THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL PETITION Nos.4336, 6167, 6173, 6316, 6341, 6343, 6364, 6391 & 6392 of 2017

COMMON ORDER:

1 Since in all these petitions the petitioner is one and the same and the relief sought for in all these petitions is also common, all these Criminal Petitions are disposed of by this common order.

2 The petitioner filed all the criminal petitions, under Section 438 Cr.P.C., seeking anticipatory bail in Crime No.378 of 2014 on the file of the Station House Officer, III Town Police Station, S.P.S.R. Nellore District (Crl.P.No.4336 of 2017), Crime No.31 of 2015 on the file of the Station House Officer, Chinachowk Police Station, Kadapa District (Crl.P.No.6167 of 2017), Crime No.3 of 2015 on the file of the Station House Officer, Pedapadu Police Station, West Godavari District (Crl.P.No.6173 of 2017), Crime No.4 of 2015 on the file of the Station House Officer, Ongole I Town Police Station, Prakasam District (Crl.P.No.6316 of 2017), Crime No.9 of 2015 on the file of the Station House Officer, Ongole I Town Police Station, Prakasam District (Crl.P.No.6391 of 2017), Crime No.3 of 2015 on the file of the Station House Officer, Cumbum Police Station, Prakasam District (Crl.P.No.6364 of 2017), Crime No.189 of 2015 on the file of the Station House Officer, Kurnool II Town Police Station, Kurnool, (Crl.P.No.6343 of 2017), Crime No.97 of 2015 on the file of the Station House Officer, Kandukuru Police Station, Prakasam District (Crl.P.No.6341 of 2017) and Crime No.7 of 2015 on the file of the Station House Officer, CID Police Station, Hyderabad (Crl.P.No.6392 of 2017), registered for the offences punishable under Sections 120-B, 406, 420, 506, 509 of IPC, Section 5 of A.P. Protection of Depositors & Financial

Establishments Act, 1999 (APPDFE Act), Section 45 of RBI Act, and Sections 4, 5 r/w 2 (c), Section 3 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

3 The learned counsel for the petitioner strenuously submitted that though the name of the petitioner is shown as a nominated Director, in fact, he is only an employee of the company, therefore, he is not vicariously liable for the wrongful acts, if any, being done by the company, which is a juristic personality. He further submitted that the Agri Gold company is not a financial establishment as defined under Section 2 (c) of the APPDFE Act, therefore, registration of offence under Section 5 of APPDFE Act is not sustainable in law. He further submitted that even if the allegations made in the complaint are ex facie taken to be true and correct, the money alleged to have been invested by the subscribers falls outside the purview of 'deposit' as defined under sub-section (b) of Section 2 of the APPDFE Act. He further submitted that the petitioner has been suffering with ailments, therefore, this is a fit case to grant pre arrest bail to the petitioner. He further submitted that even if the allegations made in the complaint are taken to be true and correct, no prima facie case is made out against the petitioner, that itself legally enables the petitioner to seek pre arrest bail.

4 *Per contra*, the learned Public Prosecutors for the State of Telangana and the State of Andhra Pradesh in one voice submitted that the petitioner has been actively participating in the day to day affairs of the company from the inception of the Agri Gold Farm Estate India Private Limited, Agri Gold Constructions Private

Limited, Dreamland Ventures Private limited in one capacity or the other. They further submitted that the above referred three companies collected an amount of Rs.25,000/- from each subscriber promising that they will pay double the amount after expiry of six years or in the alternative allot a plot at the option of the subscriber. They further submitted that the Agri Gold companies collected huge amounts from credulous persons and failed to repay the amounts within the stipulated time or allot the plots. They further submitted that the petitioner has been working as nominated Director and Vice Chairman of Agri Gold Farm Estate India Private Limited, that itself indicates the role played by the petitioner in the commission of the offence. They further submitted that the petitioner along with others created 159 companies and diverted funds to 13 sister companies wherein the petitioner is one of the Directors. They further submitted that the petitioner has not produced any document much less recent medical record to prove his health condition and the allegations made in the complaints prima facie reveal the role played by the petitioner in commission of the offences and hence the petitioner is not entitled to the relief of pre arrest bail.

5 To substantiate the arguments, the learned counsel for the petitioner has drawn the attention of this Court to the following decisions:

(1) **Shri Gurbaksh Singh Sibbia vs. State of Punjab**[1] wherein the Hon'ble apex Court held at Para No.31 as follows:

> 31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the

[1] (1980) 2 SCC 565

> 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; told, 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*, [1962] 3 SCR 622 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.

