THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.658 of 2017

ORDER:

This petition under Section 438 of the Code of Criminal Procedure, 1973 is filed by the petitioner/A5 in Crime No.261 of 2013 of Khammam II Town Police Station, Khammam District, Telangana State, now transferred to CID Regional office, Warrangal for the offence punishable under Section 409 IPC apprehending his arrest in connection with the said Crime.

2. It is the case of misappropriation of Rs.3.06 crores in the office of N.S.C., Monitoring Division, Tekulapalli, Khammam District during the period from 2008-13 due to involvement of staff in preparation of bills including DDO of NSC monitoring division for the relevant period. On the strength of the report the police registered a crime and later referred to CID about the misappropriation committed by various employees in the division. The petitioner is a Divisional Accounts Officer and he also allegedly involved in the said crime of misappropriation and thereby requested to take action by the police based on the complaint.

3. The main contention of the petitioner before this court is that the petitioner is only a Divisional Accounts Officer and he is no way concerned with processing bills, pertaining to work charged employees and relied on G.O.Ms.No.13, Irrigation & CAD (U.A.D.SER.1(1) Department, dated 15.01.1988 and further relied on the statements recorded, explanation submitted by the Executive Engineer and Superintending Engineer, to the Memo

issued to them and that the bills were not processed through the petitioner and thereby he is no way concerned with the offence but he is apprehending his arrest being a Divisional Accounts Officer in the Department in connection with the above crime which would cause incalculable loss in the event of his arrest and prayed to enlarge the petitioner on bail.

4. During hearing, Dr.Challa Srinivasa Reddy, while reiterating the contentions drawn the attention of this court to G.O.Ms.No.13, which shows that the petitioner is no way concerned with the payment to the work charged employees and also drawn the attention of this court to the explanations given by the Executive Engineer to the Superintendent Engineer, to the Memo issued to them calling for the explanation for the alleged misappropriation and merely basing on the bald allegations in the remand report petitioner cannot be roped with the said offence. In addition to that learned counsel would contend that there was no entrustment to the petitioner thereby the question of criminal misappropriation of funds as defined under Section 405 IPC would not arise. Consequently, the petitioner is not liable and cannot be arrested as there is no *prima facie* material against the petitioner to conclude that he committed any offence much less an offence punishable under Section 409 IPC.

5. On the other hand, learned Public Prosecutor for the State of Andhra Pradesh would draw the attention of this court about the procedure to be followed for payment to work charged employees in the establishment and staff referred in the remand report and also the specific procedure being followed by the Department for

processing the bills etc., including the payment of bills to the work charged employees and based on those allegations in the remand report he contended that the petitioner is also responsible for the offence punishable under Section 409 IPC and that apart, during the investigation, only ten witnesses were examined so far and thereby there is a possibility of interference with further investigation in the event of enlarging the petitioner on pre-arrest bail and failed to dismiss the petition.

6. Undoubtedly the amount allegedly misappropriated by various persons working in the office is Rs.3.06 crores i.e., towards payment of salaries etc., to the work charged establishment staff. The petitioner is undisputedly the Divisional Accounts Officer working in the Divisional Office, but contention of the petitioner is that he is no way concerned with the payment to work charged establishment staff. It is based on G.O.Ms.No.13 dated 15.01.1998. This GO pertains to entrustment of supervisory work to the superintendents of Divisional Office (Executive Engineer's Office) of all Engineering Departments, Irrigation & Command Area Development Department, Roads & Buildings, Panchayat Raj and Rural Development and Public Health and Municipal Engineering Department. In Guideline No.5 of the Government ordered, the following subject shall be hence forth dealt with by the Superintendent of Divisional Officers in all Engineering Departments and the same routed directly to the Executive Engineer, subject to scrutiny of Divisional Accounts Officer specified in respect of item Nos.5 and 6. The following are the subjects:

1. All establishment matters pertaining to ministerial last grade staff, work charged establishment and contingent, establishment of the entire division.
2. Maintenance of contingent registers, which are now being dealt with by the Superintendent.
3. Scrutiny of establishment bills and Traveling Allowance bills of various categories of establishments indicated at item No.1 above of entire division.
4. Encashment of Salary Cheques/bills disbursement and maintenance of relevant registers.
5. Maintenance of Divisional cash book including preparation of cheques pertaining to work bills and maintenance of ancillary registers which are now being dealt with by the Superintendents. These will however be scrutinized by the Divisional Accounts Officer.
6. Arbitration cases under the scrutiny of the Divisional Accounts Officer.

7. The counsel for the petitioner also drawn the attention of this court to sub-clause 5 and 6 of Clause (II) of the GO. Sub-clause 5 envisages that Maintenance of divisional cash book including preparation of cheques pertaining to work bills now being dealt with by the Superintendents and they will however be scrutinized by the Divisional Accounts Officer. Sub-clause 6 envisages that Arbitration cases under the scrutiny of the Divisional Accounts Officer. Clause V of the said GO prescribes that all bills shall be dealt with by the Superintendent of Divisional offices in all Engineering Departments and must be routed directly to the Executive Engineer subject to the scrutiny of Divisional Accounts Officer and sub-clause (1) thereof pertains to all establishment matters pertaining to ministerial last grade staff, work charged establishment and contingent, establishment of entire division. Therefore, clause v made it clear that the payments

to ministerial last grade staff work charged establishment and contingent establishment of the entire division must be routed through Divisional Accounts Officer. Therefore, the contention of the counsel for the petitioner that he is no way concerned with the alleged misappropriation regarding payment of work charged employees is without any substance. He also relied on the explanation to the Memo issued by the Executive Engineer and Superintendent Engineer, but they are not helpful to the case of the petitioner in any way.

