter dated 13.07.2021, requested the Managing Director, APSFL, to provide the concerned records/files to the Additional Director General of Police, C.I.D., for investigation into the alleged irregularities. Accordingly, the Managing Director, APSFL, lodged report dated 16.07.2021 before the Additional Director General of Police, C.I.D., A.P., enclosing the report submitted to the Government and requesting to initiate necessary legal action. A preliminary enquiry was conducted and report dated 08.09.2021 was submitted by the Deputy Superintendent of Police, C.I.D. Basing on the complaint and the said preliminary enquiry report, the present crime, viz., Crime No.24 of 2021 has been registered on 09.09.2021 for the offences indicated above, and investigation has been taken up.

5. According to the prosecution, the evidence so far collected and statements of certain witnesses recorded under Sections 161 and 164 of Cr.P.C. in the present crime revealed that the petitioner herein has played key role in the conspiracy to allot the work to A3 company contrary to the rules prescribed and that he, in connivance with accused Nos.1 and 2, facilitated accused Nos.1

and 3 for embezzlement of Government funds by fabricating the records. Thereupon, the petitioner herein has been added as accused No.25 in the present crime. Since the petitioner herein has already been arrested in connection with Crime No.29 of 2021 of CID Police Station, A.P., Mangalagiri, and has been remanded to judicial custody on 10.09.2023, a petition under Section 267 Cr.P.C. has been filed by the prosecution before the Court of Special Judge for SPE & ACB Cases, Vijayawada, to issue P.T. warrant against the petitioner for his production and remand to judicial custody in the present crime. While the same is pending, the present application has been moved for grant of pre-arrest bail to the petitioner in connection with the present crime.

6. It is argued by the learned Senior Counsel appearing for the petitioner that though the crime has been registered way back on 09.09.2021, there was no single attempt by the police to summon the petitioner to join investigation and it is only after his arrest in Crime No.29 of 2021 in the intervening night of 08/09.09.2023, he was sought to be added as an accused in the present crime by filing memo dated 16.09.2023, which indicates the motivated timing and *mala fide* approach on the part of the investigating agency. It is contended that all the allegations are aimed at other accused and even according to the prosecution, the investigation revealed deposit of money into the bank accounts of accused No.1 and his family members through A23 and while that be so, there is no basis for the prosecution to believe the petitioner/A25 to be the end beneficiary of the flow of money. It is further contended that the appointment of A3 as Member for Tender Evaluation Committee was much prior to his

conviction in a criminal case in the year 2019 and therefore, it is pointless to attribute *mala fides* to the petitioner in recommending his appointment. It is further contended that this is not a case where the role of the petitioner, being part of the decision making process, could not have been found out in the preliminary enquiry that was conducted into the alleged irregularities or at the initial stage of the investigation itself but, having chosen not to add the petitioner for two long years, the investigating agency has chosen to add him in the array of accused only after his arrest in Crime No.29 of 2021, which itself would indicate that the introduction of the petitioner as an accused in the present crime is nothing but politically motivated approach. It is further contended that the report was lodged on 16.07.2021 and preliminary enquiry was conducted and report was submitted on 08.09.2021 and based thereon, F.I.R. was registered on 09.09.2021, and thus, prior approval in terms of Section 17A of the Prevention of Corruption Act, 1988, is required. It is further contended that the allegations pertaining to forgery and criminal breach of trust are not directed against the petitioner and that the shortcomings in the performance of contractor cannot be the basis for attribution of Section 409 IPC to the petitioner. It is further contended that by alleging that the inclusion of A1 as member of the e-Governing Council & Tender Evaluation Committee and de-blacklisting of M/s. Tera Software Limited took place solely upon the recommendation of the present petitioner, the prosecution is projecting such recommendation as a thing done by conspirator as provided under Section 10 of the Evidence Act and to attract the offence under Section 120-B I.P.C.

