

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.5431 of 2017

ORDER:

In this petition filed under Sections 437 and 439 Cr.P.C., the petitioner/A9 seeks regular bail in Cr.No.378 of 2014 of Nellore III Town PS (now under CID, AP) which was registered for the offences under Sections 120B, 406, 420 IPC and Section 5 of Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (for short “APPDFE Act”).

2) The *de-facto* complainant lodged complaint against Agri Gold Farm Estates India Private Limited alleging that he deposited amounts with the accused at their office at Nellore on their promise that on maturity he would get double the amount but after maturity the accused did not repay the amount and thus cheated. Crime was registered against the present petitioner and its sister companies but transferred to Crime Investigation Department (CID). In the present crime the petitioner is arrayed as A9. Investigation is reported to be pending.

3) Learned Public Prosecutor filed counter and opposed the petition. His counter precisely is that the present petitioner is an accused in 9 more crimes which were registered for similar offences committed at different places and investigation was handed over to CID and during the course of investigation the IO has examined 248 witnesses and collected materials and Forensic Audit was also ordered. In the present case, 19 accused are arrayed out of which two accused (A18 and A19) were arrested and their confessional statements were recorded, 5 accused

(A4, A6, A12, A14 and A17) were produced to this crime through Prisoner's Transit Warrant (PT warrant) and other accused including the petitioner were absconding. Section 41A Cr.P.C. notice was issued to the petitioner but did not respond. It is further contended that the petitioner is one of the brothers of Avva Venkata Rama Rao (A4) and they collected deposits from the public worth rupees six thousand crores in the name of three companies viz. (i) Agri Gold Farm Estates India Private limited; (ii) Agri Gold Constructions Private Limited and (iii) Dream Land Ventures Private Limited. Their family members got incorporated 159 more companies apart from the above three companies. The petitioner/A9 was the Director of Dream Land Ventures Private Limited from 2004 to 2010 and he was also Director of 24 allied companies and in respect of some of the companies he is still continuing as Director. In the counter it is further mentioned that the Forensic Audit report was placed before the Division Bench in a sealed cover and it would reveal Rs.236 crores was transferred from the above mentioned three companies to other 5 companies and petitioner is actively managing the affairs of group of companies and investigation is pending.

4) Heard arguments of Sri M.P.Kashyap, learned counsel for petitioner and learned Public Prosecutor.

5a) Learned counsel for petitioner sought for bail on two main arguments. Firstly, that the petitioner has nothing to do with Agri Gold Farms Estates India Private Limited wherefrom the complainant allegedly obtained fixed deposit receipt and hence, adding petitioner as

A9 in the crime is nothing but victimising him. He is a law abiding citizen and even now he is ready to cooperate with the police for completion of investigation. The second argument is of jurisprudential interest. He would argue that for similar offence, the police of Peddapadu PS registered Cr.No.3 of 2015 wherein the petitioner was shown as Accused No.18 and was arrested on 28.04.2017. Since all the related crimes including Cr.No.3/2015 and present crime were transferred to CID for investigation, he shall be deemed to be in custody since 28.04.2017 not only in Cr.No.3 of 2015 of Peddapadu PS but also in all other crimes including the present crime. He placed reliance on *Tupakula Appa Rao vs. State of A.P.*¹ on the aspect of deemed custody.

b) He further argued, admittedly the IO has not filed charge sheet till now though in view of the nature of offences alleged, he is liable to file charge sheet within 60 days from the date of remand. Therefore, an indefeasible right is accrued to petitioner/A9 under Section 167(2) Cr.P.C. to claim statutory bail. In fact, the petitioner already filed bail application in CrI.P.No.4770 of 2017 seeking bail in Cr.No.3 of 2015. Hence statutory bail may be granted to the petitioner in the instant crime also.

6) In oppugnation, learned Public Prosecutor would argue that the petitioner does not deserve bail on merits in view of the gravity of offence and pending investigation and he also does not deserve statutory bail under Section 167(2) Cr.P.C. While admitting that in the instant Cr.No.378 of 2014 charge sheet is not yet filed, learned P.P. would

¹ 2002 (1) ALD (CrI.) 67 (AP)

however argue that in the instant crime the accused was neither arrested nor produced under PT warrant and therefore, he cannot be said to be under custody in the present crime. He was arrested in Cr.No.3 of 2015 of Peddapadu PS only whereas Cr.No.378 of 2014 relates to different police station. Since he was arrested in connection with a crime of different police station, his custody in that crime cannot be deemed to be the custody in the present crime. He admitted that all the crimes were transferred to CID but he would contend that by that fact petitioner cannot contend that his custody in one crime be deemed as custody in other crimes also to claim indefeasible right of bail for non-filing of charge sheet.