8. The specific procedure to be followed by the Department for processing the bills for payment to work charged employees is reiterated in the remand report. According to the procedure for claims of Work Charged Establishment Staff, i.e., (Work Inspectors, Lascars, Man mazdoors, Electricians, Pump operators, Wireless operators, Telephone operators, drivers etc.) Bill: The Work Charged establishment salaries and other bills have to be prepared at sub division level by the concerned case worker based on the duty certificate issued by the concerned Assistant Executive Engineer duly signed by the Deputy Executive Engineer concerned in the pay bill register and triplicate bills forms. The bills will be sent to the Division with all relevant documents in duplicate. Soon after receiving the work charged establishment bills from the sub divisions in the Division, the Divisional Accounts Officer will mark the same to the concerned case worker, through Office Superintendent, the case worker (either Junior Assistant or Senior Assistant) has to scrutiny the bill perfectly at his level (Pay Particulars & Recoveries) and will prepare a consolidate abstract bill and they were checked by the Superintendent and presented to

Divisional Accounts Officer (Petitioner herein) for thorough scrutiny. The Divisional Accounts Officer will send the bills after thorough scrutiny to the Executive Engineer for passing the bills.

9. Thus, the role of the Divisional Accounts Officer is very specific. Even according to G.O.Ms.No.13, the bills have to be routed through the Divisional Accounts Officer/petitioner herein even to pay salaries or any other amount to work charged employees. But the contention of the petitioner is that bills were not routed through him, and at this stage it is difficult to accept the said contention, since, those bills are bound to be routed through the Divisional Accounts Officer and after thorough scrutiny by him, the bills will be passed by the Engineer.

10. The other contention of the counsel for the petitioner is that the allegations made in the complaint would not attract the office punishable under Section 409 IPC since there was no entrustment. He has drawn attention of this court to the definition of Section 405 IPC. Section 405 of IPC reads as follows:

> "405. Criminal breach of trust: Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commit criminal breach of trust."

11. Here, the petitioner, who is a Divisional Accounts Officer, is a 'Public Servant' as defined under Section 21 of IPC and when a 'Public Servant' commits breach of trust he is liable for

punishment under Section 409 IPC. No doubt there is no entrustment or dominion over the property but the definition of 'Criminal Breach Of Trust' under Section 405 IPC is exhaustive and whoever dishonestly uses or disposes of the property in violation of any direction of law prescribing the mode in which such trust is to be discharged also amounts to criminal breach of trust. Here a specific process is prescribed for payment to work charged establishment, but the petitioner being a Divisional Accounts Officer is also responsible for thorough scrutiny, since, he is the final authority for passing bills by the concerned Divisional Engineer. Thus, he *prima facie,* failed to discharge or dispose of the property i.e., the amount allotted to the department for payment of work charged employees in violation of a direction of law prescribing the mode in which such payment is to be made. Therefore, the contention that there is no entrustment to the petitioner or dominion over the property of the department is without substance.

12. The main endeavour of the counsel for the petitioner is that he is not concerned and there is no *prima facie* material to conclude that the petitioner did commit such an offence under Section 409 IPC but in view of discussion in the above paras the contention is not acceptable. Undoubtedly grant of pre-arrest bail is not as a matter of routine and it is a matter of exception. The petitioner has to show exceptional circumstances, which enables the court to exercise such discretion that conferred on the court by Section 438 IPC. If that is the case it is for the petitioner to show that he did commit no such offence.

13. The law regarding grant of anticipatory bail is elaborately discussed by the Constitution Bench of the Apex Court in ***Gurbaksh Singh Sibbia and ors vs. 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*; that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other 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 Status should have no

[1] AIR 1980 SC 1632

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's case. 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.

14. In ***Siddharam Satlingappa Mhetre***[2] case, the Apex Court carefully analyzed the principles in various judgments and considering the law on anticipatory bails in other countries, laid down 10 guidelines 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;
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> 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;
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> iii. The possibility of the applicant to flee from justice;
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> iv. The possibility of the accused's likelihood to repeat similar or the other offences.
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> v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
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> vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
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> 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

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[2] AIR 2012 SC 1676

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.

15. In any view of the matter, this court being in highest court of State is bound by the principles laid down by the constitutional bench in ***Gurubaksha Singh Sibbia****'s* case must be kept in mind. The alleged misappropriation of the amount is a public fund. It is the contribution of the public by way of taxes etc., and the total amount allegedly misappropriated is Ac.3-06 crores and the interest of the State and loss to the public exchequer has to be taken into consideration while considering the bail. The entire investigation is based on the records as if for any reason the petitioner is enlarged on bail there is every possibility of tampering with the records. Therefore, I find *prima facie* material to conclude that the petitioner also joined hands with others and committed offence. To strike the balance between individual right of liberty guaranteed under Article 21 of the Constitution of India and interest of the public or the State, I find that it is not a fit case to

enlarge the petitioner on pre-arrest bail. Consequently, the petition is liable to be dismissed.

In the result, the Criminal Petition is dismissed. Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

February 10, 2016

Note: - Furnish copy by three days
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