**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

**CRIMINAL PETITION Nos.4538 and 4539 of 2016**

**COMMON ORDER :**

1) As both the Criminal Petitions are filed seeking cancellation of bail granted to accused Nos.1 and 2 in Crime No.323 of 2015 of Governorpet Police Station, Vijayawada, the same are disposed of by this common order.

2) The facts of the petition is as under:

3) The informant, who is an official representative of Vijayawada Ayurved Bhandar, lodged a report stating that the said Bhandar is a wholesale Ayurvedic medical shop situated at Nagpur. Accused No.1 was working as incharge of the said shop, who has been organising their work since last 25 years. The informant was directed to look into the arrears that were paid in the office before March, 2015. He noticed some manipulations in the accounts and found that a sum of Rs.1,55,000/- in the form of arrears that are to be paid to Geethika Ayurvedic Hospital and Stores, Kothagudem was paid into the account of the wife of accused No.1, ie. Accused No.2. When accused No.1 was questioned about the matter, accused Nos.1 and 2 are alleged to have agreed to withdraw the amount and return the same. They requested the informant to excuse them stating that such mistakes will not be repeated. It is alleged that about two months prior, it was informed to accused No.1 that the accountants are coming from Nagpur for verification of the accounts and accused No.1 was asked to maintain the shop accounts in fair manner, but accused No.1 is alleged to have left the shop and extended sick leave. It is alleged that accused No.1 intentionally stopped coming to the

shop. During the examination it was found that lakhs of rupees were deposited in the name of accused No.1 and his wife by several customers. Stocks were not found in the shop and customers complained that no stock was delivered to them. The averments in the report further show that one Chimatha Chiranjeevulu, who is a part time accountant in the Bhandar also manipulated the accounts. The allegation that a sum of Rs.40.00 lakhs was alleged to have been misappropriated by the accused Nos.1 and 2 and Chiranjeevi. However, in the month of May, 2015, accused No.1 came to the office along with his wife stating that he will join in the office and will repay the entire amount. It is alleged that till date no amount is repaid. Having regard to fraud played, a complaint came to be lodged in the month of September, 2015.

4) Anticipatory bail which is subject matter of challenge in the present petitions came to be granted in the month of October, 2015 on certain terms and conditions. The ground on which the anticipatory bail was granted to first accused was his health condition and insofar as the second accused is concerned, she being a lady working as a Government Teacher.

5) Heard both sides.

6) Learned counsel for the petitioners mainly submits that having regard to the nature of allegations and the material available on record accused Nos.1 and 2 are not entitled for grant of anticipatory bail. He submits that accused No.1 and 2 along with part time accountant manipulated the records and caused loss to a tune of Rs.40.00 lakhs. He submits that there is enough material to show that the stock was not even delivered to the customers/dealers. In support of his argument, he relied

upon the following judgments.

7) In ***Gajanand Agarwal v. State of Orissa and others***[1] the Apex Court held that there is a need to indicate in the order, reasons for *prima facie* concluding why bail was being granted particularly where an accused was charged of having committed a serious offence. It is necessary for the courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail. They are 1) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; (2) reasonable apprehension of tampering of the witness or apprehension of threat to the complainant; (3) *prima facie* satisfaction of the court in support of the charge.

8) Learned counsel for the petitioner also relied upon by the judgment of the Apex Court in ***Pokar Ram v. State of Rajasthan***[2]***.*** It was a case where the accused was initially charged for an offence punishable under Section 307 IPC and subsequently the said case was altered to 302 IPC after the death of the injured. An application for anticipatory bail was moved before the Sessions Court, which was allowed. The same was challenged before the High Court for cancellation of the order which was rejected. Dealing with the said aspect the Apex Court while allowing the appeal held as under:

> "Some of the relevant considerations which govern the discretion of the Court while deciding an application for anticipatory bail are 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 applicants 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 ". In the evaluation of the consideration whether the applicant is likely to abscond. There can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and 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."

9) In ***Puran v. Rambilas and another***[3] the Apex Court was dealing with an application filed for cancellation of bail in respect of grave offences punishable under Sections 498-A and 304-B IPC. The issue before the Apex Court was whether the High Court was right in canceling the anticipatory bail granted to the petitioner for the offences punishable under Sections 498-A and 304-B IPC. While dealing with the said issue the Apex Court held that an order granting bail by ignoring material evidence on record and without giving reasons, would be perverse and contrary to the principles of law and such an order would itself provide a ground for moving an application for cancellation of bail. It was further observed that such ground for cancellation of bail would be different from the ground that the accused has misconducted himself or that some new facts called for cancellation of bail.

10) Relying upon the judgments referred to above, learned counsel for the petitioner strenuously contends that having regard to the order passed by the Court and having regard to the gravity of the offence pleads that the anticipatory bail granted to accused Nos.1 and 2 have to be cancelled.

11) It is to be noted that all the judgments referred to by the learned counsel for the petitioners relate to grave offences which

are triable by Court of Sessions and punishable with imprisonment upto ten years.

12) Learned counsel for the accused opposed the applications contending that though the impugned order does not go into the merits of the case but having regard to the health condition of accused No.1, and accused No.2 being a lady and government teacher and that she has nothing to do with the offence granted anticipatory bail and as such the same warrants no interference. He also submits that the circumstances for grant of bail and circumstances for cancellation of bail are quite different. He further submits that there are no supervening circumstances justifying cancellation of anticipatory bail. It is further urged by him that in the absence of any complaint from the State with regard to violation of condition of bail, he pleads dismissal of the petitions.

