THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NOs.124, 125, 132, 155 AND 157 OF 2017

COMMON ORDER:

These petitions are filed under Section 438 of Criminal Procedure Code (for short "Cr.P.C.") for grant of anticipatory bail to the petitioners in the respective criminal petitions in the event of their arrest in relation to Crime No.263 of 2016 of Central Crime Station, Hyderabad apprehending their arrest for the offences punishable under Sections 420, 468, 471, 474, 477(A), 201, 212, 109, 120-B r/w 34 I.P.C.

Petitioner in Crl.P.No.124 of 2017 is Accused No.12 in Crime No.263 of 2016.

Petitioner in Crl.P.No.125 of 2017 is Accused No.05 in Crime No.263 of 2016.

Petitioners in Crl.P.No.132 of 2017 are Accused Nos.8 & 3 in Crime No.263 of 2016.

Petitioners in Crl.P.No.155 of 2017 are Accused Nos.9, 1 & 6 in Crime No.263 of 2016.

Petitioners in Crl.P.No.157 of 2017 are Accused Nos.10, 7 & 4 in Crime No.263 of 2016.

As the *lis* in all the petitions is one and the same, all the five criminal petitions are heard together to pronounce common order. The facts in Crl.P.No.155 of 2017 are dealt with for better appreciation of the case.

A-9 is M/s Musaddilal Gems and Jewels Private Limited Company represented by its Directors Mr. Nitin Gupta, A-1 and Mr. Seera Mallesh A-6. A-8 is M/s Musaddilal Jewellers (P) Ltd represented by A-3, Mr. Nikhil Gupta, Director. M/s Vaishnavi Bullion (P) Ltd, A-10 is represented by its Directors Mr. Narenderji Gellaboina and Mrs. Vinutha Bolla, A-7 & A-4 respectively. The three companies M/s Musaddilal Gems and Jewels (P) Ltd (A-9), M/s Musaddilal Jewellers (P) Ltd (A-8) and M/s Vaishnavi Bullion (P) Ltd (A-10) are engaged in trade and business of diamonds, gold, silver, bullion and jewellery at various places in Hyderabad.

On 11.12.2016, Depty Director of Income Tax (Investigation), Unit II(2), Hyderabad, lodged a compliant before the Station House Officer, Jubilee Hills Police Station against the Directors of the three companies alleging that the Directors of those companies have committed fraud to the tune of around Rs.100 crores in various banks by adopting illegal practices for exchange of old high value denomination notes of Rs.500/- & Rs.1,000/- after demonetisation by the Government of India on 08.11.2016.

It is alleged in the complaint that in terms of the Gazette Notification No.2652 dated 08.11.2016 issued by the Government of India, Rs.500/- & Rs.1,000/- denomination of bank notes of the existing serious issued by Reserve Bank of India shall cease to be legal tender with effect from 09.11.2016, to the extent specified in the notification. Thereafter, Government of India/Reserve Bank of India has issued several notifications/circulars detailing the modalities of the demonetisation process including deposit of

Rs.500/- and Rs.1,000/- in banks by various individuals/corporate companies.

M/s Musaddilal Gems and Jewels Private Limited (A-9) [CIN No.U1 3204TG2008PTC057412] is a private limited company having its registered office located at Shanti Kiran, H.No.8-2-12/88&89/MB, Road No.2, Opp. KBR park, Banjara Hills, Hyderabad and the said company was incorporated on 01.02.2008 and the share capital of the company is Rs.69,28,500/-. Mr. Nitin Gupta and Mr. Seera Mallesh are its Directors.

M/s Vaishnavi Bullion Private Limited [CIN No.U74120TG201PTC081121] is a private limited company having its registered office located at Shanti Kiran, H.No.8-2-12/88&89/MB, Road No.2, Opp. KBR park, Banjara Hills, Hyderabad and the said company was incorporated on 25.05.2012 and the share capital of the company is Rs.5,00,000/-. Mr. Nitin Gupta (A-1), Mr. Narenderji Gellaboina (A-7) and Mrs. Vinutha Bolla (A-4) are its Directors.

Mrs. Nitin Gupta and Mr. Kailash Chand Gupta are also the Directors of M/s Musaddilal Jewellers Private Limited, located at Shanti Kiran, H.No.8-2-12/88&89/MB, Road No.2, Opp. KBR park, Banjara Hills, Hyderabad.

