

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.3081 OF 2018

ORDER:

This petition is filed under Section 438 of Criminal Procedure Code (for short "Cr.P.C.") by accused No.8, apprehending his arrest, in Crime No.119 of 2011 on the file of Nellore II Town Police Station, Nellore District, registered for the offences punishable under Sections 406, 420 and 120-B of Indian Penal Code (for short "I.P.C.") and Section 5 of A.P. Protection of Depositors of Financial Establishment Act, 1999 (for short "I.P.C.") to direct the Station House Officer, Nellore II Town Police Station to release him on bail in the event of his arrest in connection with the above crime. The petitioner is accused No.8 in the above crime.

The defacto complainant lodged report with the police alleging that the complainant was informed that in her locality that New Vision Foundation will repay Rs.60,000/- in six months duration on payment of cash of Rs.12,000/-. Defacto complainant was induced by the words of the petitioner, paid Rs.12,000/- and obtained receipt. Similarly, her daughter Rishitha, sister Kunda Sujatha, her sister's daughter Eduri Meri, distant relatives Vendoti Velangini, Goda Penchalaiah and some others paid Rs.12,000/- each, in all they paid Rs.3,50,000/- to the said institution run by Raghuram, Kiran, Lakshmi, Madhavi, Rani, Nagamani and others, who are related to the New Vision Foundation and after expiry of period of six months, they did not repay the amount. The petitioner, who is connected to New Vision Foundation along with others collected huge amount from the defacto complainant and her relatives.

The main contention of the petitioner is that no allegation is made against the petitioner to enrope with the offence punishable under Sections 406, 420 and 120-B of I.P.C. and Section 5 of the Act and that the petitioner or New Vision Foundation is not a financial establishment within the definition of the Act, even if the allegations made in the complaint, if accepted, the New Vision Foundation and its members are alone responsible for the offence. Consequently, this petitioner is not liable for any of the offence and prayed to enlarge the petitioner on bail.

Sri C.Masthan Naidu, learned Counsel for the petitioner, contended that the name of the petitioner, who is arrayed as accused No.8, was not referred anywhere in the entire material and mere recovery of amount from the locker of the petitioner would not constitute any offence and in the absence of any allegation, much less specific allegation against the petitioner, he cannot be enroped with the offence and absolutely there is no material to conclude that the petitioner committed offence punishable under Sections 406, 420 and 120-B of I.P.C. and Section 5 of the Act.

Learned Public Prosecutor for the State of Andhra Pradesh contended that the petitioner is agent of Founder Trustee of New Vision Foundation and total amount involved in the crime is Rs.29 crores and collected the said amount from more than 25,000 people and cheated gullible public by Trustees or through agents and the same would constitute offence punishable under Sections Sections 406, 420 and 120-B of I.P.C. and Section 5 of the Act and that too the petitioner filed a criminal petition No.9833 of 2011 before this Court and the same was dismissed on 24.10.2017, having found no ground to conclude that the petitioner did commit

no offence and directed the Station House Officer to follow the procedure contemplated under Section 41-A of Cr.P.C., if applicable and in pursuance of the order, police issued notice under Section 41-A of Cr.P.C. calling upon the petitioner to appear before the police on 05.03.2018, instead of appearing, petitioner sent letter dated 03.03.2018 requesting 15 days time for his appearance as he has to attend the funerals of his relative and apart from that huge amount was recovered from the locker of petitioner, which is collected from various persons and thus, he committed offence punishable under Sections 406, 420 and 120-B of I.P.C. and Section 5 of the Act and he cannot be enlarged on pre-arrest bail in view of dismissal of CrI.P.No.9833 of 2011.

As seen from the allegations made in the complaint lodged with the police by the defacto complainant there was no reference about the name of petitioner, who allegedly collected amount, but the investigation disclosed that he is the agent of Trustee of New Vision Foundation and he collected amount from various members of the public and devoured the amount and misappropriated for himself without refund of the amount as agreed at the time of collection of deposit and thus, the material collected during investigation disclosed the direct involvement of the petitioner in collection of amount on behalf of Raghuram, the first trustee of New Vision Foundation, whose name is referred in the complaint itself. The material collected during investigation including the statements recorded by the police directly pointing out the complicity of the petitioner and in the mediators report, it is stated that the petitioner has acted as an agent for New Vision Foundation and collected amount and he worked as a Manager of

Raghuram, the first trustee of New Vision Foundation. As the material collected during investigation directly pointing out the complicity of the petitioner in the above crime and when this Court denied the relief under Section 482 of Cr.P.C. having found that there is *prima facie* material against the petitioner to proceed for the offences referred above, this Court cannot exercise discretionary power to grant pre-arrest bail under Section 438 of Cr.P.C., that too the offence allegedly committed by the petitioner is serious economic offence and the petitioner allegedly cheated the gullible public, who came from poor families, collected crores of rupees.

