

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CRIMINAL PETITION No.12230 OF 2016

ORDER:

Vide the present petition, the petitioner seeks direction thereby setting aside the order dated 29.06.2016 passed in CrI.MP No.1724 of 2016 in Crime No.120 of 2016 on the file of IV Additional Metropolitan Sessions Judge, Hyderabad and consequently to cancel the bail of the petitioner and be directed to surrender before police for investigation.

Brief facts of the case are that:

The petitioner is a company incorporated under the Companies Act, having registered office at "SARADHA", Ground Floor, 42, 3rd Main Road, Gandhi Nagar, Adyar, Chennai, Tamilnadu and is having Branch office at Flat No.32, Plot No.10, Harshavardhan Colony, Bowenpally, Secunderabad. The petitioner is carrying on its business in the field of providing software and services including managed services for ATMs of various Public and Private sector banks across the country. The petitioner also owns 10,000 ATMs across the country deployed for various banks. The petitioner provides comprehensive solution for different services relating to running of ATMs, as desired by its customers i.e., banks including outsourcing of ATM Cash Management Operations in various States. In order to deliver the services under the contract, the petitioner has engaged various entities like RCI Cash Management Service Private Limited, who is arrayed as A.1 in the above crime.

It is averred in the instant petition that the RCI Cash Management Service Private Limited/A.1 is a company incorporated under the Companies Act represented by its promoters as well as Whole-time Directors being the 1st respondent/A.2 and Sri Sudip Kumar, who is arrayed as A.3 in the above crime. The RCI/A.1 through its Whole-time Directors had represented to the petitioner that it has got necessary experience and infrastructure, trained personnel, security arrangements, equipment and armored vans to provide various services and expressed its desire to become an outsourcing agent of the petitioner. Accordingly, the petitioner relying upon the promise and assurance made by the RCI/A.1 had agreed to engage and entered into a Master Service Agreement (for short "MSA") with RCI/A.1 on 15.11.2013.

Mr S. Niranjan Reddy, learned Senior Counsel appearing on behalf of the petitioner submits that while entered into the agreement, it was very clear that the RCI/A.1 would be dealing with public money and should be diligent and accountable and adhere to the terms and conditions of the MSA. In consequence of the said MSA, the petitioner had handed over 116 ATMs pertaining to State Bank of India and 13 ATMs of Central Bank of India in Hyderabad for executing its operations as per MSA, besides other Bank's ATMs located at Bihar, Uttar Pradesh, Haryana, New Delhi, Punjab and other States. While the MSA was subsisting and the petitioner was conducting all necessary activities under the MSA, it had come to the knowledge of the petitioner that the RCI/A.1 had not renewed its insurance policy which was cardinal condition for providing its services under the MSA.

Learned senior counsel submits that as per Clause 14 of the MSA, the RCI/A.1 needed to have adequate and sufficient insurance coverage against fidelity and loss of cash. The petitioner after coming to know that the RCI/A.1 failed to renew the insurance policy thereby failing to perform the services properly in accordance with the terms and conditions of the MSA, sought to remind the RCI/A.1 to renew insurance policy with pain of cancelling the MSA and taking over the ATMs under the RCI/A.1. As the RCI/A.1 or its management had not acted upon renewing the insurance, the petitioner was forced to take over the ATMs from the RCI/A.1, which was agreed upon by the 2nd respondent/A.2 and A.3.

Learned Senior Counsel further submits that the petitioner vide its e-mail dated 29.04.2016 informed the RCI/A.1 of its decision to take over all the 483 ATMs managed by it across the country, and accordingly, stopped indenting cash in respect of the said ATMs on and from 29.04.2016. Even though A.3 being the Whole-time Director of the RCI/A.1 had given clear instructions for Operations Team to hand over the ATMs to the petitioner, to the shock and surprise of the petitioner, the custodians/guards at ATMs centres who were the employees of the RCI/A.1 had refused to hand over the possession of ATMs to the petitioner citing that the RCI Management failed to pay them salaries. As there was urgency, considering the seriousness of the issue of the entire 129 ATMs not being operational and involvement of huge public money and hardship being caused to the bank's innumerable customers spread across Hyderabad. The petitioner was left with no choice but to agree to the demand of the RCI/A.1, accordingly paid the

salaries due to the employees of RCI/A.1 and finally took over possession of the ATMs.