Further, it is contended that when all the material has been collected by the prosecution when the petitioner was at large itself and there is no allegation of any undue influence having been exerted by the petitioner to hamper the investigation and thus, there can be no apprehension that the petitioner would hamper the investigation or tamper with the witnesses if not taken into custody in relation to the present crime. It is further stated that A1, A11 and A22 were already granted anticipatory bail, while A2, A20, A21 and A23 were granted regular bails, and cancelation of bail has not been sought for in case of any of those accused. Learned Senior counsel would draw the attention of this Court to the order dated 29.09.2021 passed in Crl.P.No.5235 of 2021 filed by A11, wherein this Court has observed that in the entire complaint, except stating that there are procedural laches, it is nowhere mentioned that as the contract was awarded to the petitioner, the State has sustained loss and the work executed by A11 was sub-standard or there were any complaints from anyone with regard to the work executed. It is further contended that all the relevant documents have already been collected by the investigating agency and the petitioner, who has demitted the office of the Chief Minister and is no more in the custody of official records pertaining the alleged transactions, cannot be said to be tampering the evidence if he is at large. Referring to the observations made in **Gurbaksh Singh Sibbia v. State of Punjab**<sup>1</sup> and the situations to meet which the power to grant anticipatory bail was introduced, learned Senior Counsel contends that this is a case where such exercise of power to grant

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<sup>1</sup> (1980) 2 SCC 565

anticipatory bail is necessitated and that as a presumably innocent person, the petitioner is entitled to freedom and every opportunity to look after his own case. Reliance has also been placed on the decision of the Hon'ble Supreme Court in **Sushila Aggarwal v. State (NCT of Delhi)**<sup>2</sup> to contend that granting of anticipatory bail does not in any way directly or indirectly take away the right of the police to investigate into the charges against the person who is granted anticipatory bail and in the event of discovery of fact, limited custody would be sufficient for the purpose of fulfilling the provisions of recovery under Section 27 of Evidence Act, and that there is no bar that anticipatory bail should not be granted in certain kinds of serious offences, including economic offences. Reliance has also been placed on the decision of the Hon'ble Supreme Court in **State (NCT of Delhi) v. Navjot Sandhu**<sup>3</sup>, to contend that non-participant conspirators cannot be found guilty of offence committed by the other conspirators. It is, thus, prayed that as the present crime is essentially based on documentary evidence, which has already been collected by the investigating agency, and 94 witnesses have already been examined, and further considering that the petitioner is aged about 73 years and there is no chance of his fleeing from justice or hampering the investigation, his case may be considered for grant of pre-arrest bail.

7. On the other hand, learned Advocate General appearing for the State would contend that the evidence so far collected and the investigation conducted discloses the participation of the petitioner, who was having the

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<sup>2</sup> (2020) 5 SCC 1

<sup>3</sup> (2005) 11 SCC 600

portfolio of Energy Department, in the commission of alleged irregularities, at various stages of the implementation of the project. It is contended that there is no political malice as alleged and collection of the material has not been done with a particular orientation and the material so collected revealed the link between the alleged irregularities and the petitioner. It is contended that several attempts were made to examine Mr. Azizur Rahman, Partner GovTech, M/s. Price Waterhouse Cooper Pvt. Ltd., and finally, he could be examined through Webex on 14.09.2023, and that his statement would clearly demonstrate the connivance of the petitioner in facilitating award of contract to M/s. Tera Software Limited and knocking away the bid with unreasonably high rates by fabricating the Detailed Project Reports from the inception. Therefore, the petitioner has been added as an accused and, thus, the contention regarding motivated timing has no merit. It is further contended that M/s. Tera Software Ltd., which was blacklisted by the A.P. Technology Services Limited for a period of one year with effect from 11.05.2015, on account of supplying defective material and showing shoddy performance in Training & Technical support, was de-blacklisted on 06.08.2015, i.e., just one day before the last date for submission of bid in respect of A.P. Fiber Grid Project Phase-I, i.e., 07.08.2015 and noticeably, the last for submission of bid was earlier fixed as 31.07.2015 and it was extended from 31.07.2015 to 07.08.2015 and the concerned Note File did not contain any specific reason for such extension of time. It is further contended that the investigation so far conducted revealed that the petitioner personally monitored revoking of blacklisting of A3 through

