**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**CRIMINAL PETITION Nos.17168, 17169 AND 17171 OF 2016**

**COMMON ORDER:**

The subject matter of all these criminal petitions is intertwined, as such, the same are being disposed of by this Common order.

2. The petitioner, in all these Criminal Petitions, has been requesting for grant of pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Code').

3. Incidentally, Criminal Petition Nos.580 and 605 of 2017 require advertence which are filed by accused Nos.3 and 2, namely, Kajjayam Venugopal and Kotha Jhansi Rao, respectively, in Crime No.122 of 2015 of Central Crime Station, Hyderabad, since the petitioner in the present petitions is arraigned as accused No.1 and allegations in the complaint would embrace the allegations in the present three crimes also to a little extent.

4. All the complaints are lodged by the *de facto* complainant viz., Pasumarthy Venumadhav, registered as Crime Nos.122 of 2015, 50 of 2016 and 403 of 2015, whereas Crime No.404 of 2015 was registered on the complaint of one Smt. Pasumarthy Durga Devi, admittedly, the mother of the *de facto* complainant (Pasumarthy Venumadhav) in other crimes.

5. These three Criminal Petitions mentioned above have been filed by accused No.1 in Crime Nos.50 of 2016 and 404 and 403 of 2015, respectively.

6. Crime No.50 of 2016 is registered by the Station House Officer, Saifabad Police Station, Hyderabad, against three accused viz., K. Shanthan Kumar, K. Jhansi Rani and K. Venugopal, who are petitioners in the present Criminal Petitions, alleging the offences punishable under Sections 406, 409, 420, 468 and 471 of IPC.

7. Crime No.404 of 2015 is registered by the Station House Officer, Jawahar Nagar Police Station, Cyberabad against five accused viz., Kotha Shanthan Kumar, Mopal Nagaraj, Ajinaya Swamy Noori, Vinay Kumar Bathula and accused No.5 is Life Insurance Corporation Housing Finance, for the reason, the policies have been standing in the name of the *de facto* complainant - respondent No.2 in Criminal Petition No.17169 of 2016 and that the signatures of the *de facto* complainant were forged and loans were obtained from it (accused No.5) by the petitioner in active connivance of staff of LIC branch and alleged to have committed the offences punishable under Sections 419, 420, 468 and 471 read with Section 120-B IPC.

8. Crime No.403 of 2016 is registered by the Station House Officer, Jawahar Nagar Police Station, Cyberabad, against five accused alleging the offences punishable under Sections 419, 420, 468 and 471 read with 120-B IPC.

9 (i). Advertence to certain relevant facts is absolutely indispensable to have a wholesome comprehension of what had alleged to have transpired earlier:

(a) Crime No.122 of 2015 was registered against six (6) accused persons and others. The names of all the six accused have been specifically mentioned and, in fact, charge sheet was also laid which was registered as C.C. No.252 of 2016 on the file of XII Additional Chief Metropolitan Magistrate, Hyderabad, except against A2 and A3 since this Court quashed the proceedings against them.

(b) Accused Nos.1 and 2, husband and wife, viz., K. Shanthan Kumar and K. Jhansi Rani, respectively, filed Criminal Petition Nos.5819 and 6949 of 2015 before this Court for the very same relief. A learned Single Judge of this Court passed common order on 30.10.2015 acceding to the request of accused Nos.2 and 3 and partly acceding to the request of accused No.1 and thereby quashed the First Information Report in Crime No.122 of 2015 against accused Nos.2 and 3, and quashed all the penal offences alleged against accused No.1 except the offence punishable under Section 409 IPC. The learned Single Judge also observed that "C.C.S Police can continue the investigation of the Crime so far as A-1 is concerned for the offence under Section 409 I.P.C and file final report."

(c) Aggrieved over the aforesaid order, the *de facto* complainant, P. Venumadhav approached the Hon'ble Supreme Court.

The Hon'ble Supreme Court by the order dated 09.01.2017 allowed the appeals setting aside the common order observing thus:

> "Leave granted.
>
> Prima facie from the reading of the First Information Report (FIR), no case was made out for quashment of the same at the investigation stage vis.-a-vis. Accused K. Jhansi Rani and K. Venugopal i.e. accused Nos. A2 and A3 respectively.
>
> However, after hearing learned counsel for the parties at great length, it is not necessary to make observation on merit as counsel agree that a case for further investigation against A2 & A3 is made out. Ordered accordingly. The observations made by the High Court shall not come in the way of independent investigation. It would be open to the parties to question the investigation in accordance with law, as and when the Supplementary Final Report is filed in court. Impugned order is set aside.
>
> The appeals are allowed."

The aforesaid order of the Hon'ble Supreme Court appears to have constrained the petitioners in Criminal Petition Nos.580 and 605 of 2017 to approach this Court requesting to grant anticipatory bail.

(d) There is reason for accused No.1 Shanthan Kumar in Crime No.122 of 2015 in not approaching with a similar request. Initially, accused No.1 made such a request by filing an application in Criminal Petition No.12025 of 2015. Another learned Single Judge of this Court by the order dated 01.03.2016, rejected the request dismissing the criminal petition giving liberty to surrender before the Court concerned and move an application for grant of regular bail, in which event, the same shall be dealt with on merits, in accordance with law at the earliest. By the date of passing the said order, common order in Criminal Petition Nos.5819 and 6959 of 2015 was already rendered. The operative portion thereof was extracted therein. Copy of the said order is filed by accused No.1 along with the order dated 09.01.2017 of the Hon'ble Supreme Court in last of the three criminal petitions which were filed by him to substantiate his stand for grant of anticipatory bail in these petitions.

(e) What had happened during interregnum requires advertence.

(f) When charge sheet was filed, the learned XII Additional Chief Metropolitan Magistrate, Hyderabad, appears to have taken cognizance of the offences. The learned counsel for the petitioner has filed copy of the docket order dated 01.09.2016, which reads thus:

"**<u>DOCKET ORDER</u>**

**Dated : 01-09-2016**

A1 present. A4, A5 absent. Issue fresh summons to A4 , A5. A1 is directed to execute a bond for Rs.10,000/-. Call on 04-10-2016."

There is no reference to accused Nos.2 and 3 in the aforesaid order for the reason by then, the S.L.P. Nos.685 - 685 of 2016 preferred by the *de facto* complainant against the common order in Criminal Petition

Nos.5819 and 6949 of 2015 were pending and disposed of only on 09.01.2017.