(2) **Bharat Chaudhary vs. State of Bihar**[2] wherein the Hon'ble apex Court held at Para No.7 as follows:

> 7. "From the perusal of this part of Section, 438 of the Crl. P.C., we find no restriction in regard to exercise of this power in a suitable case either by the Court of Sessions, High Court or this Court even when cognizance is taken or charge sheet is filed. The object of Section 438 is to prevent undue harassment of the accused persons by pre-trial arrest and detention. The fact, that a Court has either taken cognizance of the complaint or the investigating agency has filed a charge sheet, would not by itself, in our opinion, prevent the concerned courts from granting anticipatory bail in appropriate cases. The gravity of the offence is an important factor to be taken into consideration while granting such anticipatory bail so also the need for custodial interrogation, but these are only factors that must be borne in mind by the concerned courts while entertaining a petition for grant of anticipatory bail and the fact of taking cognizance or filing of charge sheet cannot by themselves be construed as a prohibition against the grant of anticipatory bail........"

(3) **Savitri Agarwal vs. State of Maharashtra**[3] wherein the Hon'ble apex Court held at Para Nos.25 and 26 as follows:

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[2] (2003) 8 SCC 77
[3] (2009) 8 SCC 325

25. At this juncture, it would be appropriate to note that the view expressed by this Court in Adri Dharan Das v. State of W.B., (2005) 4 SCC 303, to the effect that while dealing with an application under Section 438 of the Code, the Court cannot pass an interim order restraining arrest as it will amount to interference in the investigation, does not appear to be in consonance with the opinion of the Constitution Bench in Sibbia's case (supra).

26. Similarly, the observation that power under Section 438 is to be exercised only in exceptional cases seems to be based on the decision in Balchand's case (supra), which has not been fully approved by the Constitution Bench. On this aspect, the Constitution Bench stated thus: (Sibbia Case SCC p.586, para 25)

> "*25. The observations made in Balchand Jain regarding the nature of the power conferred by Section 438 and regarding the question whether the conditions mentioned in Section 437 should be read into Section 438 cannot therefore be treated as concluding the points which arise directly for our consideration. We agree, with respect, that the power conferred by Section 438 is of an extraordinary character in the sense indicated above, namely, that it is not ordinarily resorted to like the power conferred by Sections 437 and 439. We also agree that the power to grant anticipatory bail should be exercised with due care and circumspection but beyond that, it is not possible to agree with the observations made in Balchand Jain in an altogether different context on an altogether different point.*"

(4) **Siddharam Satlingappa Mhetre vs. State of Maharashtra**[4] wherein the Hon'ble apex Court held at Para No.112 as follows:

112. 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

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[4] (2011) 1 SCC 694 = AIR 2011 SC 312

> 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;
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> 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;
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> ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
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> 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.

(5) **Bhadresh Bipinbhai Sheth vs. State of Gujarat**[5] wherein the Hon'ble apex Court reiterated the guidelines laid down in **Siddharam Satlingappa Mhetre** case (4 supra).

(6) **Ravankol Yadagiri Goud vs. State of Telangana**[6] wherein this Court held that "*in the absence of any specific allegation against each petitioner, even in the suicide note, it is difficult to find prima facie case against these petitioners that they drove Lakshmipathi to commit suicide by their acts or commission or by direct instigation.*"

(7) **S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla**[7] wherein the Hon'ble apex Court held at Para No.18 as follows:

> 18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a Company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made

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[5] (2016) 1 SCC 152
[6] 2017 (1) ALD (Crl.) 787
[7] (2005) 8 SCC 89

liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That respondent tails within parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141 he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.

(8) **Sunil Bharti Mittal vs. Central Bureau of Investigation**[8] wherein the Hon'ble apex Court held at para Nos.42 to 44 as follows:

42. No doubt, a corporate entity is an artificial person which acts through its officers, directors, managing director, chairman etc. If such a company commits an offence involving *mens rea*, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hada v Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661, the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction namely where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.

(9) **Sureshchandra Ramanlal vs. State of Gujarat**[9] wherein the Hon'ble apex Court held at Para No.6 as follows:

[8] (2015) 4 SCC 609
[9] (2008) 7 SCC 591

> 6. What is relevant to notice is that as per the said report the appellant is severely obese weighing 120 kgs. and he is not able to do his activities of daily living without at least two assistants. It is also mentioned in the report that he is absolutely bedridden due to severe osteoarthritis below knee, Lumber Canal Stenosis, Osteoporosis, diabetic and obesity and that he needs special toilet and bathroom. It is highlighted in the said report that he has danger of having bedsores, pressure sores without specialized treatment and if left untreated, the diseases may lead to his death. According to Dr. Gautam, prognosis is not going to improve further due to increasing age and servile changes.