When the petitioner had started taking over the ATMs in the State of Telangana from the possession of the RCI/A.1, during May 2016, it was identified by the petitioner that a sum of Rs.2,91,89,300/- was missing from the ATM machines and the same was also acknowledged by the staff of the RCI/A.1.

Mr Niranjan Reddy further submits that the accused in the above crime with the active involvement and direction from the Respondent No.1/A.2 and A.3, being the Whole-time Directors of the RCI/A.1, had conspired with each other and misappropriated/ diverted money to their personal use, including for use of its affiliate company namely RCI Logistics Pvt. Ltd., Hyderabad with an intent to make wrongful gain and causing wrongful loss to the petitioner and its customers i.e., Public Sector Banks.

Accordingly, the petitioner had addressed a letter on 17.05.2016 to the Commissioner of Police, Hyderabad complaining the above wrongful, illegal and criminal acts done by the RCI/A.1 through its employees under the directions of its Whole-time Directors/ Promoters being Respondent No.1/A.2 and A.3 and sought for investigation into the acts of the accused.

Learned Senior Counsel further submits that with a malafide intent to pre-empt any investigation by the police authorities and with an intent to confuse the investigating agencies, one of the employees of the RCI/A.1, Mr G. Nagaraj (who is later arrayed as A.6) filed a complaint before the X Additional Chief Metropolitan

Magistrate at Secunderabad against one K.Lokeshwara Reddy and G. Praveen Kumar (who are employees of the RCI/A.1) alleging criminal breach of trust committed by siphoning off the monies from the ATMs of whom they were the custodians. The said complaint came to be numbered as Crime No.102 of 2016 filed under Section 408 and 420 IPC on 23.05.2016. However, as per the directions of Joint Commissioner of Police, Central Crime Station, the complaint dated 17.05.2016 given by the petitioner and the Crime No.102 of 2016 filed by the employees of RCI/A.1 were combined and renumbered as Crime No.120 of 2016 and transferred to Central Crime Station, Hyderabad for investigation.

The petitioner also filed a complaint dated 13.07.2016 before the Special Director, Directorate of Enforcement, Chennai, bringing to the notice the illegal actions of the accused arrayed in the above crime and listed out properties being held by the accused with a prayer to pass an order of attachment of property owned by the accused.

Learned Senior Counsel further submits that during course of investigation, it has come to light that there was a total cash shortage of Rs.9,98,00,000/- which were siphoned off in the State of Telangana alone and diverted to the other accounts being held by the 1st respondent/A.2 and A.3. It is estimated that more than Rs.23,50,00,000/- has been siphoned off by the RCI/A.1 and its employees throughout the country.

He further submits that the *modus operandi* adopted by the management of the RCI/A.1 and the other accused arrayed on directions of the 1st respondent/A.2 is that on receiving

information about the balances at the ATM from a computer generated program, the petitioner raises Cash Intends to the respective banks and such Cash Intends are sent to RCI/A.1, who in-turn after receiving the Cash Intends will go to the concerned currency chest of the respective bank and withdraw the specified amount to fill the concerned ATM with the same . However, the RCI/A.1 instead of filling the amounts as specific in the Cash Intends into the ATMs, had siphoned off/diverted monies by partly loading the amount and updated ATM balance as per Cash Intends and submitted the receipts as if they had loaded the entire cash, thereby showing fictitious cash replenishments.

Learned Senior Counsel further submits that during investigation, the 2nd respondent has arrested several accused arrayed and also seized incriminating documents including electronic mails exchanged among accused. He submits that one Mr T.Arunachalam Girirajan, who is arrayed as A.5, who worked as the National Head at RCI/A.1 confessed that on the investigation and provocation of 1st respondent/A.2 ad A.3, the other accused had removed cash from ATMs and deposited the same into accounts held by the 1st respondent /A.2. The remand report of A.5, dated 17.06.2016, and the confession-cum-panchanama dated 17.06.2016 were attached to Annexure P-5 and P-6 respectively.

Mr Niranjana further submits that after custodial interrogation, the 2nd respondent was successful in retrieving e-mails data seized from laptop of A.5 in the presence of mediators. The 2nd respondent further filed vide investigation report dated

22.06.2016 that the seized e-mails established that 1st respondent/A.2 along with A.3 and A.4 are having knowledge of misappropriation of ATM amounts and depositing the same in RCI/A.1 account fraudulently with dishonest intention of cheating.