(ii) The afore-extracted order passed by the learned XII Additional Chief Metropolitan Magistrate, Hyderabad, would be referred to while dealing with the submission made by the learned counsel for the petitioners; basing on the said order and the order passed by the Hon'ble Supreme Court in a petition for Special Leave to Appeal (Criminal ) No.2037 of 2016 dated 16.09.2016. Accused No.1, K. Shanthan Kumar, in all these crimes challenged the order passed by this Court in Criminal Petition No.12025 of 2016 dated 01.03.2016, referred to hereinabove, rejecting his request to grant anticipatory bail. The Hon'ble Supreme Court has passed the order, thus:

> "Learned senior counsel appearing for the petitioner submits that the petitioner has already granted regular bail by the Court of XII Addl. Chief Metropolitan Magistrate, Hyderabad on 01.09.2016.
>
> In view of the submission made, no order need be passed on this Special Leave Petition and the same is disposed of.
>
> Pending application, if any, stands disposed of."

Thus, in the aforesaid order, the order dated 01.09.2016 passed by the learned XII Additional Chief Metropolitan Magistrate, Hyderabad in C.C. No.252 of 2016, extracted in the above, finds place and constitutes basis for passing the said order by the Hon'ble Supreme Court.

iii) The learned counsel for the petitioners filed the orders passed by the Hon'ble Supreme Court, dated 08.05.2017, preferred against the order passed by this Court in Crl.P. No.12025 of 2015, dated 01.03.2016, holding that since charge sheet has already been filed in the matter, no order need be passed in the Criminal Miscellaneous Petition and dismissed the same, granting liberty to the learned counsel appearing for the State to take appropriate steps in the matter in accordance with law.

(iv) The petitioner in Criminal Petition No.17168 of 2016 who is arraigned as accused No.1 and accused No.2 and accused No.3, have filed Criminal Petition Nos.8266, 8267 and 8268 of 2016 respectively. The learned Single Judge of this Court by the order dated 01.09.2016 quashed the First Information Report in Crime No.50 of 2016 allowing Criminal Petition Nos.8267 and 8268 of 2016 filed by accused Nos.2 and 3 while declining to quash the proceedings against accused No.1, dismissed the criminal petition filed by him in Criminal Petition No.8266 of 2016. That has been the reason, he moved the present application seeking anticipatory bail.

(v) The petitioner in Criminal Petition No.17169 of 2016 filed Criminal Petition No.9815 of 2015 requesting to quash the First Information Report in Crime No.404 of 2015. The learned Single

Judge by the order dated 19.12.2016 rejected the request dismissing the petition. That has been the reason, he has filed the present petition seeking anticipatory bail.

(vi) The petitioner in Criminal Petition No.17171 of 2016, along with his wife, who is accused No.2, K. Jhansi Rani, filed Criminal Petition No.9645 of 2015 requesting to quash the First Information Report in Crime No.403 of 2015. The very same learned Single Judge by the order dated 19.12.2016, while acceding to the request of petitioner No.2, quashed the crime against her, but, rejected the request of petitioner No.1, who is accused No.1, and that has been the reason, he has moved the present application for grant of anticipatory bail.

10. The foregoing account is the summary of sequence of events that transpired preceding the presentation of these criminal petitions.

11. Now, it is relevant to refer to what has been stated in the complaints lodged by the *de facto* complainants including the allegations in the complaint in Crime No.122 of 2015 from which Criminal Petition Nos.580 and 605 of 2017 had arisen.

(i) The *de facto* complainant viz., Pasumarthy Venumadhav established a company called M/s Materials Software System India (P) Limited (MSSIPL) at Basheerbagh, Hyderabad and simultaneously M/s. Material Soft Information Technologies (MSIT) in the same building complex as the proprietor thereof. MSSIPL was established by him in the year 2003 engaged in the business of software development, consulting and various other allied things connected with software development and started with a view to expand the business in software development and consultancy services in India. He appointed accused No.1 viz., K. Shanthan Kumar as an employee (Admin & Finance in charge) in MSSIPL in the month of December, 2003, with the duty to see the overall affairs of the company in his absence as he is engaged in business in United States of America and as such busy to look-after the business thereat.

(ii) So far as responsibility of Shanthan Kumar (A-1) is concerned, the *de facto* complainant states that he has to manage, the staff, oversee them and see that they work as per the norms of the company and accomplish the day to day tasks set out by the company, pay the salaries of other employees from the account of the company and report the developments to him in USA through mails/phone etc., and to facilitate easy management of the company, he has given authorisation to him to operate banking operations of accounts of the company and see that the income and expenditure are correctly accounted and maintained. He states that MSSIPL is maintaining current accounts in Karnataka Bank, Dilsukhnagar Branch, and Vijaya Bank Basheerbagh Branch, Hyderabad, and has sent Rs.19,36,22,271/- to the company in India which details have been projected by him in a table showing them as nine (9) distinct items referring to the name of the company, account number, type of account, name of the account holder and the amount sent by him to the tune of Rs.19,36,22,271/-.

(iii) He alleges that besides the companies, sold the developed software to the customers and an amount of Rs.2,50,56,375/- was transferred to the accounts of MSSIPL and his account showing nine (9) distinct items in a table with relevant details.

(iv) He alleges that Shanthan Kumar (A-1) is having total control of the company and its affairs right from looking after sales, purchases, payment of taxes, filing of returns before the Registrar of Companies, Sales Tax and Income Tax Departments. According to him, when he came down to India, during the month of May, 2015, and verified certain records, feeling that though, he used to send crores of rupees into the company's account, but the company is not booking any profits, but, however, on records, it is shown that the company is earning profits and on verification of some of the records, he suspected that right from the inception of the company, Shanthan Kumar (A-1) with a dishonest intention siphoning off the funds of the company on various accounts and what all informed has been narrated thus:

> "a) Mr.K. Shanthan Kumar showed some fictitious persons as company employees and withdrew huge sums towards their salaries and the same was shown as expenditure towards their monthly salaries. The said K. Shanthan Kumar has withdrawn an amount of

**Rs.5,23,21,736/-** from company accounts towards payment of salaries. Further he withdrew an amount of **Rs.19,20,752/-** from my personal account and also from the account of Material soft Information Technologies. Though there are no such employees.

b) Mr.K.Shanthan Kumar has showed his wife Smt K.Jhansi Rani, Sri K. Venugopal, his brother-in-law and Sri D. Subrahmanyam and other relatives and friends in the list of employees although they really does not work and withdrew huge sums towards their salary, This salaries data is of from Financial Year 2008 to 2015, out of Salary amount shown in point (a) i.e,**Rs.5,23,21,736/-** ,following amounts are withdrawn fro fictitious persons shown above. Since neither they attended office nor perform their duties and also their salaries structure are irregular fashion an lot more misappropriation of funds can come to light once all the records were verified.

c) Mr. K. Shanthan Kumar has transferred some funds in the name of his friend one Sri Chandramouli Alavala and family members and relatives and friends. Some of them are given below. On verification of records some more funds misappropriation can come to light.