the officials of CMO, who instructed Mr. G. Ravibabu, IAS, and mounted pressure on him to obtain performance report in favour of A3 and place the blacklisting issue before the Techno Finance Committee. It is further contended that during the course of investigation, about 94 witnesses were examined and statements under Sections 161 and 164 Cr.P.C. were recorded and after due verification of documents, note files and report submitted by a third-party audit by IBI Group and technical re-evaluation committee, the conspiracy hatched by the petitioner was unearthed and, hence, he was sought to be added as an accused in the present crime and petition for P.T. warrant under Section 267 Cr.P.C. has been filed. It is also contended that the investigation revealed that on the recommendation made by the petitioner, through C.M.O., A1 came to be appointed as one of the members of Governing Council e-Governance Authority, A.P. Fibernet Project, despite having criminal antecedents, and though objections were raised on the floor of the House, the petitioner continued to take decisions in favour of accused No.3. So far as prior approval under Section 17A of PC Act is concerned, it is contended that 2018 Amendment to the PC Act, being prospective in nature, the said Section has no application to the present offence and at any rate, since the material discloses abuse of power by the petitioner, Section 17A of PC Act has no application at all. The statements of Mr. P. Ajay Jain, who worked as Secretary, Energy Department, and Mr. G. Ravi Babu, who worked as Director-cum-Special Secretary of Civil Supplies Department, at the relevant point of time, under Section 164 Cr.P.C. coupled with the statement of Mr. Azizur Rahman, Partner GovTech, M/s. PWC



Ltd., would confirm the role played by A25 that he is having connivance in the activity of allocating the tenders with exaggerated rates by fabricating the Detailed Project Reports from inception. So far as grant of anticipatory bails to other accused are concerned, it is contended that within one month from the registration of the crime, the said orders granting anticipatory bail were passed and at that time, except preliminary enquiry report, there was no other material available with the prosecution. Now that there is enough material pointing towards the role of the petitioner in the exaggeration of estimated price and other irregularities, and in the context of the material that is available as on today, particularly Section 164 Cr.P.C. statements and IBI report, and in view of the gravity of the offence, it is not justifiable to discredit everything and grant anticipatory bail merely because the petitioner will not flee from justice, as the trail of money is yet to be investigated into. It is pointed out that the then Managing Director (FAC), A.P. Technology Services Limited, addressed a letter dated 19.08.2015 to the Vice Chairman & Managing Director, Infrastructure Corporation of A.P. Limited, explaining about the dubious nature of M/s. Tera Software Ltd. and suggesting a course of action to request another company to match the price instead of awarding the contract to M/s. Tera Software Ltd., and within five days thereafter, the GAD Department of Government of A.P., which was headed by the petitioner, issued G.O.Rt.No.2584 dated 24.08.2015, posting another Officer as Managing Director of A.P. Technology Services. Referring to the judgment of the Hon'ble Supreme Court in **Gurbaksh Singh Sibbia**, it is contended that the larger interest of the public or State also needs

to be looked at, while considering the plea of anticipatory bail. Reference is also made to the observation made by the Hon'ble Supreme Court in **Sushila Aggarwal**, to the effect that where there are circumstances or facts which pose peculiar problems or complexities pointing to the seriousness of an offence which the accused is implicated in, it is always open to courts to impose the needed restrictions. It is contended that two witnesses, when summoned to join investigation, were found to have left the country and with all these associating circumstances, the right of the investigating agency to conduct a free and fair investigation should also be seen in the context of parameters that would be applied while granting anticipatory bail. In the above circumstances and since the investigation is at crucial stage, it is pleaded that grant of anticipatory bail to the petitioner is not warranted and the petition may be dismissed.

8. This Court has considered the submissions made on either side and perused the material available on record.

9. According to the prosecution, the role of the petitioner in the present crime, as per the investigation conducted so far, is as under:

a) The petitioner appointed A1 as an adviser for the AP Fiber Grid Project in spite of his criminal antecedents, only because of his prior close acquaintance with the individual.

b) The petitioner implemented the decisions despite specifically being objected to by the Legislative members during the discussions in the State

Legislative Assembly, where the conflict of interest in between A1 and Tera Software Ltd. were pointed out.

c) There is a nexus among the accused in facilitating awarding of contract in favour of M/s. Tera Software Ltd. with an intent to cause unlawful gain and pecuniary advantage to it and the value of the work done by the said company is far shorter than the values prescribed under the contract, thereby causing a pecuniary advantage to it by Rs. 114.53 crores and the consequential loss to the State exchequer.

d) The petitioner influenced the Government officials by abusing his official capacity, approved the Detailed Project Report (DPR) which was prepared without following any due procedure and without proper verification.