From the documents seized by the investigating agencies, there were e-mail communications between the accused that clearly evidenced the fact that 1st respondent/A.2 and A.3 had directed employees of RCI/A.1 to siphon off and divert money which was supposed to be replenished into the ATMs.

Learned counsel further submits that A.2 is the Whole-time Director of company holding 41% share and 10% by his partner. Whereas, another bank owns 49% share.

Mr Niranjana argued that the 1st respondent/A.2 initially moved Anticipatory bail application vide CrI.M.P.No.1609 of 2015 before IV Additional Chief Metropolitan Sessions Judge, Hyderabad and the same was dismissed vide order dated 14.06.2016. Thereafter, he filed another anticipatory bail application in CrI.M.P.No.1724 of 2016, however, the same was allowed on 29.06.2016 without passing a reasoned order despite the fact that in remand report dated 20.06.2016 it is specifically stated as under:

“Further the LW1 stated that the Director Sudip Kumar from 01.05.2016 onwards is not in touch with FSS and stopped communicating and reasons best known to him. Leaving no other option the LW1 approached the authorized signatory Pawan Gupta to resolve the issues immediately who in turn denied to help FSS in any way and asked them to contact Sudip Kumar for the same as he never involved himself in the day today affairs of the company.

The LW1 further stated that the modus operandi of the RCI management is that, on daily basis their company i.e., FSS has monitoring system to check the balances in the ATMs which are authenticated to their company, on receiving information about the balances in the ATMs, they raise cash indents to SBI and RCI, in turn after receiving the cash indent from their company i.e., FSS, the RCI team will go to the concerned currency chest of SBI to withdraw cash.

In this case the presence of accused person A.3: Sudip Kumar @ Sudip S/o Ramani Bhushan Prasad, aged 49 years, Occ: Director, RCI Cash Management Pvt. Ltd. Millennium Towers 2nd Floor, Opposite to IIT Main Gate, Powai, Mumbai Maharashtra, r/o Flat No.803/804, A-Wing, Lake Lucerne, Lake Homes, Powai, Mumbai, Maharashtra, N/s Chandpura Lodge, Sarai Sayyad Ali, Chata Chowk, Muzaffarpur, Bihar is required for investigation and to collect some more evidence with his assistance as well as to apprehend the A.2: Pawan Kumar Gupta and other accused persons, however a separate requisition is being filed before the Hon'ble Court for their POLICE CUSTODY. During the course of investigation, the LW10 made efforts for the remaining accused persons A.2, A.12, A.13 & Others, but found them absconding."

Moreover, when A.5 was produced before XII Additional Chief Metropolitan Magistrate, Hyderabad, Inspector of Police, WCO TEAM-VII, CCS, DD, Hyderabad filed e-mail dated 17.06.2015 sent by Vinay Mahipal, one of the employee to A.2-Pawan Gupta. He also filed e-mail dated 21.3.2016 and 29.04.2016 sent by G. Nagaraj/A.6, to Sudip Kumar/A.3 and Pawan Gupta and copies of the same were sent to T.Arunachalam Girirajan/A.5, another employee.

E-mail dated 21.03.2016 sent by G. Nagaraj to Sudip Kumar, Pawan Gupta. Despite the fact that the accused persons have been misappropriating money from last more than a year, the

learned Judge ignored the same and granted anticipatory bail to 1st respondent/A.2.

Learned Senior Counsel submits that if order is perverse and offence is serious, then this Court has power to set aside the same and cancel the bail application.

On the other hand, learned counsel appearing on behalf of 1st respondent submits that if there is any misappropriation in the present case that is done by the employees of 1st respondent/A.2. No incriminating documents have been seized from the possession of the 1st respondent/A.2 and no amount was found from his possession, whereas, the police has seized the incriminating documents from the employees/other accused with cash amount. Moreover, despite the complaint made to the Special Director, Directorate of Enforcement, nothing has been recovered from the petitioner. The learned trial Court after considering the remand papers with annexures thereto and after applying the mind granted anticipatory bail to the petitioner. The money, if any, misappropriated by the employees of the petitioner, rather it caused loss and spoiled the reputation of the petitioner.

Learned counsel further submits that granting of bail is a discretion of the trial Court. Once the petitioner is granted bail can be cancelled or withdrawn only if the accused violates any condition of the bail or does not cooperate with the investigation. The petitioner appeared as and when called by the police, therefore the present petition may be dismissed.