| SL. NO | Name of the Beneficiary | Amount Sent | Remarks |
|---|---|---|---|
| 1 | K.Shanthan Kumar | 10,38,993/- | Self |
| 2 | K.Venugopal | 10,01,228/- | Brother-in-law of Shanthan Kumar |
| 3 | D. Subrahmanyam | 11,09,577/- | Friend of Shanthan Kumar |
| 4 | M.S.Sastry | 11,19,267/- | Friend of Shanthan Kumar |

d) Mr.K.Shanthan Kumar transferred the funds to the following persons and Business Entities, which are shown below however they are unrelated to the company and also to Materialsoft Information Technologies and from my personal account, following are the net amount which are receivable by the company and personal

| SL. NO | Name of the beneficiary | NET AMOUNT SENT | Remarks |
|---|---|---|---|
| 1 | K.Jhansi Rani | 59,98,006/- | |
| 2 | M.S.Sastry | 1,00,27,256/- | |
| 3 | Ram Babu | 15,42,512/- | |
| 4 | Santhosh | 10,38,467/- | |
| 5 | Sesha Giri Rao | 8,74,077/- | |
| 6 | Shafi Uddin Khan | 22,46,906/- | |
| 7 | K.Venugopal | 9,73,664/- | |
| 8 | Anjaneya Swamy Nori | 8,26,210/- | |
| 9 | Subrahmanyam | 16,35,791/- | |
| 10 | Alliance Technologies | 37,06,150/-/- | |
| 11 | Aditya Consultants | 14,03,560/- | |
| 12 | Chandra Mouli | 18,62,693/- | |
| 13 | Kwality System | 11,62,667/- | |
| 14 | Rajasthan Tourism Development | 7,00,000/- | |
| 15 | P.C. Computer services | 36,83,042/- | |
| 16 | Pranami Communications | 13,00,000/- | |
| 17 | Select Engineering | 7,14,354/- | |
| 18 | Mohinuddin | 5,77,091/- | |
| 19 | Venaktesh | 4,90,793/- | |
| 20 | Aruna.M | 3,82,167/- | |
| 21 | Kiran Mai | 5,40,000/- | |
| 22 | K.Santhosh Kumar | 5,26,167/- | |
| 23 | Srinivas.M | 2,79,570/- | |
| 24 | K.B.V.Raju | 3,71,890/- | |
| 25 | Kedareeshwar | 4,73,672/- | |

| | | | |
|---|---|---|---|
| 26 | Saadhana Builders | 1,12,35,188/- | |
| 27 | Other Miscellaneous Parties | 2,12,41,237/- | |
| | TOTAL | Rs.7,58,13,130/- | |

d) Mr.K. Shanthan Kumar included the name of Mr. M.S. Sastry, my brother in law resident of USA as one of the employee and drew an amount around Rs.1,00,000/- as salary paid to him per month.

e) He submitted exaggerated Internet bills and illegally misappropriated company's money. He has claimed an amount of Rs.63,06,341/- towards Internet bill and paid to M/s Pioneer Labs

f) Mr.K.Shanthan Kumar showed income to the company although there is no income supported by the documents and caused immense loss to the company in terms of payment of Income Tax to the Department for the year 2009-2010 to 2013-14 and un-necessarily made the company liable for payment of Income Tax of Rs.37,93,414/-. Thereby he caused huge financial loss to the tune of Rs.37,93,414/-. Amount of tax shown from 2009 to 2014 is as follows. (I.T. returns for the period from 2004 to 2008 are to be verified).

| SL.NO | Year | AMOUNT OF TAX | Remarks |
|---|---|---|---|
| 1 | 2009-2010 | 11,78,498 | |
| 2 | 2010-2011 | 16,50,045 | |
| 3 | 2011-2012 | 6,35,568 | |
| 4 | 2012-2013 | 2,18,764 | |
| 5 | 2013-2014 | 1,10,539 | |

g) From the Year 2004-2005 to 2014-15 above said Mr. Shanthan Kumar was diverted the funds of the company to the tune of Rs.71,58,391/ in the name of Kranthi Educational Society, He have showed in the records that company has received Rs.69,23,000/-, he has sent Rs.21,28,000/- to Cambridge High school and showed that he received an amount of Rs.21,30,000/- similarly he has sent an amount of Rs.2,27,000/- to Bhavi Bharath C/o Shanthan Kumar and showed that he has received Rs.14,98,000/-. But to mention here that our company has no connection with above institutions.

h) On verification of bank records it is revealed that during the period from 2004 to 2015 the said K.Shanthan Kumar has withdrawn an amount to the tune of Rs.4,06,90,096/- from company accounts and amount of Rs.69,20,790/- from Personal accounts though he was not authorized to withdraw money for the self needs.

i) Mr.K.Shanthan Kumar submitted fake returns to the Registrar of Companies by fabricating our signatures on the minutes of meetings.

j) Mr.K.Shanthan Kumar submitted false and fabricated Income Tax Returns by forging our signatures on the Returns Forms although I was abroad at the time of filing of the Returns to the Departments.

k)Mr.K.Shanthan Kumar mortgaged my personal properties mentioned below and obtained loans from Vijaya Bank, Karnataka Bank etc.,

| SL. No. | NAME OF THE BANK | LOAN ACCOUNT NO. | AMOUNT OF THE LOAN | OUTSTANDING LOAN AMOUNT | REMARKS |
|---|---|---|---|---|---|
| 1 | Karnataka Bank, Dilsukhnagar Branch | 33170016002101, | 50,00,000/- | Cleared | P.Venu Madhav (Personal) |
| 2 | -DO- | 3317001600216001, | 90,00,000/- | -DO- | Materialsoft Information Technologies (Proprietor) |
| 3 | Vijaya Bank, Basheerabgh | 406808391000001, | 43,53,000/- | 7,68,556/- | P.Venu Madhav (Personal) |
| 4 | -DO- | 406808391000003, | 1,25,00,000/- | Cleared | Materialsoft Information Technologies (Proprietor) |

| | | | | | |
|---|---|---|---|---|---|
| 5 | -DO- | 406809051000003, | 1,25,00,000/- | 60,86,146/- | Company Account |
| 6 | -DO- | 406806211000006, | 1,25,00,000/- | Cleared | Company Account |
| 7 | -DO- | 406809041000013, | 60,00,000/- | -DO- | Company Account |
| 8 | -DO- | 406806011000022, | 1,25,00,000/- | -DO- | Company Account |
| 9 | -DO- | 406809041000014, | 1,00,00,000/- | -DO- | Company Account |
| | | Total loan taken | 8,43,53,000/- | | |

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(v) He alleges that Shanthan Kumar (A-1) has misutilized the power of attorney given to him by signing personal cheques and encashing cheques and misappropriated the amounts from company accounts and personal accounts as shown in the above table.