6 In reply to the above, the learned Public Prosecutors for both the States have relied on the following decisions:

(10) **State of Karnataka vs. Selvi J. Jayalalitha**[10] wherein the Hon'ble apex Court held at Para No.218 as follows:

> 218. In State of Rajasthan and Ors. v. Gotan Lime Stone Khanji Udyog Private Limited and Anr. (2016) 4 SCC 469, it has propounded that the principle of lifting the corporate veil was well recognized not only to unravel tax evasion but also where protection of public interest was of paramount importance and the corporate entity was only an attempt to evade legal obligations and lifting of veil is necessary to prevent a device to avoid any welfare legislation. It was acknowledged that it was difficult to enumerate the classes of cases where lifting the veil is permissible but it was stressed upon that the same must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc. It was recorded that the doctrine of lifting the veil could be invoked, if the public interest so required or if there was violation of law by using the device of a corporate entity. In the reported case, the corporate entity had been used to conceal the real transaction of transfer of mining lease to a third party for consideration without the statutory consent by terming it as two separate transactions. The real transaction was the sale of mining lease which was legally impermissible. That the doctrine of lifting the veil has to be applied to give effect to law which is sought to be circumvented, is thus the judicial precept.

(11) In **Soma Suresh Kumar vs. Government of Andhra Pradesh**[11], the Hon'ble apex Court while upholding the constitutional validity of the Act held at Para Nos.8 and 9 as follows:

> 8. We notice that the State of Andhra Pradesh was contemplating a legislation similar to one enacted in the State of Tamil Nadu, for a long time. On many occasions, the State's attention was drawn, to the large scale diversion of money by many financial institutions in the State, by cheating the depositors of their hard-earned savings, misappropriating the same and then later vanishing from the scene. Several cases were

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[10] (2017) 6 SCC 263 = 2017 SCC OnLine SC 134
[11] (2013) 10 SCC 677

booked against the persons responsible for the same, but the presence of a comprehensive legislation to curb such unfair practice was lacking. This was the reason for the State of Andhra Pradesh to enact the Andhra Act.

9. The Statement of Objects and Reasons of the Act read as under:

> "*Instances have come to the notice of the State Government, wherein a number of unscrupulous financial establishments in the State are cheating innocent, gullible depositors by offering very attractive rates of interest, collecting huge deposits and then vanishing suddenly. The depositors are being cheated and are put to grave hardship by losing their hard earned savings. To curb these malpractices, the State Government has decided to bring a law to protect the interests of depositors of the financial establishment in the State and for matters connected therewith or incidental thereto. The above issue was also discussed in a conference of the State Chief Ministers and Finance Ministers presided by the Union Finance Minister on 14.9.1998 at Vigyan Bhavan, New Delhi. The Union Finance Minister also desired that States should take expeditious steps for enacting legislation on the lines of "Tamil Nadu Protection of Depositors (in Financial Establishments) Act, 1997, "to restore the confidence amongst the innocent depositors and also to serve as a deterrent against malpractices by such establishments during the course of acceptance of public deposits.*
>
> *To achieve the above object, the Government has decided to make separate law by undertaking legislation.*"

(12) **Pothani Chandrasekhar v. State of A.P**[12] wherein this Court held at para Nos.12 and 13 as follows:

> 12. It is no doubt true that textually the offence of cheating requires fraudulent dishonest intention to cheat on the part of the accused at the very beginning when the deceived person delivered property or valuable security. If the same were interpreted textually, the same would result in a situation where no person can be accused of cheating and can be made punishable under Section 420 I.P.C. It may not require a big logical argument to conclude that, a person, however, gullible the deceived may be, would not reveal his true intention before making the deceived person to part with valuable property. It is always done by some inducement of making false promises or making to believe the other person to deliver the property in the existence of certain facts, which are non-existent. For instance, no depositor would deposit money in any Non-Banking Financial Company, if such company were to announce that the chance of returning the deposit made by a person with interest would be remote or would be doubtful. Therefore, every financial company would certainly induce persons to part with the money by promising attractive rates of interest as well as attractive benefits by way of gifts. Therefore, the subsequent conduct of a person receiving the property should furnish some indication of his original intention. Indeed, as observed by the Supreme Court in the above case, the