Heard the learned counsel for the parties.

It is not in dispute that first anticipatory bail was dismissed vide order dated 14.06.2016. The investigation is still pending, thus, charge sheet has not been filed. Despite, the same court considered another anticipatory bail application of 1st respondent/A.2 and allowed the same vide order dated 29.06.2016. There was no change of circumstances between filing of the first anticipatory bail application and second one, which was allowed.

On a perusal of the said order, the submission of learned counsel for the 1st respondent has been recorded that when the 1st respondent filed first bail application, he had not filed relevant documents but now he has filed the relevant documents. Moreover, basing on the confession of the other accused persons, the 1st respondent was involved in this case and accordingly requested to grant bail. On recording the above submissions, the learned IV Addl. Metropolitan Sessions Judge, Hyderabad, has passed order as under:

“ I have perused the contents of bail application, documents filed on behalf of the petitioner. C.D file and the counter filed on behalf of the prosecution. Earlier bail application was dismissed. This is the second bail application. In view of the facts and circumstances of the case and in view of the representation made by the petitioner’s counsel, I am inclined to grant anticipatory bail to the petitioner/A.2 with some conditions.

In the result, the petition is allowed. Petitioner/A.2 is directed to surrender before the arresting officer within 10 days from the date of this order. On such surrender, he shall be released on bail on execution of his personal bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties for a like sum each to the satisfaction of the same arresting officer. Further, petitioner is directed to appear before the Investigating agency on

every Monday between 10 a.m. and 2 p.m. as it suits his convenience till filing of charge sheet or until further orders whichever is earlier. Further, the petitioner is directed to deposit his passport before the same arresting officer, if he is not having any passport he has to file an affidavit to that effect.”

It is clear from the said order that when the second application was filed, the remand report with annexure thereto, C.D. file and counter filed on behalf of the prosecution was on record. The learned Judge was aware about that earlier bail application was dismissed vide order dated 14.06.2016 as noted in the above said order. No doubt, the allegations against the 1st respondent/A.2 are serious in nature. Despite that, the said judge did not bother even to record the arguments of the State and not discussed even a single document filed by the State.

It is pertinent to mention here that the petitioner is having 41% share in the company and 10% by his partners. Thus, he is having 51% share in the company. Whereas, another banks own only 49%.

It is pertinent to note that when A.5 was produced before XII Addl. Chief Metropolitan Magistrate, Hyderabad on 22.06.2016, it is specifically placed before the said Court that during course of investigation, the accused person/UT prisoner Thiruvanamalai Arunachalam Giri Rajan, retrieved the e-mail data from the seized Toshiba Laptop which was provided by the RCI company in the presence of two mediators. The details of e-mails are as under:

2. *Mail data dated 03.02.2016 & 08.02.2016, between Vinay Mahipal, Nagaraj and Pawan Kumar Gupta –*

with regards to amount deposit in RCI company account.

3. *Mail data dated 03.02.2016, 08.02.2016 & 21.03.2016 held between Nagaraj, Vinay Mahipal, Pawan Kumar gupta and Sudhip Kumar – with regards to amount deposited in RCI company.*
8. *Mail data dated : 11.06.2015 held between Sudhip Kumar & Pawan Kumar Gupta – with regards to insufficient balance in bank accounts of RCI company and Sudhip's confirmation on cash deposit of Rs.9.00 lakhs.*
9. *Mail data dated: 17.06.2015 held between Vinay Kumar Mahipal & Pawan Kumar Gupta – with regards to deposit of funds (crores of rupees) in the RCI company account and Vinay Kumar shown his apprehension that how to manage the deposits before various Govt. Departments.*
13. *Mail data dated: 09.02.2016, 11.02.2016, 12.02.2016 & 13.02.2016 held between Nagaraj, vinay Kumar Mahipal, Upkar Singh, Sudhip Kumar, Pawan Kumar Gupta, Swathi Gujja and Girirajan – with regards to handing over vendor management to Vinay Kumar Mahipal and Nagaraj's confirmation on shortage of Rs. 2.00 crores in VAULT, which was deposited in RCI company account.*

It is further stated in the said report that from the above information, retrieved from RCI company laptop, it is well established that the accused persons–A.2 Pawan Kumar Gupta (R.1), A.3-Sudhip Kumar, A.4-Vinay Kumar Mahipal are having knowledge about swindling/misappropriation SBI ATMs amount with the help of Operations Manager Nagaraj, depositing the same

in the same in the RCI company fraudulently with dishonest intention of cheating.