(vi) The *de facto* complainant also alleges that he purchased two office spaces in Babukhan Estate vide office space bearing Nos.701 to 708 admeasuring 26,175 square feet in the year 2006 bearing document No.1233 of 2006 and in the year 2004, Shanthan Kumar (A-1) forced him to sell part of the property in 707 and 708 to M/s. Agrasen Hall Trust for an amount of Rs.29,00,000/- and Rs.29,00,000/- respectively and part of 705 and 706 for an amount of Rs.69,00,000/- to Agarwal Packers and Movers, but he did not handover the money to him till the date of lodging the complaint and failed to account for the money and whenever questioned, he was avoiding the answer on one pretext or the other and even sold his (*de facto* complainant) Mitsubishi Lanser Car without his knowledge and rented his (*de facto* complainant) house at Banjara Hills to some third party and collected rents about Rs.25,00,000/-, but failed to account the same since past seven (7) years.

(vii) He alleges that Shanthan Kumar (A-1), to conceal his misgiving and fraud appointed one Nagaraju, Chartered Accountant, to audit the records of the company, and that Chartered Accountant in connivance with the Shanthan Kumar audited the false statements, failed to submit proper books of accounts and even the amount of Rs.10,00,000/- paid to Shanthan Kumar on his request, remained unpaid.

(viii) He alleges that Shanthan Kumar (A-1) obtained loans to the tune of Rs.8,43,53,000/- from bank in the name of company and also on his (*de facto* complainant) name and so far, he paid Rs.3,29,00,000/- interest without his knowledge and it was nothing but waste of company funds, which he used for his personal purposes as the records of the company reveal that no such loans were required.

(ix) He alleges that Shanthan Kumar (A-1) joined his company with an ulterior motive with a dishonest intention of cheating, misappropriated the company money as he was in USA as he (A-1) is in-charge of the company affairs in India. He further alleges that Shanthan Kumar (A-1) having conspired with the other accused, more particularly, with Nagaraju, Auditor - cum - Chartered Accountant, falsified the company records unsupported by the documents and diverted funds to his own account and his wife's account and filed falsified returns before the Income Tax authorities and Registrar of companies and leased out the roof of the building owned by him (*de* *facto* complainant) and misappropriated the rents paid by the Pioneer Online Limited for erecting tower on the company's roof.

(x) He alleges that in the year 2003, he has transferred an amount of Rs.21,86,78,646/- to the company's accounts maintained with Karnataka Bank and Vijaya Bank and the same were not accounted properly by Shanthan Kumar (A-1) and no documents are shown indicating incurring of expenditure and took loan to the tune of Rs.8,43,53,000/- taking advantage of his (*de facto* complainant) in India and as he (*de facto* complainant) stays in USA and visit India very rarely as he imposed total trust on him. It is alleged that he falsified accounts, forged his (*de facto* complainant) signatures, obtained loans in the name of the company and diverted the said funds for his personal benefits and purchased properties worth crores of rupees during the period of his association with the company and in collusion with some staff of the company by preparing false accounts and the company auditor-cum-chartered accountant did not divulge the detailed accounts despite repeated requests and so also Shanthan Kumar (A-1) and thus, levelling the aforesaid allegations, he lodged the complaint with Central Crime Station, Hyderabad, on 20.05.2015 and the same was registered as FIR No.122 of 2015 for the offences punishable under Sections 403, 406, 409, 420, 468 and 471 read with Section 120-B IPC against six persons and others.

(xi) Thus, the first crime (Crime No.122 of 2015) relates to siphoning off funds and misappropriation of funds associated with forging signatures of the *de facto* complainant relating to the accounts and amounts of the companies.

xii) Since Accused Nos.2 and 3 in Crime No.122 of 2015 have surrendered and filed regular bail applications, they were granted bails and, therefore, they withdrew the Crl.P. Nos.580 and 605 of 2017 with the permission of this Court and they were dismissed as withdrawn by the orders, dated 30.06.2017.

**Criminal Petition No.17168 of 2016:**

(xiii) The present F.I.R. No.50 of 2016 relates to Shanthan Kumar (A-1), his wife Smt. K. Jhansi Rani (A-2) and one K. Venugopal (A-3), brother-in-law of Shanthan Kumar (A-1) obtaining loans from the Life Insurance Corporation of India, conniving with the staff of the Corporation, Kukatpally Branch, to the tune of Rs.4,00,000/- by forging his signatures and getting that amount credited to the personal account of the *de facto* complainant and by forging his (*de facto* complainant) signatures withdrawing the amounts from his account, on account of which, he was served with a notice to repay the loan amount along with interest accrued on it.

(xiv) The *de facto* complainant alleges that thus, a total sum of Rs.23,00,000/- was obtained by accused No.1 by submitting false, fabricated and forged documents. Hence, he laid the complaint against Shanthan Kumar (A-1), Smt. K. Jhansi Rani (A-2) and K. Venugopal (A-3) and officials of LIC, Metlife India Insurance

Company and others which was received at 10-00 p.m. on 22.01.2016 and registered as FIR No.50 of 2016 for the offences punishable under Sections 406, 409, 420, 468 and 471 of IPC.

(xv) The petitioner viz., Shanthan Kumar, who is arraigned as accused No.1, claims that he is not the Manager or office in-charge of the company of the *de facto* complainant as stated by him (*de facto* complainant), but he was only a part time assistant managing the affairs of the *de facto* complainant's office at Hyderabad, only acting on a General Power of Attorney executed by the *de facto* complainant in the year 2008 and there was no dishonest intention and no connection whatsoever with the alleged offences.

(xvi) According to him, the allegation of diversion of funds by him through the bank transactions is false and baseless and, in fact, they have been done only on the instructions of the *de facto* complainant to his School under the name and style of Cambridge at Barkatpura, Hyderabad, and the same was done to adjust funds which was delayed by the *de facto* complainant for payment of salaries and so, he (A-1) has to pay from his pocket/school accounts.

(xvii) Concerning the allegations in the complaint, he states that he has not committed any forgery nor misused money coming from the LIC or LIC MetLife and there is no documentary evidence to substantiate the claim of the *de facto* complainant and he had not committed any forgery or misused any money coming from the *de* *facto* complainant's insurance policies from LIC and MetLife. He would also state that the *de facto* complainant, who came from USA in 2013 had verified all the accounts of the company and his personal properties and after thorough verification, he had issued a communication by way of Minutes of the Board Meeting stating that he has performed to the satisfaction of the Board and he will continue to do so. He states that almost after eighteen (18) months , the present complaint was filed alleging various offences against him and even the other complaint in FIR No.122 of 2015. He refers to Criminal Petition No.5819 of 2015 filed by him and this Court allowing the criminal petition quashing all the charges except the charge under Section 409 IPC for which an enquiry is pending before the Central Crime Station, Hyderabad. He also avers that the Hon'ble Supreme Court did not stay the final order of this Court in Criminal Petition Nos.5819 and 6949 of 2015. He claims that he has not committed any forgery or misused any amount coming from LIC and MetLife and both the amounts were deposited to the account of the *de facto* complainant only and only with the intention to take revenge, the *de facto* complainant with the help of police has lodged FIR No.50 of 2016 with the Saifabad Police Station, Hyderabad.