The Deputy Director of Income Tax (Investigation), Hyderabad, came to know through credible source that M/s Musaddilal Gems and Jewels Private Limited and M/s Vaishnavi Bullion Private Limited, Hyderabad have deposited an amount of Rs.57 crore and Rs.40 crore in State Bank of India, Industrial

Finance Branch, Punjagutta, Hyderabad & Axis Bank, Jubilee Hills, Hyderabad, respectively, after the demonetisation of Rs.1000/- & Rs.500/- currency notes by Government of India on 08.11.2016, by colouring the same as genuine business by raising around 5200 cash advance receipts on 08.11.2016 and subsequent sale invoices. The Directorate has initiated enquiries against the above two companies under the provisions of the Income Tax Act, 1961.

The investigation disclosed the following facts:

1. M/s Musaddilal Gems and Jewels Private Limited had deposited an amount of Rs.57.85 crores on 10.01.2016 (24.8 crores), Rs.27.2 crores on 11.01.2016 and Rs.5.85 crores on 15.11.2016 in State Bank of India A/c No.32895770198, Industrial Finance Branch, Punjagutta, Hyderabad through their staff namely Mr. Narssingh, Basha, etc. M/s Musaddilal Gems and Jewels Private Limited had claimed that Rs.57.85 crore was received from 3100 customers towards cash advance for bullion on 08.11.2016 from 9 PM onwards. M/s Musaddilal Gems and Jewels Private Limited had claimed that they delivered the bullion during the period between 08.11.2016 and 11.11.2016 to the customers who paid cash advances on 08.11.2016.
2. M/s Vaishnavi Bullion Private Limited, Hyderabad had deposited an amount of Rs.40 crore in Axis Bank A/c No.916020066093266, Jubilee Hills, Hyderabad through their staff namely Mallesh, Neel Sundar, Nisha Gupta, Basha etc. This account is a new account opened on 10.11.2016 for

this purpose only. M/s Vaishnavi Bullion Private Limited had claimed that they delivered the bullion during the period between 08.11.2016 and 11.11.2016 to the customers who paid cash advances on 08.01.2016.

During investigation under Income Tax Act, Mr. Nitin Gupta was examined under Section 131 and according to his statement, more than 5000 persons visited the office of the above companies locate in the premises at Shanti Kiran, H.No.8-2-12/88&89/MB, Road No.2, Opp. KBR park, Banjara Hills, Hyderabad on 08.11.2016 from 09.00 PM onwards, but, it is evidently incorrect. Mr. Nitin Gupta also stated that he did not call the police on 08.11.2016 to manage the huge crowd of 5200 people and the same was managed through his 8 to 10 employees whose details like name, address, mobile number are not known to him. The statement of the security guards who were on night duty on 08.11.2016 wee also recorded and according to their statements, no person had visited the premises Shanti Kiran, H.No.8-2-12/88&89/MB, Road No.2, Opp. KBR park, Banjara Hills, Hyderabad.

Mr. Seera Mallesh, the other Director of M/s Musaddilal Gems & Jewels Private Limited and M/s Vaishnavi Bullion Limited stated that both the companies are not having regular business and there are no employees in these companies and that these two companies were not opened on 08.11.2016 and that on 08.11.2016 he left office at around 06.00PM and was not called back to office and he attended office on 09.112016 at around 10.00 PM.

The statement of Mr. Jeelan Basha, cashier (as claimed by Mr. Nitin Gupta that this person was in office on 08.11.2016 till late night during the visit of 5200 customers) that he attended office at 10.00 AM and left around 8:30 PM on 08.11.2016 and he did not come back to office on 08.11.2016. Thus, these statements of the employees including the statement of Mr. Nitin Gupta *prima facie* establish that 5200 customers did not visit the premises on 08.11.2016.

During investigation, the Deputy Director of Income Tax also collected CCTV footage of neighbour clearly indicating that there were no visitors after 8:00 Pm on 08.11.2016. Further, all the advance cash receipts and subsequent sale invoices raised by two companies are amounts below Rs.2 lakhs each only as PAN is not required to be mandatorily obtained for transactions below Rs.2 lakh. Out of 5200 customers, the Deputy Director of Income Tax has collected declarations from 65 customers on 08.11.2016. Even those declarations of 65 customers does not contain the complete address, ID proof of such customers. The biometric attendance of the employees of these companies revealed that all the employees of these companies had left the office during 7:00 PM to 7:30 Pm on 08.11.2016. Though, the business premises of the above two companies is covered by CCTV surveillance system, no CCTV footage is available for 08.11.2016. The Deputy Director of Income Tax stated that CCTV recording is overwritten after every 72 hours and suspected that the CCTV footage was erased by the management of the above companies. The residences having CCTV in the lane approaching the premises were identified and the CCTV footage of 08.11.2016 of one of the neighbours was obtained. A perusal of the CCTV footage pertaining to the night of 08.11.2016 shows that there was no movement of any person/vehicles in the said lane.