[12] (2005) SCC OnLine A.P 271 = 2005 (1) ALD (Crl.) 833 (AP)

> intention of the accused at the time of inducement can always be inferred by subsequent conduct associated with other factors.
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> 13. In this case, it is not the case of the petitioner that he has not received the deposits from large number of persons that he has paid/returned the deposits with interest to substantial number of persons but failed to return the deposits only to few people, who lodged complaints. The petitioner and his company accepted the deposits by promising thrice the amount after five years and did not return the deposits to any person, who has deposited the amount. This is a clear indication of fraudulent dishonest intention on the part of the petitioner. This Court, however, hastens to add that these are the observations in the context of considering rival submissions and are not intended to be binding on the Criminal Court where the facts are to be marshalled based on evidence that may be let in by the prosecution.

7 Let me consider the facts of the case in the light of the above legal principle and the submissions made by the learned counsel for both parties.

8 The petitioner is not shown as an accused in Crime Nos.97 of 2015 on the file of the Station House Officer, Kandukuru Police station, Cr.No.3 of 2015 on the file of Station House Officer, Cumbum Police Station of Prakasam District and Cr.No.7 of 2015 on the file of Station House Officer, CID Police Station, Hyderabad corresponding to Crl.P.No.6341, 6364 and 6392 of 2017 respectively.

9 The case of the prosecution is that the petitioner along with others initially established three companies viz., Agri Gold Farm Estate India Private Limited, Agri Gold Constructions Private Limited, Dreamland Ventures Private limited under the Companies Act, 1956 having its registered office at Agri Gold Tower, bearing D.No.6-3-668/10/4, Durganagar Colony, Panjagutta, Hyderabad (hereinafter referred as 'Agri Gold Group of Companies'). These three companies have collected huge money in the name of deposits from innumerable subscribers assuring that the company

will repay double the amount after expiry of six years from the date of deposits, or in the alternative allot plots to them. The Agri Gold Group of Companies have formulated schemes in such a manner alluring thereby induced the public to invest money by way of deposits and other means and failed to repay the amount, thereby cheated the general public. It is the further case of the prosecution that the petitioner was in-charge of Srikakulam, Vizianagaram and Visakhapatnam districts on behalf of the Agri Gold Group of Companies. The gist of the prosecution version is that on behalf of the Agri Gold Group of companies, the petitioner along with other accused collected huge money from different subscribers and diverted the funds to the sister companies, thereby cheated the public.

10 The first and foremost contention of the learned counsel for the petitioner is that the name of the petitioner is not shown in the FIR, that itself indicates that the prosecution falsely roped the petitioner subsequently with an ulterior motive to harass him.

11 As rightly pointed out by the learned counsel for the petitioner, initially the complaint was lodged against Agri Gold company only. A perusal of the C.D file clearly reveals that the petitioner was nominated as a Director of the Agri Gold Farm Estates India Private Limited in the year 2007 and renewed his Directorship on 01.01.2011. Prior to appointing the petitioner as Nominated Director, he was associated with the Agri Gold Group of Companies in different capacities. The very purpose of lodging the complaint is to set the criminal law into motion. It is needless to say that FIR is not an encyclopedia to include all minute details. It

is the statutory duty of the investigating agency to investigate into the matter in order to find out who are the perpetrators of the crime either directly or indirectly or remotely. This Court is very much conscious that while deciding bail applications, more particularly, anticipatory bail applications, it should not express any opinion, touching the merits of the main case. At this stage, the Court has to take into consideration the gravity of the offence alleged to have been committed by the accused and whether there is any prima facie material to establish the role alleged to have been played by the petitioner in the commission of the alleged offence. I have carefully perused the material furnished by the petitioner as well as the C.D. file produced by the learned Additional Public Prosecutors of both the States. A perusal of the record *prima facie* reveals the close association of the petitioner with Agri Gold Group of Companies. Merely because the name of the petitioner is not shown in the FIR, that itself does not automatically entitles him to seek the relief of anticipatory bail without looking into the other relevant aspects. Hence this Court is unable to accede to the contention of the learned counsel for the petitioner that since the name of the petitioner is not shown in the FIR he is entitled for pre arrest bail.

12 The second predominant contention of the learned counsel for the petitioner is that the Agri Gold Group of companies will not fall within the definition of Financial Establishment; therefore, registration of case under Section 5 of the APPDFE Act is not sustainable either on facts or in law. He further submitted that for

the reasons best known, the investigating agency included Section 5 of the APPDFE Act.