(xviii) He states, the fact that the complaint given against him by the *de facto* complainant to the State Human Rights Commission (SHRC) falsely alleging that he was arrested by Saifabad Police Station and the same news was carried by a regional daily also, is one sided and according to him, he was actually kidnapped from his house and was later found on telephonic information given by the Sub Inspector of Saifabad Police Station, and on a complaint in detail, to the said effect was given at Kachiguda Police Station and FIR No.225 of 2016 was registered.

(xix) He states that this Court by way of quashing FIR under Section 482 of the Code, pleased to allow in respect of accused Nos.2 and 3. He claims that he had been cooperating with the investigating agency and it is almost one year since the FIR had been filed and now in any way his arrest will not be of any help. He is a law abiding citizen, not involved in the present case and will be humiliated and harassed by the police, if he is arrested. He claims that he is Head Master of a School in Hyderabad and permanent resident of Hyderabad and is ready to furnish security to be imposed by this Court and, therefore, requests to grant anticipatory bail.

**<u>Criminal Petition No.17169 of 2016</u>:**

(xx) The present case relates to selling the house standing in the name of the daughter, M. Lalitha Vani of the *de facto* complainant viz., P. Durga Devi, bearing House No.5-9-544, Plot No.44, in Survey No.131 Part and 134 Part, admeasuring 267 square yards situated at Tulasi Gardens, Yapral Village, Ranga Reddy District, by forging her signature and finger prints, fabricating false documents and transferring the said property to the accountant of MSSIPL, Mopal

Nagaraju by Shanthan Kumar (A-1). The allegations relate to that extent and which was detected in the second week of July, 2015, noticing that Shanthan Kumar released her daughter's house documents from M/s. LIC Housing Finance in the year 2012, without her knowledge by forging her signatures and obtained loan by depositing the house title deed in Union Bank of India, Ramanthapur Branch, Hyderabad, in the name of M. Nagaraj and, thereby, cheated his daughter. Of course, the said complaint was filed by Pasumarthy Durga Devi, who is mother of Lalitha Devi and also her General Power of Attorney Holder. The complaint was received at 10-45 p.m. on 23.08.2015 and registered as FIR No.404 of 2016 for the offences punishable under Sections 419, 420, 468 and 471 read with Section 120-B IPC.

(xxi) The petitioner viz., Kotha Shanthan Kumar, is arraigned as accused No.1. He states that Plot No.44 in Survey No.131 part and 134 part at Tulasi Gardens is owned by the director of the company for which the petitioner had General Power of Attorney to administer matters of M. Sastry. He states that property owners, M. Sastry and his wife, M. Lalitha Vani had given a Special Power of Attorney to sell their property at Tulasi Gardens and deposit the same in his bank account and the buyer of the property, Mr. Nagaraju is also a good friend of Mr. Sastry and his brother-in-law, P. Venu Madhav, the *de facto* complainant, who was owner of the property, and was appointed as auditor of MSSIPL. He expresses surprise that he had kept the documents in Union Bank of India, Ramanthapur Branch, in the name of Mr. Nagaraju and except mere allegation, there is no practical possibility of doing the same. He expresses that the claim of the *de facto* complainant that she is Power of Attorney Holder is also doubtful. According to him, FIR No.122 of 2015 of Central Crime Station, Hyderabad, was filed by Pasumathi Venumadhav in May, 2015, against them and notice under Section 41-A was given to them by CCS, Hyderabad, for furnishing documents to the above said property and this Court was pleased to stay arrest in the said case. According to him, the same issue while being investigated by the CCS, Hyderabad, another FIR in Jawaharnagar Police Station was registered by the *de facto* complainant on 23.08.2015 to get them arrested as stay of arrest was there in previous case. He further states that the police took him for questioning on 8th September, at 8.45 p.m. to Jawaharnagar Police Station and let him out at 12.40 a.m., the next day and himself and his wife were abused verbally and on his request of leaving his wife at that point of time in the night was also not considered and foul language was used to degrade the chastity of woman by the Sub Inspector of Police Mr. P. Anil Kumar. He states that he is a law abiding citizen and if he is arrested, he will be harassed and humiliated by the police and charge sheet was filed for the same allegation on 18.08.2016 by the CCS, Hyderabad. He states that he is Head of the School in Hyderabad and permanent resident of Hyderabad and he is ready to furnish security to be imposed by this

Court and it is his first bail application and no other bail petition is pending before any other Court.

(xxii) What has been stated in his counter in Criminal Petition No.17169 of 2016 substantially is, what he has averred in the complaint, but with various details referring to them in paragraph No.6 as reply to the contents of the bail petition and also referring to the ruling of the Hon'ble Supreme Court in **Maruti Nivrutti Navale v. State of Maharashtra**[1]. He would state that the documents filed by Shanthan Kumar (A-1) along with the petition cannot be appreciated in anticipatory bail petitions since the offences of forgery and cheating have been established through investigation and, therefore, the grounds urged by Shanthan Kumar (A-1) do not have any force for seeking anticipatory bail, and, therefore, seeks to dismiss the petition.

**Criminal Petition No.17171 of 2016:**

(xxiii) This case relates to selling of the house standing in the name of the *de facto* complainant, viz., P. Venumadhav, bearing House No.5-9-543, Plot No.43, in Survey No.1312 Part and 134 Part, admeasuring 267 square yards situated at Tulasi Gardens, Yapral Village, Ranga Reddy District, by forging his signatures and the thumb impressions and transferring the same to Smt. K. Jhansi Rani (A-2) by K. Shanthan Kumar (A-1). Besides alleging the same, it is also alleged that Shanthan Kumar released his house documents also

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[1]. (2012) 9 SCC 235 + 2012 (8) SCALE 572

from M/s. LIC Housing Finance Limited in the year 2011 without his knowledge by forging his signatures and obtained loan by depositing the said title deeds in Karnataka Bank, Dilsukhnagar Branch, Hyderabad, in the name of his wife, Smt. K. Jhansi Rani (A-2). The same was detected by him in the second week of May, 2015, and on his complaint dated 23.08.2015, crime was registered in FIR No.403 of 2015 for the offences punishable under Sections 419, 420, 468 and 471 read with Section 120-B IPC against K. Shanthan Kumar (A-1), his wife, K. Jhansi Rani (A-2), Syed Gaziuddin (A-3), N. Kiran Kumar (A-4) and M/s. LIC Housing Finance Limited (A-5) and others.

(xxiv) The petitioner viz., Kotha Shanthan Kumar is arraigned as accused No.1. He states that the property, which is in question, belonged to the *de facto* complainant, and, Mr. Shastry, who is brother-in-law of the *de facto* complainant, P. Venumadhav, was also Additional Director of the company MSSIPL, was a Special Power of Attorney Holder for the property Plot No.43 in Survey No.131 part and 134 part, admeasuring 267 square yards at Tulasi Gardens, Yapral.

