THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.244 OF 2017

ORDER:

This criminal petition, under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to grant pre-arrest bail to the petitioner/A.2, who is apprehending his arrest in connection with Crime No.753 of 2016 of Pendurthy Police Station, Visakhapatnam District, for the offences punishable under Sections 420, 468, 471, 506 read with 34 of Indian Penal Code, 1860 (for short, 'I.P.C.').

The case of the prosecution, in brief, is that the *de facto* complainant – Yedida Venkata Ramana Rao lodged a complaint with the police on 13.12.2016 making serious allegations against the petitioner and another that A.1 - Patil Khana Venkata Brahmaji, the personal assistant of the petitioner, B.Seshagiri Babu, who is dealing with bank affairs, obtained filled in application form on 11.09.2015 and on the same day he has given the provisional debt sanction letter; the petitioner informed that the *de facto* complainant was sanctioned the loan for Rs.70,00,000/-, but issued sanctioned letter only for Rs.64,00,000/- on 11.09.2015. It is also alleged that the loan was sanctioned in the shape of Dollars and for conversion of Dollars into Indian currency, he has to incur an amount of Rs.6,00,000/- and promised that they will return such amount along with the sanctioned loan amount. On such promise, the *de facto* complainant issued a cheque No.766390 for Rs.6,00,000/- drawn on ICICI Bank A/c.No.006001543026. The said cheque was deposited in the account of A.1 and transferred the amount to A/c.No.006001519450. It is further alleged that even after lapse of months, no loan amount was deposited into the account of the *de facto* complainant. On 01.04.2016, he demanded A.1 to return the amount of Rs.6,00,000/-. On repeated demands, A.1 issued three cheques bearing Nos.798578, 798579, 798580 each for Rs.2,00,000/- drawn on ICICI Bank A/c. No.0060015419450. On presentation of the said cheques, they were dishonoured and thereafter the *defacto* complainant requested A.1 and the petitioner to return the amount of Rs.6,00,000/-, upon which A.1 given an amount of Rs.50,000/- and the petitioner issued a cheque for Rs.1,50,000/-, but the same was dishonoured on its presentation. Thus, the petitioner along with A.1 allegedly cheated the *de- facto* complainant. On the strength of the report, the police registered the crime for the offence punishable under Sections 420, 468, 471, 506 read with 34 I.P.C. and issued F.I.R.

The main contention of the petitioner is that when the cheques issued by himself and A.1 were dishonoured, the remedy open to the *de facto* complainant is to file a complaint for the offence punishable under Section 138 of Negotiable Instrument Act, 1882, but not by filing a complaint before the police and that the petitioner did commit no offence and the allegations made in the complaint are false. He also drawn the attention of this Court to the guidelines laid down by the Apex Court in **Sumit Mehta v. State of N.C.T. of Delhi**[1] and prayed to grant pre-arrest bail in Cr.No.753 of 2016 for the offences referred above.

The Public Prosecutor for the State of Andhra Pradesh would contend that the investigation is not yet completed. The investigating agency has examined L.Ws.1 to 4 and seized the cheques, cash receipts and provisional debt sanction letter from the bank and these documents, *prima facie*, would show that the petitioner indulged in such crime and that in the event the petitioner is granted anticipatory bail, being the Branch Manager of the Bank, he can tamper the evidence and prayed to dismiss the petition.

The petitioner is a Branch Manager of the Bank. Admittedly, A.1, who is allegedly working under the petitioner, obtained several signatures of the *de facto* complainant on several documents on the pretext of sanctioning loan, but issued a letter dated 11.09.2015 sanctioning loan for an amount of Rs.64,00,000/-, and stating that an amount of Rs.6,00,000/- was required for exchange of Dollars into Indian currency, hence the *de facto* complainant issued a cheque for an amount of Rs.6,00,000/-. The said cheque was deposited in the account of A.1 and

[1] (2013) 15 SCC 570

transferred the amount. But even after lapse of months, no amount was deposited in the Bank account of the petitioner. On demand, A.1 issued three cheques each for Rs.2,00,000/-, but they were dishonoured on presentation and thereafter A.1 paid an amount of Rs.50,000/- and the petitioner issued a cheque for Rs.1,50,000/-. On presentation, the cheque issued by the petitioner was also dishonoured. Hence, making the *de facto* complainant to believe that Rs.6,00,000/- is required for exchange of foreign currency into Indian currency and issued cheques to return such amount etc., would directly amount to cheating, taking advantage of the position in the Bank by the petitioner along with A.1, *prima facie*.