It is also important to note that e-mail data 17.06.2015 Vinay Mahipal, one of the employee of the 1st respondent brought to the notice of the 1st respondent/A.2, A.4 Pawan Kumar Gupta, which reads as under:

“ I am writing this mail to you to share what I am dealing with for the past few weeks. During the past few months at times I am having sleepless nights and there are few concerns which are bothering me a lot. This is regarding the deposit of Cash in our Bank accounts.

Initially when it all started during March, I was under an impression that it is only a temporary arrangement and the amount also would be in few lacs. I had never imagined that this activity would go on a continuous basis. It has become more of a routine activity for the past 3 months. As per our Bank statement there is a deposit of more than 3.5 Cr till date. On many occasions banks have denied accepting so much of cash and raised so many queries which respect to that.

I would like to share some of the questions that keep on bothering me and I struggle to find answers to these questions

- 1. How to account for this Cash in our books?*
- 2. If there is any query from Bank or any of the government departments like income Tax Dep. How do we respond to it?*
- 3. How do we ensure that the cash is replenished? Would it require withdrawal from bank? And if yes, what would be the justification of such a huge amount of withdrawal.*
- 4. Cash deposit details are collected by the Income Tax Dept. What justification we can give during the income Tax Scrutiny?*
- 5. Most of the employees of the company know about the cash deposit. It is not a secret. How do we ensure that it doesn't spread beyond the four corners of our office?*

I am aware of the Cash flow situations of the company and also know that it has been extremely difficult for you also to ensure that Company's day

today operations move and it doesn't come to a standstill. I don't know what to say and how to react. But one thing I can say is that I am not at all comfortable with this activity. God forbidden, if something goes wrong, we all will be in really very big problem (which I am not able to even imagine).

My request to you is to give a serious thought to my email and suggest which could give me some peace of mind."

Moreover, vide e-mail dated 21.3.2016 sent by Nagraj-A.6 to A.3-Sudhip Kumar and A.2-Pawan Kumar Gupta, which reads as under:

"Dear Sir's

I would request you to kindly look into the cash adjustments which are asked to be done (2 crore) for various reasons which you know, were-in we were told that it will be adjusted back to vault within 2 to 3 months of time which did not happened and has been pending from one year.

Hence forth I would kindly like to bring to your attention that audits have stringent and unable to manage the operational challenges because of this adjustments, this has also resulted indiscipline/no support attitude from field staff, above all the toughest part is to manage the threatening words that I receive from custodians on disclosure of the shortages to FSS.

While which I would like to express my deep concern that this should not result as a black mark in my career.

Hence we seek your immediate attention, intervention and quick immediate action for this issue to be addressed and resolved."

It is further important to note that the Remand Case Diary dated 20.06.2016 was filed before granting anticipatory bail to the 1st respondent. Despite that, learned judge has not noted any facts and has not passed reasoned order, however granted

anticipatory bail in such serious allegations, wherein more than 23,50,00,000/- money has been misappropriated.

It is pertinent to note that the State has filed application for cancellation of the bail against Pawan Kumar Gupta/A.2 vide CrI.M.P.No.2267 of 2016 in CrI.M.P. No.1724 of 2016 on the file of IV Additional Metropolitan Sessions Judge at Nampally, wherein the State had specifically stated that the said accused is not cooperating with the investigating officer, and if he is continued on bail, he may give threaten and influence the witnesses and tamper with the evidence.

The plea of the State was rejected and accordingly the application filed by State was dismissed vide order dated 03.10.2016.

Learned Senior counsel has relied upon a decision of Supreme Court reported in **Puran vs. Rambilas and another**¹, wherein the Apex Court observed as under:

“8. He submitted that in view of these observations the learned Additional Sessions Judge did not give reasons whilst granting bail. He submitted that in these circumstances the Additional Sessions Judge cannot be faulted. He submitted that the High Court could not cancel bail on this ground. We see no substance in this contention. Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. What the Additional Sessions Judge had done in the order dated 11.09.2000 was to discuss the merits and demerits of the evidence. That was what was deprecated. That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated.