7) Petitioner claims bail on merits that he has nothing to do with the Agri Gold Farm Estates India Private Limited wherefrom the complainant obtained fixed deposits. He also claims statutory bail under Section 167(2) Cr.P.C. on the premise of deemed custody. Admittedly, a number of depositors lodged complaints with different police stations against the sister concerns of the accused alleging that their deposit amounts were not returned on maturity. In view of the large scale swindling of public amounts staggering to seven thousand crores, the investigation in all those matters was transferred to CID and the same is pending.

a) Now, to consider the request of the petitioner for bail either on merits or under statutory right conferred under Section 167(2) Cr.P.C., the Court must first of all be satisfied that the petitioner is either in

physical or deemed custody in Cr.No.378 of 2014 of Nellore III Town PS. Admittedly, the petitioner is not in physical custody in Cr.No.378 of 2014 because he was arrested only in Cr.No.3 of 2015 of Peddapadu PS and he was not brought on PT warrant to Cr.No.378 of 2014. Therefore, his claim for bail can be considered, if only his argument of deemed custody is accepted. The petitioner heavily relies on *Tupakula Appa Rao* (1 supra) to buttress his argument of ‘deemed custody’.

8) Before that, the judgment of a Division Bench of this High Court in *Jakir Hussain Kosangi and others vs. State of A.P. rep. by its Principal Secretary to Government, Home Department, Hyderabad and others*² placed on record by the learned Public Prosecutor has to be mentioned. The batch of those writ petitions were filed by Directors and Managing Directors of Akshya Gold Farms and Villas India Limited challenging the action of both the State Governments and CID, allowing the registration of multiple FIRs and conducting an investigation into all of them in relation to the same set of facts as unconstitutional. They sought for a Writ of Mandamus to the effect that the respondents shall treat the earliest complaint registered against them as the FIR and to treat all subsequent complaints under Section 161/162 Cr.P.C. On a threadbare analysis of as many as 21 Apex Court judgments and also two High Court judgments including *Akbaruddin Owaisi vs. The Government Andhra Pradesh and others*³, the Division Bench of this Court refused to grant writ of Mandamus. It held thus:

² W.P.No.29375 of 2016 and batch dated 04.07.2017

³ 2013 (2) ALD (CrI.) 855

“Para—65. Therefore, the prayer made by the petitioners to treat the earliest complaint registered against them as the First Information Report and to treat all subsequent complaints as statements under Section 161/162 of the Code, cannot be granted. Similarly, no Court can issue a mandamus directing the Station House Officers of all the police stations within the jurisdiction of the High Court not to register any further FIR, as the same would also tantamount to a restriction upon the victims of such a huge scam from taking recourse to lawful remedies.”

9) So from the above ratio, it is clear that the Division Bench opined that since staggering amount of rupees seven thousand crores was admittedly due to the different depositors, those depositors who invested money in various branches have **independent causes of action** and hence the court cannot give a direction to the respondents to treat the earliest complaint against them as the FIR and all subsequent complaints as statements under Section 161/162 Cr.P.C. and it also cannot give a direction to Station House officers of all the police stations within the jurisdiction of the High Court not to register any further FIR as it would amount to a restriction upon the victims of such huge scam from taking recourse to lawful remedies.

In simple, the Division Bench held **multiple FIRs. registered by different police stations are maintainable in view of different causes of action.**

10) It is pertinent to note the above decision was rendered despite the fact that a single investigating agency i.e. CID is investigating the several crimes as in one of the batch of writ petitions, CID of both States was a party.

11) Coming to ***Tupakula Appa Rao***'s case (1 supra) the facts were that the petitioner was working as Secretary in Primary Agricultural Co-operative Credit Society (PACCS) of Nidamanuru which society falls within the jurisdiction of Kurnool District Central Co-operative Bank, Suryaraopet Branch. The Circle Supervisor of the said bank reported misappropriation of the bank funds in PACCS of Nidamanuru. Basing on his report the Branch Manager of Suryaraopet Branch of Kurnool District Central Co-operative Bank lodged a report with the police alleging misappropriation of funds of the society to the tune of Rs.14 lakhs whereon four crimes i.e. Cr.Nos.434 to 437 of 2001 were registered against the petitioner by Patamata Law and Order Police Station, Vijayawada. The petitioner was arrested on 30.10.2001 in connection with Cr.No.436 of 2001 and remanded to judicial custody. In other crimes he was neither arrested nor brought on PT warrant. The petitioner therefore filed three petitions seeking anticipatory bail in the remaining three crimes. There, a question arose as to, since all the four crimes relate to same complainant and against the same accused and arising out of same police station, whether his arrest in one crime can be deemed to be the arrest and custody in other crimes also to consider his anticipatory bail applications. In that context, a learned Judge of this Court observed thus:

“Para—16. If the arrest is shown in all the cases, simultaneously there is no difficulty he can be said to be in custody in each of those cases. If for any reason his arrest is limited to one case like in the instant cases it is not as though he is remedy less. The fall out of the above discussion is that whether or not the custody of a person in one case should also be treated as custody in other cases wherein

*he is wanted is a question of fact and is to be **decided with reference to facts and circumstances of each case**. If the facts indicate that a person already detained in custody in one case out of more than one case and his arrest is not formally shown **on account of the negligence of the concerned authorities** and for no fault of the accused he can with all justification claim that his custody in one case should also be deemed to be in custody for the purpose of other case or cases.”*

12) Thus, learned Judge observed whether or not the custody of a person in one case to be treated as custody in other cases also was a question of fact and to be decided with reference to the facts and circumstances of each case. He held that if the facts indicate that he was arrested in one case out of many cases and his arrest was not formally shown in other cases **on account of negligence of the concerned authorities and for no fault of accused**, he can by all justification claim that his custody in one case should also be deemed to be in custody for the purpose of other cases also.

13) Learned Judge also happened to deal with the situation where the accused is concerned in different cases pertaining to different police stations and pending before the different Courts where no negligence on the part of authorities could legitimately be shown. To surmount such contingency, the learned Judge opined that the accused has to move an application seeking his production in connection with the case before the other Court and such Court can pass appropriate orders. The procedure suggested, in his view, was consistent with administration of justice and would safe guard the interests of the accused as well as the investigating agency.

14) So, the ratio in the above judgment is to the effect that where several crimes were registered against the same accused in the same police station and he was arrested in one crime and not other crimes and if it is established that his arrest in other crimes was not shown due to the negligence of the concerned authorities, then the accused can justifiably claim his deemed custody in other crimes also. However, that cannot be the situation where different crimes are registered in different police stations against the same accused. In such an event, he has to move an application before the Courts where other crimes are pending for taking him into custody and Court can pass a suitable order thereon.

15) In the instant case, admittedly, different crimes were registered in different police stations against the petitioner and other accused. However, they were transferred to a single investigating agency i.e. CID.

16) In *Akbaruddin Owaisi's* case (3 supra), a learned Judge referring Order 866-3 (G.O.Ms.No.438 dated 05.10.1988) of A.P. Police Manual noted that the Office of the CID is '*one police station*' for the entire State of Andhra Pradesh under Section 2(s) Cr.P.C. and one Deputy Superintendent of Police (DSP) is to be nominated for this purpose to be the Station House Officer.

17) Basing on the aforesaid Police Manual and the judgment, it is contended by the petitioner that since the office of CID in the entire State of A.P. is one police station and as all the crimes registered against the petitioner and others were transferred for investigation to CID, the arrest

of accused in one crime shall be deemed to be the arrest and custody in other crimes arising out of same police station.

18) Repelling the above argument, learned Public Prosecutor argued that merely because the office of CID is declared as '*one police station*' for the entire State that cannot be treated as '*same police station*' for claiming the deemed custody as laid down in the case of ***Tupakula Appa Rao*** (1 supra). He would argue that while maintaining the respective crime files in respective police stations, only investigation was entrusted to CID and different IOs are investigating the crimes and therefore, though CID is '*one police station*', crimes shall be treated as relating to different police stations and in that view, the CID after investigation had a right to file either separate charge sheets in each crime or a single charge sheet and it has not decided yet.

19) I find fore in the submission of learned P.P. It must be noted that the Division Bench in the batch of writs held that since causes of action are different, multiple FIRs can be registered. Further, though a single investigating agency (CID) is conducting investigation, crime files are maintained in different police stations only. In that view of the matter, the different crimes shall be treated as belong to different police stations and not the same police station. Therefore, the ratio in ***Tupakula Appa Rao*** cannot be applied in the instant case. As a consequence, the petitioner who was arrested and remanded to custody in Cr.No.3 of 2015 cannot claim his deemed custody in other crimes including Cr.No.378 of

2014. Therefore, he does not deserve bail either on merits or under Section 167 (2) Cr.P.C.

20) The bail application is accordingly dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 28.07.2017
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