In view of the material collected, the Deputy Director of Income Tax came to the conclusion that the companies have not made any sales for the financial year 2016-17 barring a sale of Rs.18 lakhs in October, 2016, which is the only sale from 01.04.2016 to 08.11.2016 in M/s Musaddilal Gems & Jewels Private Limited. The companies are not maintaining any show room/sign board displaying the name of the company or their brand. During investigation, it was also found that M/s Musaddilal Jewellers Private Limited, their sister company, which has registered office at the same premises mentioned above has also collected cash advance of Rs.6.5 crore from 350 persons on 08.11.2016. Further, it has come to the light during investigation that M/s Vaishnavi Bullion Private Limited, Hyderabad has their regular bank account Ac/ No.26610200000453 in Bank of Baroda, PBB, Hyderabad. As the officials concerned of Bank of Baroda, PBB, Hyderabad did not agree for depositing of huge demonetised currency in the account, they opened account with Axis Bank, Jubilee Hills, Hyderabad and deposited the amount in different branches of Axis Bank during the period from 10.11.2016 onwards. The investigation further revealed that the amount deposited in various bank accounts of these companies were transferred to other companies immediately to various bullion dealers. Thus, the petitioners made a sincere attempt to transfer the unaccounted cash into another form by using the demonetised currency. Since the above three companies made a dubious claim of receipt of cash advance amounting to less than Rs.2 lakhs from more than 5200 persons, forging of documents and destruction of evidence, these companies and persons concerned are liable for punishment under Sections 204 & 464 of IPC. Hence, the Deputy Director of Income Tax, Unit II(2), Hyderabad lodged a complaint with the police.

On the strength of the above complaint, Central Crime Station registered F.I.R. No.263 of 2016 on 11.12.2016 against several accused, including the petitioners in the criminal petitions for the offences punishable under Sections 420, 468, 471, 474, 477(A), 201, 212, 109, 120-B r/w 34 I.P.C.

Crl.P.No.155 of 2017 was filed A-9, A-1 & A-6 contending that the Station House officer, without ascertaining the facts and circumstances of the case, erroneously registered the crime against the petitioners for various offences and it is to be noted that the petitioners are engaged in purchase and sale of gold and silver jewellery, gems, diamonds, pearls and also ornament designers, makers, dealers, importers and exporters of precious and semi-precious metals, stones and also in the business of bullion trading in accordance with law. Therefore, very registration of crime without ascertaining facts is an illegality committed by the Station House Officer.

It is also contended that the Deputy Director of Income Tax conducted survey in the business premises of the petitioners on

01.12.2016 and seized the hard disk of CCTV footage and other relevant documents of the business and initiated proceedings under Income Tax Act. With regard to the allegation of depositing of high denomination of Rs.500/- and Rs.1000/- notes, after demonetization is not an illegal act, the petitioners deposited the amount as per the accounts maintained by them in various banks, but the Station House Officer registered crime against the petitioners without any basis.

The allegation against the petitioners that they caused huge loss to the government exchequer in the form of direct taxes to be collected on such unaccounted income of Rs.100 crore, for which the Deputy Director of Income Tax already initiated proceedings under Income Tax Act. Therefore, it is urged that the present complaint is not maintainable against the petitioners for the offences under various provisions of Indian Penal Code. Further, as the petitioners issued receipt, vouchers after receipt of advance payment on 08.11.2016 between 08.30 PM and 10.00 PM to the customers and deposited entire amount collected, in the accounts maintained by the petitioners companies between 11.11.2016 and 19/20.11.2016, thereby, there is no illegal transaction and would not attract any of the offence punishable under the Indian Penal Code.

It is further contended that the petitioners have paid advance tax of Rs.2.4 crores under Income Tax Act for the profits made and also paid VAT to the Commercial Tax Department in respect of sale transactions pertaining to 5200 customers entered between 08:30 PM to 10:00 PM on 08.11.2016, as there was no restriction pursuant to demonetization on 08.11.2016 and as per RBI guidelines, no KYC documents are required for the investments below Rs.2 lakhs. It is urged that Deputy Director of Income Tax has clubbed the transaction of all three companies which are independent and separate legal entity and arrived at a figure of Rs.100 cores and projected as if the petitioners and others have done illegal business, alleging that it resulted in loss to the government exchequer by way of collection of direct taxes. It is also urged that, even taking the entire allegations into consideration, no offence can be made out against the petitioners to attract the ingredients of the alleged offences, thereby, there is absolutely no material to establish *prima facie* that the petitioners committed any offence referred supra.