13 To substantiate the rival contentions, the learned counsel for the petitioner as well as the learned Public Prosecutors have drawn the attention of this Court to Sub-Sections (b) and (c) of Section 2 of the APPDFE Act, which read as under:

> **2 (b)** *"Deposit"* means the deposit of a sum of money either in lump sum or instalments made with a financial establishment for a fixed period, for interest or return in any kind;
>
> **(c)** *"Financial Establishment"* means any person or group of individuals accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined under clause (c) of Section 5 of the Banking Regulation Act, 1949, (Central Act 10 of 1949).

14 A perusal of the above clause, at a glance, clearly demonstrates, if any person or group of persons accept deposits in any name or shape, prima facie, will fall within the definition of '*Financial Establishment*'. Undoubtedly, the Agri Gold Group of companies referred above will not fall within the ambit of exception as contemplated under the second part of Section 2 (c) of the Act.

15 Let me consider the facts of the case in the light of Section 2 (c) of the APPDFE Act. A careful perusal of the note prepared by the investigating agency on Agri Gold Group of Companies prima facie reveals that they collected an amount of Rs.6,380.42 crores from 32,02,628 depositors promising to pay the same with higher rate of interest. A perusal of the C.D. file prima facie reveals that the companies have accepted deposits having agreed to pay

interest on it. A perusal of the record also reveals that the companies have assured to repay the deposit amount immediately after maturity period. The Agri Gold Group of companies, having agreed to repay double the amount or in lieu to register plot in the name of the subscriber, failed to fulfill the promise made and the legal obligation cast on them, for the reasons best known to them. A perusal of the record *prima facie* reveals that the financial activities carried on by the Agri Gold Group of companies will fall within the purview of Sub-sections (b) and (c) of Section 2 of the APPDFE Act. Having regard to the facts and circumstances of the case and the principle enunciated in **Soma Suresh Kumar** case (11 supra), this Court is unable to accede to the contention of the learned counsel for the petitioner that registration of the case under section 5 of the APPDFE Act is unsustainable either on facts or in law.

16 The learned counsel for the petitioner strenuously submitted that the alleged acts of the petitioner will not fall within the scope of Sections 420, 405 and 120-B of IPC. He further submitted that the prosecution, having failed to establish the *mens rea* on the part of the petitioner, falsely implicated him in the case with the sole object of depriving his personal liberty, which is contrary to the letter and spirit of Article 21 of the Constitution of India.

17 The Agri Gold Farm Estates India Private Limited company was incorporated under the Companies Act in the year 1995-96. The petitioner has been associated with that company in different capacities. For the first time, in the year 2007 he was nominated as Director with effect from 23.02.2007 to 03.01.2011. It is not in

dispute that the petitioner was appointed as whole time Director. Again the petitioner's tenure was renewed on 01.01.2011 for a further period of five years. In order to appreciate the submission of the learned counsel for the petitioner it is not out of place to extract the relevant portions of the agreement, which reads as under:

> "**Sri. M.Bhanoji Rao** has been working as "**Vice Chairman"** in M/s. Agri Gold Farm Estates India Private Limited of Agri Gold, who devotes his whole time in the management of the company business and renders expert service to the company with a successful track record and the Board of Directors, after critical review of Performance Appraisal, is pleased to renewal his appointment contract by revised for a further period of Five Years, with effect from 01.01.2011 on the following terms and conditions mutually agreed upon."

I. **COMMENCEMENT OF EMPLOYMENT:**

1. X x x x x x x

2. ……… However, your services can also be utilized by Agri Gold Group of Companies as and when required by deputation / transfer or otherwise.

ANNEXURE – A
ROLES & RESPONSIBILITIES

1. MANAGEMENT AND ADVISORY ROLL:

   X X X X X

2. EXECUTIVE ROLE:

   You are to play an active role of a top Executive in Operations and to act as bridge between top Management and operational staff for smooth, effective and trouble free operations of project.

RESPONSIBILITIES

The following are some illustrating example for your guidance:

- To assist the Board in framing policies as per developments in business from time to time.
- To assist the Board in planning and framing strategic objectives / policies / rules/ procedures.
- To represent the company in legal matters, after obtaining the approval from Chairman in every case so represented.

- To Co-ordinate with other Directors and core teams / committees, who are appointed or formed by the Chairman from time to time.
- To Monitor / Implement statutes connected with and incidental to the core business operations including company Law / corporate Governance and other Government Departments / Agencies.
- All other duties & responsibilities assigned by the Chairman from time to time.