(xxv) He states that on a Special Power of Attorney, the property was bought by the petitioner from Mr. Sastry and he had taken a housing loan of Rs.60,00,000/- from Karnataka Bank of Dilsukhnagar Branch, Hyderabad, and from the same loan, an amount of Rs.12,45,184.05 paise was paid to LIC Finance Limited for release of property documents and the remaining amount of Rs.47,54,815.95 paise was paid to the *de facto* complainant directly through his Account No.331250010026270 in Karnataka Bank, Dilsukhnagar Branch, Hyderabad.

(xxvi) He expresses surprise that the *de facto* complainant has mentioned none of these details and that the amount of Rs.47,54,815.95 paise was credited in his bank account was not even verified by him for four years although, he (*de facto* complainant) was in India from the end of 2013 and had been visiting Indian in between.

(xxvii) According to him, registration of property through a Special Power of Attorney is not an illegal act. He claims that the property was registered by Mr. Sastry to them and not by him (A-1). He states that the *de facto* complainant was staying on rent from 2011 on an oral agreement and payment of rent has been stopped from April 2015 and a notice for eviction has been given in September, 2015.

(xxviii) He refers to FIR No.122 of 2015 lodged by the *de facto* complainant with CCS, Hyderabad and states that notice under Section 41-A was being issued to him and this Court granting stay of arrest in this case. He states that while the very same issue was being investigated by the CCS, Hyderabad, another FIR No.122 of 2015 was registered on 23.08.2015 to get them arrested and stay of arrest was there in the previous case. He refers to interrogation done by the police, Jawaharnagar Police Station, on September 8 at 8.45 p.m., till 12.40 a.m., the next day, and the police verbally abused him and his wife and using foul language to degrade the chastity of woman by the Sub Inspector and that the charge sheet filed for the same allegation by the CCS, Hyderabad.

(xxix) He refers to quashing of FIR by this Court allowing the petition partly in respect of accused Nos.2 and 3. He is not involved in the present crime and in case, he is arrested, he will be humiliated and harassed by the police and he is ready to furnish security to be imposed by this Court and this is his first bail application and no other application is pending before any other Court.

(xxx) Almost identical grounds have been urged in the counter filed by the *de facto* complainant as that of the averments made in Criminal Petition No.17169 of 2016 except to the extent that the properties are different. He also seeks to dismiss the petition for anticipatory bail filed by the petitioner viz., K. Shanthan Kumar (A-1), who is kingpin in all these crimes.

**Submissions:**

12. In Criminal Petition Nos.17168, 17169 and 17171 of 2016, the learned counsel would submit that this Court granted stay of arrest of the petitioner on 28.12.2016 and similar interim orders passed by this Court were continued in all these three petitions and, therefore, it cannot be said that the petitioner is not entitled to anticipatory bail.

His next submission is the very fact that this Court in quash petitions filed by the petitioner while quashing other offences, excepted the offence under Section 409 IPC alone and in fact the stand taken by the petitioner in these petitions that he never indulged in forging signatures of the *de facto* complainant, fabrication of accounts of the company and the documents relating to the insurance policies and the property of the *de facto* complainant P. Venumadhav and P. Durga Devi, GPA of the original owner, Smt. Lalitha Vani, and even the very fact that this Court quashed the FIR against Smt. K. Jhansi Rani, wife of the petitioner herein, K. Venugopal, accused No.3, though, he is related to the petitioner as brother-in-law, though, the Hon'ble Supreme Court, set aside the order, still, would indicate false implication of the petitioner and other accused. It is his submission that the learned XII Additional Chief Metropolitan Magistrate, has granted bail on 01.09.2016 and the same was affirmed by the Hon'ble Supreme Court in Crime No.122 of 2015 and, therefore, depriving the petitioner for the relief of grant of anticipatory bail is nothing but causing grave injustice to him, more particularly, basing on false allegations levelled by the *de facto* complainant.

13. Now, the aforesaid submissions require examination in the light of events that transpired earlier and the allegations levelled against the petitioner in the light of the principles laid down by the Hon'ble Supreme Court to be followed in either granting or refusing to grant anticipatory bail.

i) The ruling relied on by the learned counsel for respondent No.2 in **Jai Prakash Singh v. State of Bihar and another**[2], the Hon'ble Supreme Court held that for grant of anticipatory bail, it is mandatory on the part of the Court to ensure the compliance of pre-requisite conditions including the nature and gravity of the accusation and in paragraph No.7, the Hon'ble Supreme Court has extracted the pre-requisites contemplated by the provisions of Section 438 of the Code, thus:

> "8. The provisions of Section 438 Cr.P.C. lay down guidelines for considering the anticipatory bail application, which reads as under:
>
> "**438**. ***Direction for grant of bail to person apprehending arrest***.-
>
> (1) Where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail; and that court may, after taking into consideration, inter alia, the following factors, namely:-
>
> (i) The nature and gravity of the accusation;
>
> (ii) The antecedents of the applicant including the fact as to whether he 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; and
>
> (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail."

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2. (2012) 4 SCC 379

In view of the above, it is mandatory on the part of the court to ensure compliance with the prerequisite conditions for grant of anticipatory bail including the nature and gravity of the accusation."

ii) In **Sidharam Satlingappa Mhetre v. State of Maharashtra**[3] the Hon'ble Supreme Court, in the context of granting of an anticipatory bail, laid down certain factors and parameters to be considered in paragraph Nos.122 to 124 thus:

"122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

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;

[3] (2011) 1 SCC 694

> 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.
>
> 123. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.
>
> 124. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record."

iii) In **Gurbaksh Singh Sibba V. State of Punjab**[4], the Hon'ble Supreme Court held thus:

> "…..Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications for anticipatory bail will be as large as, at any rate, the adult populace. Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely."

iv) In **Maruti Nivrutti Navale's Case**[1], while holding in the fact-situation occurring therein that custodial interrogation is required, more particularly, to ascertain in respect of the documents which were

[4] (1980) 2 SCC 565

alleged to have been forged and fabricated, held in paragraph Nos.12 and 13 thus:

> "12. As observed above, all the three counsel appearing for the parties took us through MoUs, lease deed and other correspondence/communications with the Educational Authorities as well as the report of the Deputy Collector, Pune, to Senior Police Inspector, Bundgarden Police Station, Pune. It is also relevant to point out that all these materials were scrutinized/analyzed by the Additional Sessions Judge, Pune and the High Court while considering the application for anticipatory bail. It is true that the parties have also approached the Civil Court for various reliefs. At the same time, as pointed out by counsel for the State and the second Respondent-Complainant, considering the seriousness relating to corrections/additions/ alterations made in various documents, information furnished to the Educational Authorities which, according to them, are incorrect, we are of the view that in order to bring out all the material information and documents, custodial interrogation is required, more particularly, to ascertain in respect of the documents which were alleged to have been forged and fabricated. In the said documents and other materials which are in the possession of the Appellant and the allegation against him that he has made false representation before the Public Authority on the basis of those documents for obtaining necessary permission, as pointed out by the State, in order to secure possession of those documents, custodial interrogation is necessary. For this reason, the Additional Sessions Judge and the High Court rejected the claim for anticipatory bail.
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> 13. In addition to the same, it is stated by the Respondents that after the order of this Court dated