The contention of the petitioner is that the alleged offences would attract the offence punishable under Section 138 of NI Act, but not under Section 420 I.P.C.

Here, it is not the case where the petitioner issued a cheque in lieu of discharge of whole or part of the legally enforceable debt under Section 138 of the NI Act, but retained an amount of Rs.6,00,000/-, which is part of the loan allegedly sanctioned and issued a cheque for the said amount, which was dishonoured. Therefore, the contention of the petitioner that the *de facto* complainant has to avail remedy under Section 138 of the Negotiable Instrument Act, 1882 is without any substance.

It is further contended that the personal liberty of the petitioner, being the Branch Manager of the Bank cannot be effected as it is a fundamental right guaranteed under the Constitution of India and drawn the attention of this court to a Judgment of the Apex court in **Sumit Mehta v. State of NCT of Delhi** (1supra), wherein at paragraph 6, the Apex Court held that a reading of the provision under Section 438 of Cr.P.C. makes it clear that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. The grant of bail under section 438(1) of Cr.P.C. is dependant on the merits and circumstances of a case.

No doubt, in the event the petitioner was granted anticipatory bail, it would certainly effect the right of personal liberty, which is a fundamental right guaranteed under the Constitution of India; but there is a limitation on the fundamental right of personal liberty and a person can be deprived of right to enjoy the personal liberty as per the procedure established by law and such deprivation would not amount to infringement of fundamental right guaranteed under the Constitution of India.

Grant of pre-arrest bail is not a matter of course, it is a matter of exception. Unless the petitioner has shown exceptional circumstances, the court cannot grant pre-arrest bail and such discretion is only in exceptional circumstances as per the law declared by the Apex Court in **STATE OF MAHARASHTRA VS.**

MOHD. SAJID HUSAIN[2]. Wherein the 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 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.

Similarly, in **SIDDHARAM SATLINGAPPA MHETRE VS. STATE OF MAHARASHTRA AND OTHERS**[3], the Apex Court held as follows:

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

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 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

[2] AIR 2008 SC 155
[3] 2011 Crl.L.J. 3905

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.

The prime consideration to grant pre-arrest bail is that the petitioner shall not tamper evidence and threaten the witnesses and not to interfere with the investigation. Here the petitioner is a Branch Manager of the Bank and he is having custody over the entire records and in case the petitioner is granted pre-arrest bail, there is every possibility of tampering the records and such possibility cannot be ruled out, though the investigation agency, however, seized the cheques, cash receipts, provisional loan sanction letter. Therefore, keeping in mind the guidelines laid down by the Apex Court in **Sumit Mehta v. State of NCT of Delhi** (1supra), I find that it is difficult to exercise discretion to grant pre-arrest bail to the petitioner, since he is in a position of Manager of the Bank, played mischief and cheated the *de facto* complainant, obtained an amount of Rs.6,00,000/- and issued cheques making the *de facto* complainant to believe that the cheques were issued in lieu of discharge of the amount due to him. The petitioner, being the Branch Manager of the Bank having control over the Bank, cannot play such fraud, hence he is disentitled to claim pre-arrest bail and the court cannot exercise discretion to grant pre-arrest bail to a person, who committed serious offence of fraud against its own customer.

Therefore, I find no ground to grant pre-arrest bail to the petitioner and the petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

M.SATYANARAYANA MURTHY,J

24.01.2017
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