18 A perusal of the above *prima facie* reveals the petitioner's indispensable role in the day-to-day affairs of the Agri Gold Group of companies.

19 The learned counsel for the petitioner vehemently submitted that the petitioner is not the Vice Chairman of M/s.Agri Gold Farm Estate India Private Limited. As referred supra, in the renewal agreement, it is categorically mentioned that the petitioner has been working as Vice Chairman of M/s.Agri Gold Farm Estate India Private Limited by devoting his whole time in the company activities. If really the petitioner never worked as Vice Chairman of M/s.Agri Gold Farm Estate India Private Limited, what prompted the Chairman to mention the same? It is apposite to extract hereunder the last but not the least part of the agreement.

DECLARATION

I have read and understood all the clauses of this agreement and I promise to abide to all the contents stated in the above clauses.

Sd/-x x x
M. Bhanoji Rao

20 The above declaration clearly indicates that as per the agreement, the petitioner has been working as Vice Chairman. If the petitioner never worked as Vice Chairman what prompted him to subscribe his signature on the agreement without any protest.

On the other hand the declaration negates the contention of the petitioner. For one reason or the other, the petitioner did not disclose in his bail application that he has been working as Vice Chairman from the year 2007 onwards.

21 The learned Public Prosecutors submitted that the management of the Agri Gold Group of companies has floated 159 other companies for obvious reasons. They further submitted that the management of the Agri Gold Group of companies has diverted huge funds from the Agri Gold Group of companies to other sister companies without following the procedure with an ulterior motive to cheat the depositors.

22 I have carefully perused all the bail petitions. Nowhere it is mentioned that the petitioner is a Director in 13 sister companies of the Agri Gold Group of Companies. The learned Public Prosecutors produced the certificate issued by the Registrar of Companies. A perusal of the same reveals that the petitioner is a Director in 13 companies which are mentioned below:

1. Pendyala Timber Estates Private Limited.
2. Gold Pride Timber And Agro Estates Private Limited.
3. Amrutha Agro Estates Private Limited.
4. Devi Prabha Timber Estates Private Limited.
5. Sri Lalitha Avenue Private Limited.
6. Avvas Infra Ventures India Private Limited.
7. Paresha Real Estates Private Limited.
8. Avvas Corporate Real Estates Private Limited.
9. Tejini Real Estates Private Limited.
10. Bhuvanesh Infra Ventures Private Limited.

11. Greenvalley Agro Projects (India) Private Limited.
12. Harithamohana Agro Projects Private Limited.
13. Brook Fields and Resorts Private Limited.

23 A perusal of the record *prima facie* reveals that the petitioner is not only a Director and Vice Chairman of Agri Gold Farm Estates India Private Limited, but also a Director in the above mentioned 13 sister companies. A perusal of the record further reveals that all the companies are under the control of the same management. However, this Court is very much conscious that the company incorporated under the Companies Act is and independent juristic personality. This Court is also very much conscious that one company cannot be made liable for the acts of the other company, even if both companies are under the effective control of the same management. However, at the same time, the Court shall not lose sight of the possibility and probability even remotely in incorporating those companies with an ulterior motive. If the answer is affirmative, then the principle of lifting of corporate veil can be pressed into service in order to protect the interest of the persons who are dealing with the company in any manner whatsoever. The underlying object of the lifting of corporate veil is to ascertain the subtle truth and the real activities of the company as well as the hidden agenda, if any, of the management of the company or whether such an agenda is contrary to the provisions of the Companies Act. A perusal of the record *prima facie* reveals that the Agri Gold Group of companies have diverted the funds to the tune of nearly Rs.600 crores to the sister companies. For the reasons best known to the petitioner, he did not disclose that he is

the Director of the above mentioned 13 companies under the control of same management.