23.09.2011 granting interim protection, the Appellant has misused his liberty in creating hindrance to the investigation and continues to scuttle it and also intimidating and pressurizing the Complainant as well as the prosecution witnesses."

v) In a recent judgment in **Bhadresh Bipinbhai Sheth v. State of Gujarat and Others**[5], the Hon'ble Supreme Court, in the context of an offence punishable under Section 376 of IPC, referring to the earlier ruling in **Gurbaksh Singh Sibbia's Case**[4] and **Maneka Gandhi v. Union of India**[6], having clarified the position that the grant or non-grant of bail depends upon a variety of circumstances and the cumulative effect thereof enters into judicial verdict, and that any single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail, extracted paragraph No.31, wherein the Hon'ble Supreme Court in **Gurbaksh Singh Sibbia's Case**[4] discussed the inferences of the anticipatory bail thus:

"20. Though the Court observed that the principles which govern the grant of ordinary bail may not furnish an exact parallel to the right to anticipatory bail, still such principles have to be kept in mind, namely, the object of bail which is to secure the attendance of the accused at the trial, and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. The Court has also to consider whether there is any possibility of the accused tampering with evidence or influencing witnesses etc. Once these tests are satisfied, bail should be

[5] **(2016) 1 SCC 152**
[6] **(1978) 1 SCC 248**

granted to an under trial which is also important as viewed from another angle, namely, an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. Thus, grant or non-grant of bail depends upon a variety of circumstances and the cumulative effect thereof enters into judicial verdict. The Court stresses that any single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail. After clarifying this position, the Court discussed the inferences of anticipatory bail in the following manner:

> 31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, 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; and, equally, 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. The relevance of these considerations was pointed out in The State v. Captain Jagjit Singh [AIR 1962 SC 253 : (1962) 3 SCR 622 : (1962) 1 Cri.LJ 216], which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

21. It is pertinent to note that while interpreting the expression "may, if it thinks fit" occurring in Section 438(1) of the Code, the Court pointed out that it gives discretion to the Court to exercise the power in a particular case or not, and once such a discretion is there merely because the accused is charged with a serious offence may not by itself be the reason to refuse the grant of anticipatory bail if the circumstances are otherwise justified. At the same time, it is also the obligation of the applicant to make out a case for grant of anticipatory bail. But that would not mean that he has to make out a "special case". The Court also remarked that a wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use.

22. Another case to which we would like to refer is the judgment of a Division Bench of this Court in the case of Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors. [(2011) 1 SCC 694]. This case lays down an exhaustive commentary of Section 438 of the Code covering, in an erudite fashion, almost all the aspects and

in the process relies upon the aforesaid Constitution Bench judgment in Gurbaksh Singh's case. In the very first para, the Court highlighted the conflicting interests which are to be balanced while taking a decision as to whether bail is to be granted or not, as is clear from the following observations:

1. Leave granted. This appeal involves issues of great public importance pertaining to the importance of individual's personal liberty and the society's interest. Society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests, namely, on the one hand, the requirements of shielding society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand, absolute adherence to the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.

23. The principles which can be culled out, for the purposes of the instant case, can be stated as under:

(i) The complaint filed against the accused needs to be thoroughly examined, including the aspect whether the complainant has filed a false or frivolous complaint on earlier occasion. The court should also examine the fact whether there is any family dispute between the accused and the complainant and the complainant must be clearly told that if the complaint is found to be false or frivolous, then strict action will be taken against him in accordance with law. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.

(ii) The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases, the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.

(iii) It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

(iv) There is no justification for reading into Section 438 Code of Criminal Procedure the limitations mentioned in Section 437 Code of Criminal Procedure. The plentitude of Section 438 must be given its full play. There is no requirement that the accused must make out a "special case" for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by Section 438 Code of Criminal Procedure to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

(v) The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted by the court is misused. The anticipatory bail granted by the court should ordinarily be continued till the trial of the case.

(vi) It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant, on finding new material or circumstances at any point of time.

(vii) In pursuance of the order of the Court of Session or the High Court, once the accused is released on anticipatory bail by the trial court, then it would be unreasonable to compel the accused to surrender before the trial court and again apply for regular bail.

(viii) Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise.

Similarly, the discretion vested with the court Under Section 438 Code of Criminal Procedure should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

(ix) No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case.

(x) We shall also reproduce para 112 of the judgment wherein the Court delineated the following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:

(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) 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;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

> (g) 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 the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;
>
> (h) 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 free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;
>
> (i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
>
> (j) 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 in entitled to an order of bail."

14. Turning to the main allegations in Criminal Petition No.17168 of 2016 are the petitioner herein along with his wife and brother-in-law criminally conspired and connived with the officials of the Life Insurance Corporation of India, Kukatpally Branch, and by forging the signature of the *de facto* complainant filed loan papers and the officials of the LIC, Kukatpally Branch without verifying the signatures of the *facto* complainant sanctioned the loan of Rs.4.00 lakhs without knowledge of the *de facto* complainant. The petitioner

herein received the cheque from LIC of India, credited the same in the personal account of the *de facto* complainant bearing A/c No.3312500300000801 of Karnataka Bank, Dilsukhnagar Branch, Hyderabad, and in furtherance of his evil design, again forged the signatures of the *de facto* complainant, withdrew the said amount from the *de facto* complainant's account, which resulted in service of notices on the *de facto* complainant demanding to repay the loan amount along with interest accrued thereon. This is one of the allegations in the said complaint.

i) The second allegation is that the petitioner herein along with his wife and brother-in-law hatched up another plan and withdrew the *de facto* complainant's money to the tune of Rs.23.00 lakhs from Metlife India Insurance Company Limited, Somajiguda Branch, Hyderabad, by submitting fabricated and forged documents. In the month of May, 2015, when the *de facto* complainant came to India to oversee the Company affairs, the petitioner herein did not properly respond having got suspicion when he verified, he came to know that the Company's funds were diverted and they were in less and, thus, that complaint therefor was also lodged, besides the complaint herein and two complaints in other two petitions.