13) As seen from the record, the respondents in both the petitions are husband and wife. Insofar as accused No.2 is concerned, the material placed on record show that she is a Government Teacher having no connection with the employment of accused No.1. Accused No.1 appears to have used the account of accused No.2 by depositing certain amounts in her account and withdrawing the same. Admittedly she is a Government Teacher. Even as per the application filed by the petitioner and also the averments made in the complaint it was only accused No.1, who was working as incharge of their shop at Vijayawada, is responsible for the misappropriation. Though the trial Court did not go into the merits of the case, but having regard to the circumstances stated above and since there is no complaint from the State that accused No.2 has violated any of the conditions of the bail, the order may not warrant interference

against her.

14) Coming to accused No.1, the trial Court though did not go into the merits of the case but granted anticipatory bail on the ground of sickness. As stated earlier, the present applications which have been running into 17 pages does not anywhere dispute the said finding. It is to be noted that anticipatory bail was granted in the month of October, 2015 and the present application for cancellation of bail came to be filed in the month of March, 2016 and after notice it was listed in the month of July, 2016. As stated earlier, there is no complaint from the State with regard to non-compliance of the conditions imposed in the order granting anticipatory bail. One fact which requires to consideration is that W.P.No.11061 of 2016 came to be filed by the petitioner herein directing respondent Nos.1 to 4 therein to hand over the entire investigation in Crime No.323 of 2015 of Governorpet Police Station to the Economic Offences Wing of the Crime Investigation Department.

15) A counter came to be filed in the said writ petition, wherein it has been stated that sofar 13 witnesses were examined and all the documents from different branches of the bank have been collected. It was also mentioned in the counter that the investigation is going on impartially and also on proper lines. Since the investigation is under progress it was averred that it may not be proper to transfer the investigation to CBCID at this crucial stage. From the above facts, it has to be seen whether the order under challenge warrants interference.

16) As stated earlier, the considerations for rejection of bail are different from those of cancellation of bail which has been granted.

17) In ***Dolat Ram and others v. State of Haryana*** [4], the Apex Court held as under :

> "Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

18) In ***Hazari Lal Das v. State of West Bengal and another*** [5] the Apex Court, while dealing with the aspect of cancellation of bail, held as under :

> "7. There is nothing on record that there has been interference or attempt to interfere with the due course of administration of justice by the appellant. It also does not appear from the record that the concession granted to him has been abused in any manner. No supervening circumstances have surfaced nor shown justifying cancellation of anticipatory bail. The judicial discretion exercised by the Sessions Judge in granting the anticipatory bail has been interfered with by the High Court in the absence of cogent and convincing circumstances. We are, thus, satisfied that the

impugned order cannot be sustained."

19) In ***Savitri Agarwal and others v. State of Maharashtra and another***[6] the Apex Court while dealing with the scope of 438 Cr.P.C. and power of High Court and Sessions Court for grant of anticipatory bail held as under:

> "Section 438 of Cr.P.C. confers on the High Court and the Court of Sessions, the power to grant anticipatory bail if the application has reason to believe that he may be arrested on accusation of having committed a non-bailable offence. The expression anticipatory bail has not been defined in the Code. But it means "bail in anticipation of arrest". The expression "anticipatory bail" is a misnomer inasmuch as it is not as if bail is presently granted by the court in anticipation of arrest. When a competent court grants "anticipatory bail", it makes an order that in the event of arrest, a person shall be released on bail. There is no question of release on bail unless a person is arrested and, therefore, it is only on arrest that the order granting anticipatory bail becomes operative. The power being rather unusual in natural, it is entrusted only to the higher echelons of judicial service ie. a Court of Session and the High Court."

20) In ***Bharat Chaudhary and another v. State of Bihar and another***[7] the Apex Court held that the object of Section 438 Cr.P.C. is to prevent undue harassment of the accused persons by pre-trial arrest and detention. The gravity of the offence is an important factor to be taken into consideration while granting anticipatory bail so also the need for custodial interrogation, but these are only factors that must be borne in mind by the courts concerned while entertaining a petition for grant of anticipatory bail and the fact of taking cognizance of filing of a charge sheet cannot by itself be construed as a

prohibition against the grant of anticipatory bail.

21) As stated earlier, the offences alleged in the present case are triable by a Magistrate. It is neither the case of the prosecution nor the petitioner that the accused have violated any of the conditions of bail. On the other hand, the material on record shows that there was substantial progress in investigation and 13 witnesses have been examined. In fact, in the counter filed in the writ petition it was not specifically averred that custodial interrogation of these accused is essential. On the other hand, it has been stated that all the documents from the bank were already collected.

22) Having regard to the judgments of the Apex Court referred to above; as the offences are triable by a Magistrate; since there is no complaint with regard to non-compliance of conditions imposed nor is there any complaint that the accused are interfering with the investigation; as accused No.2 has nothing to do with the employment of accused No.1 except he being her husband and the amounts are routed through her account; and the fact of release of bail on health condition is not being seriously challenged in the present application, this Court is of the opinion that there are no merits in the petitions and the orders under challenge warrants no interference. However as the investigation is still pending, the accused shall appear before the concerned investigating Agency once in a week ie. on every Monday between 10.00 a.m. and 5.00 p.m. for a period of eight (08) weeks or till filing of the charge sheet, whichever is earlier.

23) With the above direction, both the Criminal Petitions are disposed of. Miscellaneous petitions, if any, pending shall stand closed.

**JUSTICE C. PRAVEEN KUMAR**

17.08.2016
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[1] (2006) 12 SCC 131

[2] (1985) 2 SCC 597

[3] (2001) 6 SCC 338

[4] (1995) 1 SCC 349

[5] AIR 2010 (SC) 91

[6] (2009) 8 SCC 325

[7] (2003) 8 SCC 77