24 The learned counsel for the petitioner submitted that the petitioner is not vicariously liable for the wrongful acts, if any, committed by the company. There is no much quarrel with the proposition of law submitted by the learned counsel for the petitioner. It is needless to say vicarious liability is an exception to criminal jurisprudence but not an absolute principle. To substantiate the contention, the learned counsel for the petitioner has drawn the attention of this Court to the ratio laid down in **S.M.S. Pharmaceuticals Ltd** (7 supra) and **Sunil Bharti Mittal** (8 supra) cases. Those two decisions deal with the liability of a Director of the company under Section 138 of N.I. Act. Establishment of ingredients of Section 141 of N.I. Act is *sine qua non* to convict the Director of the company under Section 138 of the N.I. Act. Accusation made against a person under Section 138 of N.I Act cannot be equated with the accusation made under Sections 406, 420 and 120-B of IPC. It is a settled principle of law that no two cases are identical in almost all aspects. Therefore, those two decisions are no way helpful to the petitioner. The Directors are the heart and sole of the company. It is needless to say that the various activities of the company are being carried on by the Directors in the best interest of the company as well as third parties dealing with the company. The Directors of the company act as bridge between the company on one side and the third parties on the other. The manner and mode of collecting unimaginable amount of money from the public in the form of

deposits and failure to repay the same *prima facie* indicates the intention of the petitioner. In **K. Sitaram vs. CFL Capital Financial Service Ltd**[13], the Hon'ble apex Court held at Para No.21 as follows:

> 21) With regard to the contention of learned senior counsel for the appellants herein that there can be no vicarious liability attributed to the Director, Deputy Director of a Company unless the Statute specifically creates so, no doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company that too when the criminal act is that of conspiracy. Thus, an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which an individual can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically invoking such a provision.

In view of the facts and circumstances of the case and also the principle enunciated in the case cited supra, *prima facie*, this Court is not agreeing with the submission made by the learned counsel for the petitioner.

25 The other ground urged by the learned counsel for the petitioner is that the Court has to take into consideration the health condition of the petitioner while deciding the petitions under Section 438 Cr.P.C.

26 The learned counsel for the petitioner submitted that the petitioner is not in a position even to attend the calls of nature without assistance of someone else as he sustained multiple fractures in a road accident.

27 A perusal of the record clearly reveals that the petitioner met with an accident in the year 1994 and obtained disability

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[13] JT 2017 (6) SC 52

certificate on 24.8.1994. If really the petitioner is unable to attend the calls of nature without the assistance of someone else from 1994 onwards, this Court is unable to understand how he was appointed as an employee of the Agri Gold Group of companies. It is a matter of common knowledge that no company will appoint a person with such disability as its employee. On the other hand, initially the petitioner was appointed as an employee, thereafter appointed as a nominated Director as well as Vice Chairman of the company. Moreover, the petitioner has not filed even a single scrap of paper to know his latest health condition. Simply because he met with an accident way back in the year 1994, that itself, is not sufficient ground to grant pre arrest bail to him. In **Sureshchandra Ramanlal** case (9 supra), the Hon'ble apex Court made an observation that the accused therein was almost on the death bed. The facts of the case on hand are distinguishable with the facts of the case cited supra. Therefore, I am unable to accede to the contention of the learned counsel for the petitioner that the petitioner is entitled for anticipatory bail on the ground of his health condition.

28 The learned Additional Public Prosecutors submitted that some of the Directors of Agri Gold Group of companies have filed W.P.Nos.29374 of 2016 and 10185, 11201, 11245, 12943 and 13005 of 2017 seeking to conduct common investigation in all the cases. A Division Bench of this Court dismissed those Writ Petitions with the following observations:

> 64. As we have pointed out earlier, in almost all the five decisions of the Supreme Court where finance companies and its directors were accused of collecting deposits and not repaying

them, the Supreme Court did not adopt the same view as adopted in T.T Antony. Though in V.K Sharma and P.K Sharma the Supreme Court granted a small reprieve, the Supreme Court did not grant the reliefs that the petitioners have sought in these writ petitions. It must be pointed out that a staggering amount of nearly Rupees seven thousand crores was admittedly due, when the first PIL was filed. The number of depositors to whom such a huge amount was due from Agri Gold group of companies and Akshaya Gold, was about 32 lakhs of people. These companies had branches in several places. The depositors, who invested money in various branches, have independent causes of action.

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.

66. On the question as to whether there could be a trial of hundreds of criminal complaints and as to how the accused could be subjected to so many trials, the answer is not far too difficult to seek. In so far as the States of Andhra Pradesh and Telangana are concerned, there is a special enactment known as The Telangana/ Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999. The Act contemplates the constitution of a Special Court under Section 6 (1). Under Section 6 (2), no Court including a Court constituted under the Insolvency Laws, other than a Special Court shall have jurisdiction in respect of any matter to which the provisions of the Act apply. Under sub-section (3) of Section 6, any pending case in any other Court to which the provisions of the Act apply, shall stand transferred to the Special Court. The Act has been given overriding effect upon the other laws, under Section 14, which states that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. In fact, under Section 13 (1), the Special Court constituted under this Act can take cognizance without the accused being committed to it for trial.