15. Likewise, the main allegations in Criminal Petition No.17169 of 2016, the *de facto* complainant while verifying the business accounts, having suspected the behavior of the petitioner, it was noticed that her daughter's house was sold by the petitioner in the

year 2012 to one Mopal Nagaraju (who was Accountant in her company) without her (*de facto* complainant) daughter's consent or knowledge bearing No.5-9-544, Plot No.44, admeasuring 267 square yards, situated at Tulasi Gardens, Yapral village, Ranga Reddy District, and she procured certified copy of the sale deed bearing document No.6062/2012 and found that the petitioner forged her daughter's signatures and fingerprints and fabricated false document and got transferred the said property to the Accountant, M. Nagaraju, and she has also noticed that the petitioner released her daughter's house documents from M/s. LIC Housing Finance in the year 2012 without her knowledge by forging her signatures and obtained loan by depositing title deeds in Union Bank of India, Ramanthapur Branch, Hyderabad, in the name of the said M. Nagaraju and, thus, cheated her daughter. This complaint was lodged by the mother of M, Lalitha Vani, by name, Pasumarthy Durga Devi.

16. The main allegations in Criminal Petition No.17171 of 2016 are that the petitioner herein sold away the house of the *de facto* complainant in the year 2011 to his wife, K. Jhansi Rani without his consent and knowledge bearing No.5-9-543, Plot No.43 in an extent of 267 square yards, situated at Tulasi Gardens, Yapral Village, Ranga Reddy District, under a registered sale deed bearing No.1411 of 2011 and having obtained certified copy, when he verified, he noticed that the petitioner forged his signatures and fingerprints and fabricated false documents and got transferred the said property to his wife,

K. Jhansi Rani. On his further verification, he found that the petitioner used 2004 stamp papers in execution of the said sale deed and that the petitioner is habituated in engaging one N. Kiran Kumar to purchase stamp papers in his name and in the name of his family members and using the said stamp papers for illegal transactions and, thus, played fraud on him. He also noticed that the petitioner released his house documents from M/s. LIC Housing Finance Limited in the year 2011 without his knowledge by forging his signatures and obtained loan by depositing the same title deeds in Karnataka Bank, Dilsukhnagar Branch in the name of his wife, K. Jhansi Rani and during the said transaction, he was not in India and even on the date of its execution, he was not in India.

17. A perusal of the allegations in all these complaints even without probing into further would clearly make out a strong *prima facie* case in each of these complaints in the direction of commission of the offences alleged against the petitioner.

18. In the first case (Criminal Petition No.17168 of 2016), the very fact that the petitioner obtained loan of Rs.4.00 lakhs though, the *de facto* complainant was not in India from LIC of India, Kukatpally Branch, where the *de facto* complainant has taken LIC policy and, initially, got the amount deposited in the account of the *de facto* complainant and withdrew it from the account of the *de facto* complainant would give a definite indication that unless the signatures of the *de facto* complainant were forged and the withdrawal forms

were fabricated, the said amount could not have been withdrawn from the account of the *de facto* complainant. Likewise, withdrawal of Rs.23.00 lakhs from M/s. Metlife India Insurance Company Limited, Somajiguda Branch, Hyderabad, by the petitioner herein, which is referred to in the above.

19. In the second petition (Criminal Petition No.17169 of 2016), it is again clear from the allegations levelled therein that unless the signatures of M. Lalitha Vani and her thumb impressions are forged, fabricating the sale deed giving an impression that M. Lalitha Vani was executing the sale deed and getting the sale deed even registered, transferring the house property to Mr. M. Nagaraju, Accountant, cannot be just sidelined even at this stage. In fact, the title deed which was deposited with M/s. LIC Housing Finance by the said M. Lalitha Vani was got released by the petitioner without her knowledge which gives rise to an irresistible inference even at this stage that by forging her signatures got released the title deed and then again forging and fabricating the sale deed by personation for M. Lalitha Vani, got the sale deed registered and then again depositing through M. Nagaraju in Union Bank of India, Ramanthapur Branch in the name of M. Nagaraju, Accountant, who is also one of the accused persons, obtained loan, would all reflect the magnitude of the crime and involvement of the petitioner in the commission of the offences alleged against him and others.

20. Likewise, in the third crime (Criminal Petition No.17171 of 2016), getting title deed of the *de facto* complainant released and again forging the signatures of the *de facto* complainant and even thumb impressions and obtaining a sale deed as if it was executed by the *de facto* complainant in favour of the petitioner's wife, by originally getting it released from M/s. LIC Housing Finance in the year 2011 and depositing them in Karnataka Bank, Dilsukhnagar Branch, Hyderabad through his wife, who is accused No.2, for obtaining loan, that too, when the *de facto* complainant was in USA, would all disfavour the petitioner for grant of anticipatory bail. In fact, the passport entries are significantly important to indicate that the *de facto* complainant was not in India and, thus, when such an assertion was made in the complaint, and the allegations being very serious in all these three crimes, mere submission that in the year 2013, when the *de facto* complainant, Pasumarthy Venu Madhav came to India and having verified the accounts of both the Companies, he has given a clean chit to the petitioner is no ground to grant anticipatory bail. The reason being, even the resolution referred to by the petitioner relating to the year 2013, according to the *de facto* complainant is a fabricated document. Thus, these all require a thorough investigation in these three crimes as to the involvement of the petitioner and the conspiracy alleged.

21. It is no doubt true, during the course of arguments by the learned counsel for the petitioner, the learned counsel for the *de facto* complainant and the learned Additional Public Prosecutor, custodial

interrogation of the petitioner came to fore, but without making any comment on that aspect of the case as it is within the purview of the Investigating Officer whether the circumstances really warrant custodial interrogation or otherwise, in view of allegations showing the involvement of the petitioner in the crimes in which he sought anticipatory bail, is difficult to grant.

22. It is no doubt true, the learned counsel for the petitioner has also laid emphasis on the circumstance that the petitioner herein was granted bail in Crime No.122 of 2015, which was referred to in the above. But, certainly, it would not enure to the benefit of the petitioner to get anticipatory bail in the present three crimes for the principal reason that upon completion of investigation charge sheet was filed and that has been the reason the Hon'ble Supreme Court in Crl.M.P. 6931 of 2017 in Petition for Special Leave to Appeal (Crl.) No.2037 of 2016, dated 08.05.2017, observed thus:

> "Heard the learned Senior counsel appearing for the petitioner and the learned counsel appearing for the respondents.
>
> Since charge-sheet has already been filed in the matter, no order need be passed on the Criminal Miscellaneous Petition.
>
> Accordingly, the Criminal Miscellaneous Petition stands dismissed.
>
> However, liberty is granted to the learned counsel appearing for the State to take appropriate steps in the matter in accordance with law"

23. It is also no doubt true, the allegations in these three crimes constitute part and parcel of allegations levelled in Crime No.122 of 2015, but the main allegations therein relate to siphoning the amounts of both the Companies and appropriating the amounts for personal gain by fabricating the relevant accounts and other documents.

24. Thus, viewed from any angle and applying the guidelines laid down by the Hon'ble Supreme Court in **Gurbaksh Singh Sibbia**[4], the petitioner does not deserve for grant of anticipatory bail in any of these petitions.

All these Criminal Petitions are, accordingly, dismissed.

**A. SHANKAR NARAYANA, J**

**July 17, 2017.**

**PV/MGR**