The law regarding grant of anticipatory bail is elaborately discussed by the Constitution Bench of the Apex Court in “**Gurbaksh Singh Sibbia and Ors. v. State of Punjab**”¹, as the power of granting 'anticipatory bail' is somewhat extraordinary in character and it is only in exceptional cases where it appears that a person might be falsely implicated, or a frivolous case might be launched against him, or "there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail" that such power is to be exercised. No hard and fast rule can be laid down in discretionary matters like grant or refusal of bail whether anticipatory or regular bail. The Apex Court further held that, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; told, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other

¹ AIR 1980 SC 1632

considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. Therefore, anticipatory bail can be granted even in serious cases like economic offences and States should have no consideration for grant or refusal of grant of anticipatory bail, as there can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it. Therefore, while dealing with the application for grant of pre-arrest bail or anticipatory bail, the Court must take into consideration the guidelines issued in "**Gurbaksh Singh Sibbia and Ors. v. State of Punjab**" (referred above). Though, according to the judgment of the Supreme Court, even in economic offences, the Court can grant anticipatory bail, subject to satisfaction of other grounds.

Time and again, the Apex Court laid down certain guidelines to be followed by the Courts to exercise discretion under Section 438 of Cr.P.C.

The Apex Court only reiterated the 10 guidelines laid down in “**Siddharam Satlingappa Mhetre v State Of Maharashtra**²” which are as follows:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice;
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

In “**Jai Prakash Singh v. State of Bihar**³”, the Apex Court held that Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. The Courts are expected to deal with very

² AIR 2011 SC 312

³ AIR 2012 SC 1676

serious matters seriously, but not in casual and cavalier manner and grant of anticipatory bail by extending unwarranted sympathy towards accused by exercising discretion. Court might not exercise its discretion in derogation of established principles of law, rather it had to be in strict adherence to them. Discretion had to be guided by law, duly governed by rule and could not be arbitrary, fanciful or vague and Court must not yield to spasmodic sentiment to unregulated benevolence. Any order *dehors* grounds provided in Section 438 of Cr.P.C is illegal.

In view of the law declared in the above judgment, the Courts shall not extend undeserved sympathy to the accused and that the Court while exercising discretion has to follow the settled principles and at the stage of consideration of anticipatory bail while dealing with application for pre-arrest bail, the Court is under obligation to indicate in the order, reasons for *prima facie* coming to the conclusion as to why bail was being granted, particularly, where the accused was charged for having committed serious offences. It is necessary for the Courts dealing with the applications for pre-arrest bail to consider several circumstances. Though, the conclusive finding in regard to the points urged by the petitioners is not accepted by the Court, considering the bail applications, yet, giving reasons, is different from discussing merits or demerits. At the stage of granting bail, a detailed examination of evidence and elaborate documentation of merits of the case is not to be undertaken, but that does not mean that while granting bail, some reasons for *prima facie* conclusions as to why bail was being granted is required to be indicated.

At the stage of granting of bail the court can only go into the question of the prima facie case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial vide: **Satish Jaggi v. State of Chhattisgarh**⁴

The Apex Court in “**Gobarbhai Naranbhai Singala v. State of Gujarat**”⁵ relied on “**State of U.P. v. Amarmani Tripathi**”⁶ held that while considering the application for bail, what is required to be looked is

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- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
 - (ii) nature and gravity of the charge;
 - (iii) severity of the punishment in the event of conviction;
 - (iv) danger of the accused absconding or fleeing if released on bail;
 - (v) character, behaviour, means, position and standing of the accused;
 - (vi) likelihood of the offence being repeated;
 - (vii) reasonable apprehension of the witnesses being tampered with; and
 - (viii) danger, of course, of justice being thwarted by grant of bail.

If these principles are applied to the present facts of the case the offence allegedly committed by the petitioner herein is aiding

⁴ (2008) 1 SCC (Cri.) 660

⁵ 2008 Cri L J 1618

⁶ 2005 (8) SCC 21

the accused No.1 to commit serious economic offence being an agent for sometime and later as manager, and when the petitioner aided for commission of such economic offence, the Court cannot grant bail as a matter of routine.

