HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.1424 of 2017

ORDER:

This Criminal Petition, under Section 438 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") is filed by the sole accused in Crime No.204 of 2016 of Chintalapudi Police Station, registered for the offences punishable under Sections 409 and 420 of the Indian Penal Code, 1860 (for short "IPC"), apprehending his arrest in connection with the above crime.

Petitioner-accused is an Assistant Manager in Andhra Bank, Chintalapudi, who allegedly misappropriated an amount of Rs.4,73,000/- from different accounts. Out of Rs.4,73,000/-, an amount of Rs.1,85,000/- was misappropriated by producing fake FDRs., obtaining loan thereon and Rs.2,03,000/- was misappropriated from gold loan account. The Branch Manager himself lodged a complaint with the Police on 01.09.2016, complaining misappropriation by the petitioner. An enquiry was ordered and the petitioner was placed under suspension. Two witnesses were examined during enquiry, i.e., Smt. Vemula Rani, the natural mother of the adopted daughter of the petitioner and also the Branch Manager of the bank.

Learned counsel for the petitioner would contend that no material was elicited in the examination of Smt. Vemula Rani and the Branch Manager of the bank and even according to the testimony of the Branch Manager, there is no possibility of gaining access to the internet in the system and the person having control over the system alone knows the password and it is not accessible to anyone and therefore the employee concerned is responsible.

But, a perusal of the material on record makes it clear that the first witness Smt.Vemula Rani is closely related to the petitioner having given her daughter in adoption and she is not expected to depose against the adopted father of her daughter, i.e. the petitioner herein. Therefore, her evidence at this stage requires no consideration. The material produced before this Court clearly shows that the petitioner produced fake FDRs., obtained loan of Rs.1,85,000/- and misappropriated the same. Therefore, there is prima facie material against the petitioner to conclude that he committed the offence and merely because no material was found in the departmental proceedings, the petitioner is not entitled to claim pre-arrest bail.

Grant of pre-arrest bail is a matter of exception and unless exceptional circumstances are shown, the petitioner cannot be enlarged on bail. In the decision in **State of Maharashtra v. Mohd. Sajid Husain[1],** the Hon'ble Apex Court laid down the following guidelines for grant of anticipatory bail:

"1.The nature and gravity or seriousness of accusation as apprehended by the applicant;

2.The antecedents of the applicant including the fact as to whether he has, on conviction by a Court, previously

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[1] **AIR 2008 SC 155**

undergone imprisonment for a term in respect of any cognizable offence;

3.The likely object of the accusation to humiliate or malign the reputation of the applicant by having him so arrested; and

4.The possibility of the appellant, if granted anticipatory bail, fleeing from justice. "

In another decision reported in **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others**[2] the Hon'ble Apex Court held as follows:

"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 facts 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 accuser'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 case 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*

[2] 2011 Crl.L.J. 3905

clearly comprehend the exact role of the accused in the case. The case in which accused is implicated with the help of Section 34 and 149 of IPC, the Court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii) *While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*

ix) *The Court to consider reasonable apprehension of tampering of the witnesses 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.*

In view of the aforesaid decisions of the Apex Court, gravity of the offence has to be taken into consideration besides the possibility of the petitioner fleeing from justice and tampering of evidence, threatening witnesses etc. The Court has to strike a balance between the right of the individual liberty guaranteed under the Constitution of India and the societal interest. In this case, the petitioner is an employee in a bank. Several people deposited amounts in the bank reposing confidence on the bank. But, the petitioner, being an employee, allegedly misappropriated the amount by producing fake FDRs., prima facie and thereby it is difficult for the institution to exist when it loses confidence of the public. In such case, it is difficult to strike balance between the societal interest at large and the individual right of liberty guaranteed under the Constitution of India. When such acts create a doubt on the very institutional responsibility, i.e., banking industry, I am not inclined to exercise my discretion to grant pre-arrest bail to the petitioner at this stage. That apart, the learned Public Prosecutor submitted that investigation is not completed, only two witnesses were examined and the entire evidence depends upon the documentary evidence, including the computers. If for any reason petitioner is enlarged on bail, there is every possibility of his tampering with the evidence being an employee having access to the records and computers, subject to availability of the password. Therefore, I find no ground to exercise discretion to grant pre-arrest bail to the petitioner.

In the result, this Criminal Petition is dismissed.

M. SATYANARAYANA MURTHY, J

February 28, 2017
MRR