¹ (2001) 6 Supreme Court Cases 338

9. Mr Lalit next submitted that the High court has itself not given reasons but has mechanically set aside the order of the bail. We see no substance in this submission. The High court has correctly not gone into merits or demerits of the matter. The High court has noted that the evidence prima facie indicated demand of dowry. The High court has briefly indicated the evidence on record and what was found at the scene of the offence. The High Court has indicated that the evidence prima facie indicated that a demand for Rs.1 lakh was made just a month prior to the incident in question. The High court has stated that the material on record suggested that the offences under Sections 498-A and 304-A (sic 304-B) were prima facie disclosed. The High court has concluded that the material on record, the nature of injuries, demand for Rs.1 lakh and the other circumstances were such that this was not a fit case for granting bail. Thus the High court has given very cogent reasons why bail should not have been granted and why this unjustified erroneous order granting bail should be cancelled.

10. Mr Lalit next submitted that once bail has been granted it should not be cancelled unless there is evidence that the conditions of bail are being infringed. In support of this submission he relies upon the authority in the case of **Dolat Ram v. State of Haryana** (1995) 1 SCC 349 : 1995 SCC (Cri) 237. In this case it has been held that 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. It has been held that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. It has been held that generally speaking the grounds for cancellation of bail broadly 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. It is, however, to be noted that this court has clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very

serious impact on the society. Therefore, an arbitrary and wrong exercise of discretion by the trial Court has to be corrected.

11. Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has mis-conducted himself or because of some new facts requiring such cancellation. This position is made clear by this Court in Gurcharan Singh v. State (Delhi Admn.). IN that case the Court observed as under: (SCCp.124 para 16)

If however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that court. The State may as well approach the High Court being the superior court under Section 439 (2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existing, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High court for cancellation of the bail. This position follows from the subordinate position of the court of Session vis-à-vis the High Court.

*14. Mr Lali next submitted that a third party cannot move a petition for cancellation of the bail. He submitted that in this case the prosecution has not moved for cancellation of the bail. He pointed out that the father of the deceased had moved for cancellation of the bail. He relied upon the cases of **Simranjit Singh Mann v. Union of India** (1992) 4 SCC 653 : 1993 SCC (Cri)22 : AIR 1993 SC 280) and **Janata Dal v H.S Chowdhary** (1991) 3 SCC 356 : 1991 SCC (Cri) 933). Both these cases dealt with petitions under Article 32 of the Constitution of India whereunder a total stranger challenged the conviction and sentence of the accused. This court held that neither under the provisions of the Criminal Procedure Code nor under any other statute is a third-party stranger permitted to question the correctness of the conviction and sentence imposed by the court after a regular trial. It was held that the petitioner, who was a total stranger, had no locus standi to challenge the conviction and the sentence awarded to the convicts in a petition under Article 32.*

The principle laid down in these cases has no application to the facts of the present case. In this case the application for cancellation of bail is not by a total stranger but it is by the father of the deceased. In this behalf the ratio laid down in the case of R.Rathinam v State by DSP (2000) 2 SCC 391 : 2000 SCC (Cri) 958 needs to be seen. In this case bail had been granted to certain persons. A group of practicing advocates presented petitions before the Chief Justice of the High court seeking initiation of suo motu proceedings for cancellation of bail. The Chief Justice placed the petitions before a Division Bench. The Division Bench refused to exercise the suo motu powers on the ground that the petition submitted by the advocates was not maintainable. This court held that the frame of such Section (2) of Section 439 indicates that it is a power conferred on the courts mentioned therein. It was held that there was nothing to indicate that the said power can be exercised only for the State or investigating agency or a Public Prosecutor moves a petition. It was held that the power so vested in the High Court can be invoked either by the State or by any aggrieved party. It was held that the said power could also be exercised suo motu by the High Court. It was held that, therefore, any member of the public, whether he belongs to any particular profession or otherwise could move the High court to remind it of the need to exercise its power suo motu. It was held that there was no barrier either in Section 439 of the Criminal Procedure Code or in any other law which inhibits a person from moving the High court to have such powers exercised suo motu. It was held that if the High court considered that there was no need to cancel the bail then it could dismiss the petition. It was held that it was always open to the High court to cancel the bail if it felt that there were sufficient reasons for doing so.”