e) The petitioner personally monitored the revoking of the blacklisting of the M/s Tera Software Ltd (A3) through the officials of the C.M's Office who instructed Sri G. Ravibabu, IAS., and mounted pressure on him to obtain performance reports in favour of M/s Tera Software Ltd and to place the blacklisting issue for review before the TFC on top priority basis, as stated by Sri. G. Ravibabu, IAS in his Sec. 161 Cr.P.C and Sec.164 Cr.P.C Statements, and the petitioner played key role in the conspiracy to allot work to A3 company contrary to the rules prescribed.

f) The petitioner, who headed the General Administration Department, has abruptly transferred the officer B. Sundar from the office of Managing Director (FAC) of AP Technology Services Ltd., who raised objections against

the blacklisted company i.e., Tera Software Ltd., in participation in the bid, and posted another officer in his place.

g) The petitioner appointed his chosen officers in tender process, to award the tender to Tera Software Ltd (A3) by overruling the objections of other bidders, in a fraudulent and deceitful manner.

h) The petitioner, in connivance with A1 and A2, accepted the tender process related committees by appointing A1 as a member, as proposed by A2, as a part of overall conspiracy.

i) The petitioner approved multiple illegal decisions and resorted to gross deviations from the laid down rules.

j) The Project was taken up by the M.D. INCAP without prior administrative sanction, constituted Technical committee and Tender evaluation committee.

k) A2 permitted the forged experience certificates submitted by A3 during the bid as genuine, in spite of specific complaints from different sources, and awarded the tender in favour of A3, though it is an ineligible company, and the petitioner approved and ratified all the illegal decisions by issuing G.O.Ms.No.10.

l) The process of revocation of blacklisting of A3, within three months, in the nick of time, (on 06.08.2015), so as to enable the participation of A3 in the tender process where bids were opened on 07.08.2015, was at the instance of the petitioner through the officials of the then Chief Minister's Office.

m) The petitioner has instructed Sri. Ajay Jain, IAS, to let the process of the tender be handled by A1 and A2 and disregarded all the problem areas flagged by the said officer.

10. To trace the nexus and alleged connivance of the petitioner in facilitating the award of contract in favour of M/s. Tera Software Limited, the prosecution relies on documentary evidence, evidencing replacement of officers from the office in A.P. Technology Services Ltd., who opposed the steps being taken in favour of M/s. Tera Software Limited, and that the last date for submission of bid was extended till 07.08.2015, while M/s. Tera Software Limited was de-blacklisted on 06.08.2015. The prosecution also relies upon Section 164 Cr.P.C. statement of the then Secretary, Energy Department, wherein he stated that the petitioner instructed him not to mention any of the objections or adverse remarks on the note files concerning proposals in relation to execution of A.P. Fiber Grid Phase-I project at a cost of Rs.330 crores and approval for Tender Evaluation Committee. The statement of the then Director-cum-Special Secretary of Civil Supplies Department, recorded under Section 164 Cr.P.C., is also placed on record, wherein he has stated that the Secretary to the then Chief Minister asked him to obtain status reports as regards M/s. Tera Software Limited in an early manner, to take steps for its removal from blacklist. Though the action of the investigating agency in adding the petitioner as an accused after two years of registration of crime is sought to be pointed out by the learned Senior Counsel for the petitioner to contend that there is motivated timing, taking into consideration the time that would be consumed in

investigating the offences of this nature and the *prima facie* material collected by the prosecution and also taking note of the stand of the prosecution that a witness, who was consultant on various parts of the project, was examined through Webex on 14.09.2023 only, this Court does not see any merit in the contention regarding motivated timing. In the circumstances and since the larger interest of the public or State also needs to be looked at in terms of the gravity, and not only in terms of the penalty prescribed for the offence, and having regard to the gravity of the offence which pertains to the allegation of causing of pecuniary advantage of about Rs.114.53 crores to A3 and consequential loss to the State Exchequer, with the alleged connivance of the petitioner, this Court is of the opinion that grant of anticipatory bail to the petitioner is not warranted at this stage, more so, when the trail of money is yet to be investigated, and to see that the investigation is not frustrated.

11. In view of the above discussion, this criminal petition is liable to be dismissed and is, accordingly, dismissed. Pending interlocutory applications, if any, shall stand closed.

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**K. SURESH REDDY, J**

Dt: 09.10.2023  
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