67. The only area, which may be a grey area, is that after the bifurcation of the State into two, there will be Special Courts in both the States of Telangana and Andhra Pradesh and both may have concurrent jurisdiction. But as and when an appropriate occasion arises, the High Court can interfere at that stage to transfer all cases to the Special Court in any one of the two States. The occasion for exercise of that power has not arisen so far.

68. Therefore, the petitioners are not entitled to any relief and the writ petitions are liable to be dismissed. However, for the purpose of facilitating the investigating agencies to get a clear and comprehensive picture of the range and width of the offences allegedly committed and to trace the trail of money, the State Governments may consider the constitution of a special wing in each of the two States and notifying them under Section 2 (s) of the Code of Criminal Procedure, 1973, so that all FIRs pending all over the two States could be transferred to a single agency and dealt with conveniently. With these observations, the writ petitions are dismissed.

29 The learned Public Prosecutors submitted that the State Governments attached the properties of the Agri Gold group of companies. They further submitted that a Division of this Court is supervising the sale of the properties of the above company. The petitioner herein filed Criminal Petition No.2930 of 2017 under Section 438 Cr.P.C in Cr.No.3 of 2015 on the file of Station House Officer, Pedapadu Police Station and had withdrawn the same on 18.04.2017.

30 The learned counsel for the petitioner submitted that the investigating agency has not followed the procedure as contemplated under Section 41 and 41 A of Cr.P.C and is taking hectic efforts to arrest the petitioner in one way or the other to cause inconvenience to him. On the other hand, the learned Public Prosecutors submitted that despite best efforts made by the investigating agency, they are unable to trace out the petitioner to serve the notice. They further submitted that having no other alternative the investigating agency affixed the Section 41-A notice on the doors of the house of the petitioner. A perusal of the record clearly reveals that the investigating agency has affixed Section 41-A Cr.P.C. notice on 14.4.2017 on the doors of the house of the petitioner Plot No.S.L.11/7 R, Sri Ram Properties, A.P.T. Section, near M.V.P. Law College, Madhurawada, Visakhapatnam. When the petitioner himself is not available in the address, where he has been ordinarily residing and carrying on his activities, the investigating agency has no other alternative except to affix the notice on the doors of the house of the petitioner as contemplated under Cr.P.C.

31 The manner and mode of collecting an amount of Rs.6,380.42 crores from 32,02,628 depositors and failing to pay the same within the stipulated time, as agreed by them, that itself, *prima facie* reveals the intention of the petitioner. The victims of the Agri Gold Group of companies are approximately 32.00 lakhs. As many as 1,19,770 applications have been received by the investigating agency from the victims of different areas in the States of Andhra Pradesh, Telangana and Karnataka. A perusal of the record reveals that the Agri Gold group of companies extended its business activities to the nook and corner of Andhra Pradesh and Telangana. The unimaginable amount collected by the Agri Gold Group of companies itself indicates the real impact of the inducement made by the management of the Agri Gold Group of companies on the public in general and the depositors in particular. The Court has to take into consideration the evil impact of the alleged offence on the society as a whole. The Court shall not close its eyes and ignore the factum of the silent sufferance and trauma being undergone by the helpless depositors, who belong to middle and below middle class families eventually. The orders passed by the Courts shall not create any impression in the minds of the general public that the persons, who have collected huge amount of money from gullible public under the guise of corporate laws, with an ulterior motive, can take shelter under Section 438 Cr.P.C. Even as per the principle laid down in the cases 1 to 6 cited supra, the Court has to exercise discretionary power conferred on it under Section 438 Cr.P.C., judiciously basing on sound principles of law. The very underlying

object of Section 438 Cr.P.C., is to strike a balance between the personal liberty of an individual and the investigational powers of the investigating agency. In this type of corporate offences, the investigating agency requires the presence of the accused in order to ascertain the modus operandi in the commission of the offence. The impact of white collar crimes is more dangerous and heinous than the other crimes. The impact and consequence of the corporate offence sometimes may ruin the lives of several families forever.

32 Taking into consideration the overall facts and circumstances of the case as well as the gravity of the offence alleged to have been committed by the petitioner, this Court is of the considered view that this is not a fit case to grant pre arrest bail to the petitioner. Hence all these petitions are liable to be dismissed.

33 In the result, all the Criminal Petitions are dismissed.

T. SUNIL CHOWDARY, J.

Date:18th August, 2017
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