Accordingly, the Court held that the frame of sub section (2) of Section 439 indicates that it is a power conferred on the courts mentioned therein. It was held that there was nothing to indicate that the said power can be exercised only if the State or investigating agency or a Public Prosecutor moves a petition. Accordingly, it was held that the power so vested in the High court

can be invoked either by the State or by any aggrieved party. It was also held that the said power could also be exercised suo motu by the High Court. Therefore, further held that any member of the public, whether he belongs to any particular profession or otherwise could move to the High Court to remind if of the need to exercise its power suo motu. It was also held that there was no barrier either in Section 439 of the Criminal Procedure Code or in any other law which inhibits a person from moving the High court to have such powers exercised suo motu. It was also held that if the High Court considered that there was no need to cancel the bail then it could dismiss the petition. It is always open to the High Court to cancel the bail if it felt that there are sufficient reasons for doing so.

In case of **Gajanand Agarwal Vs State of Orissa and others**², wherein, the Apex Court held as under:

14. 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. Any order devoid of such reasons suffers from non-application of mind as noted by this Court in Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598 : 2002 SCC (Cri) 688) Puran v. Rambilas (2001) 6 SCC 338 : 2001 SCC (Cri) 1124 and Kalyan Chandra Sarkar v. Rajesh Ranjan (2004) 7 SCC 528 : 2004 SCC (Cri) 1977) and Kalyan Chadnra Sarkar v. Rajesh

² (2006) 2 Supreme Court Cases 13

Ranjan (2004) 7 SCC 528 : 2004 SCC (Cri) 1977 : JT (2004) 3 SC 44. The above position was highlighted by this court in Chaman Lal v. State of U.P (2004) 7 SCC 525 : 2004 SCC (Cri) 1974 : JT (2004) 6 SC 540 and in Anwari Begum v. Sher Mohd (2005) 7 SCC 326 : 2005 SCC (Cri) 1669.

16. *The least that the High court could have done is to refer to the earlier orders and, in fact, as to how the scenario had changed to warrant a departure from the earlier view expressed. That apparently has not been done. In case of Sunil, learned Additional Sessions Judge had observed as to how the non-genuine documents were pressed into service while applying for bail. That aspect has not even been noted by the High Court.”*

As argued by the learned counsel for the petitioner that the petitioner is co-operating with the investigating agency appeared as and when called there is no necessity of arrest once he is admitted on bail.

In another case reported in **State Rep. by the C.B.I., vs. Anil Sharma** ³, the Apex court held as under:

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented 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 a 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 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. The argument that the custodial interrogation is fraught with the danger of the person being

³ (1997) 7 Supreme court cases 187

subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

No doubt there are very serious allegations against the petitioner that the total amount misappropriated is Rs.23,50,00,000/- and an amount of Rs.9,98,00,000/- misappropriated from Hyderabad, State of Telangana itself.

First anticipatory bail was dismissed on 14.06.2016. As there was no change of circumstances, on 29.06.2016 when second anticipatory bail application was allowed. It seems the said judge who granted bail did not bother about the misappropriation of huge amount and has also not bothered about the serious allegations against the 1st respondent. Mechanically without any reasoning, passed the order, which is perverse, it gives the smell that the said judge has passed the order due to ulterior motive. It shows that either the judge is not competent to deal such matters or his integrity is doubtful.

In view of the facts recorded above and the seriousness of the crime, I am of the view that until and unless the petitioner is in police custody the proper material and the *modus operandi* adopted by the RCI/A.1, through the other co-accused persons, from whom huge amounts and incriminating materials recovered were arrested, will not come on surface. Whereas, the petitioner who was aware that this misappropriation is going on from the last

one year, despite which he did not take any steps. Thus, it is established that, at this stage, it is presumed that the 1st respondent/A.2 has caused huge misappropriate amount in this process.

Accordingly, I hereby set aside the order dated 29.6.2016 consequently cancel the bail of the 1st respondent/A.2.

The 1st respondent/A.2 is directed to surrender before the police concerned within three (03) days from today.

Since the learned judge who granted anticipatory bail to the 1st respondent/A.2 has not dealt the issue properly, let this judgment be placed before the Portfolio judge, who is having jurisdiction at Hyderabad. I request the Administrative Judge to take note while recording ACR of said judge.

Accordingly, the Criminal Petition is allowed.

Miscellaneous Petitions, if any pending, shall stand closed.



JUSTICE SURESH KUMAR KAIT.

Date :25-10-2016

Gvl