If, totality of the circumstances of the case is taken into consideration, the act of the petitioners is a serious economic offence and in such case, the petitioner is not entitled to claim even a regular bail as held by the Apex Court in “**Nimmagadda Prasad v. Central Bureau of Investigation**”⁷.

In “**State of Gujarat v. Mohanlal Jitamalji Porwal and another**”⁸ the Apex Court made a serious observation while considering bail in a serious economic offence and held in paragraph 5 as follows:

“.....The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest.”

In “**Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director**”⁹ the Supreme Court held that, a balance has to be struck between right to individual liberty guaranteed under Article

⁷ AIR 2013 SC 2821

⁸ (1987) 2 SCC 364

⁹ AIR 2007 SC 451

21 of the Constitution of India and interest of society as no right can be absolute. No doubt, in the event of arrest of the petitioner, certainly, his Fundamental Right guaranteed under Article 21 of Constitution of India will be infringed. Fundamental Right under Article 21 of Constitution of India is not an absolute right and such liberty can be deprived of in accordance with law. Arrest of a person in the process of investigation is permissible under the provisions of Criminal Procedure Code and such act of arrest by the police is deprivation of right of liberty of an individual in accordance with law. Therefore, it does not amount to violation of Fundamental Right guaranteed under Article 21 of Constitution of India. To strike a balance between the individual right of liberty and societal interest, the Court must take into consideration the impact of such serious crime, both on the society at large and on the economy of the State. In such case, the balance will tilt towards the interest of the society at large.

In “**Gurpal Singh v. State through C.B.I**”¹⁰ referring the case in “**V. Nandanan Vs. DIG of Police (Crime), Hyderabad & another**”¹¹, held that anticipatory bail is not to be granted as a matter of course in all cases where the applicant has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence. Grant or refusal of such bail must depend upon variety of circumstances, the cumulative effect of which must enter the judicial verdict. The power under the Section has to be exercised sparingly and in exceptional cases using the discretion on the facts of each case. An order under

¹⁰ 1999(49)DRJ193

¹¹ 1986 Cri.L.J. 1052

Section 438 being an exceptional type there must be a special case made out for passing such an order. It should not be allowed to circumvent the normal procedure of arrest and investigation or to prejudice the investigation. Ulterior motives of harassment and reasonable possibility of the accused not absconding are only some of the considerations. Some little facts may be necessary in the exercise of the discretion to grant or refuse the prayer. Further, the Court held that in exercising the judicial discretion in granting anticipatory bail the court should not be unmindful of the difficulties likely to be faced by the investigating agency and the public interest likely to be affected thereby.

In “**Pukar Ram v. State of Rajasthan**”¹² the Supreme Court held that Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal.

In “**State (CBI) v. Anil Sharma**”¹³ the Supreme Court observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is

¹² AIR 1985 SC 969

¹³ AIR 1997 SC 3806

well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual.

Similarly, in “**State of Andhra Pradesh v. Bimal Krishna Kundu**¹⁴” the Apex Court observed that “it is disquieting that implications of arming respondents, when they are pitted against this sort of allegations involving well orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence”.

In view of the law declared by the various Courts, before granting anticipatory bail, the Court must consider the effect of enlarging the petitioner on the ground of infringement of Fundamental Right of individual liberty and also effect on the society at large.

In the facts of the present case, the accused including the petitioner collected huge amount of Rs.29,00,00,000/- from villagers, most of them are poor, promising to pay 5 times of the amount deposited, but failed to repay the same, such collection will have its own impact on the financial condition of the poor villagers, who were lured to deposit the amount expecting high returns, thereby the offence committed by the petitioner is a serious economic offence against entire village at large and in such

¹⁴ AIR 1997 SC 3589

case, the petitioner is disentitled to claim pre-arrest bail. Moreover, the petitioner having failed in his attempt in CrI.P.No.9833 of 2011 filed under Section 482 of Cr.P.C., approached this Court, since this Court found *prima facie* material against the petitioner.

In view of my foregoing discussion, the petitioner is disentitled to claim anticipatory bail. Consequently, the criminal petition is liable to be dismissed.

In the result, the petition is dismissed.

The miscellaneous petitions pending, if any, shall also stand closed.

29.03.2018
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JUSTICE M. SATYANARAYANA MURTHY