The petitioners filed W.P.No.43777 of 2016 before this Court to quash the F.I.R and this Court by order dated 15.12.2016 has directed the petitioners to appear before the Investigation Officer and the Investigation officer was directed to file status report on 21.12.2016. On 21.12.2016, the Government Pleader for Home has informed that the petitioners are not cooperating with the investigation by nor furnishing the details of the customers. This Court has disposed of the writ petition with a direction that the Investigation Officer shall complete the investigation in accordance with law, following the procedure, as notice under Section 41-A was already issued and this Court did not express any opinion on merits of the case. In pursuance of the interim order dated 15.12.2016, the Investigation Officer has issued 41-A notice on 18.12.2016 along with 41 questionnaire. The petitioners have appeared before the Investigation Officer and signed the register. Also the petitioners have given reply to all 41 questions on 20.12.2016, question wise by cooperating with the investigation in all means. But, the Investigation Officer has affixed Section 41-A Cr.P.C. notice on 21.12.2016 to the business premises, as if the petitioners are not cooperating. It is finally contended that any of the allegations made in the complaint would not attract any of the offences and the petitioners are extending their utmost cooperation for completion of investigation. Therefore, the petitioners are entitled to be enlarged on bail in the event of their arrest. The petitioners are apprehending their arrest in connection with the above crime and in the event of their arrest, it would cause incalculable loss to their reputation in the society, being a bullion merchant and expressed their readiness and willingness to produce sufficient sureties to the satisfaction of this Court, as directed by the Court in the event of grant of anticipatory bail and cooperate for completion of investigation, if any, to be done.

It is specifically contended that the Deputy Director of Income Tax is a statutory authority under the Income Tax Act, 1961, competent to conduct investigation in the case relating to wilful attempt to evade tax by the petitioners. But, for lodging a complaint without any bonafides and moreover under Section 276(C) of Income Tax Act, there is special prosecution mechanism against the person who wilfully attempt to evade the payment of any tax. The maximum punishment provided for in the said provision of law is two years with fine. The allegations levelled in the complaint against the petitioners to the extent of allegedly making false entries or statements in the books of accounts or other documents, omitting relevant entries or causing any other circumstance leading to the effect of evasion of tax is comprehensively covered within the scope of the said penal provision. But, circumventing various provisions of Income Tax Act like Sections 276(C) & 277A, personal complaint was lodged by the Deputy Director of Income Tax and thereby, somehow to harass the petitioners in different ways and means and prayed to issue directions to the police to enlarge the petitioners on bail in the event of their arrest in connection with the above crime.

The respondent filed counter affidavit in all the five criminal petitions raising common grounds, admitting about receipt of complaint from Deputy Director of Income Tax and registration of crime against the petitioners for various offences under Indian Penal Code and after issuing F.I.R, the Station House Officer, took up investigation, examined 37 witnesses. It is stated in the counter affidavit that most of the witnesses are employees of the petitioner/accused companies, who denied that 5200 persons visited the office of the accused within short-span. It is stated that their statements clearly disclose and their evidence clearly reveal that the petitioners/accused resorted to fraud, inducement, forgery, falsification of accounts, cheating, dishonest intention showing that they received cash advances from about 5200 customers on 08.11.2016 within 3 ½ hours, in view of demonetization of currency notes of value of Rs.1000/- & Rs.500/- by the Government of India. Thus, the Directors of the three companies fabricated the documents and forged several documents like receipts, evidencing receipts of sale consideration by conspiring with each other for wrongful gain and deposited huge amount of demonetized currency notes in various banks, referred supra.

It is stated in the counter affidavit that the petitioners deposited Rs.24.8 crores on 10.11.2016, Rs.27.2 crores on 11.11.2016 and Rs.5.85 crores, totalling to a sum of Rs.57.85 crores in State Bank of India A/c No.32895770198, Industrial Finance Branch, Punjagutta, Hyderabad through their staff. Similarly, the petitioners deposited Rs.40 crores in the newly opened A/c No.916020066093266 in the Axis Bank, Jubilee Hills, Hyderabad on 10.11.2016 pertaining to M/s Vaishnavi Bullion Private Limited, Hyderabad and thus depositing such huge amount by creating advance cash receipts in the names of various persons who are total 5200 in number is nothing but a fraud against the State.

It is further stated in the counter affidavit that, during the course of investigation, out of 5200 fictitious customers, only 9 customers were examined namely Md Azam, Md Jaleel, Annaram Pentaiah, ` Lalitha Jayalaxmi, RVNVR Panduranga Rao, G. Chandrashekar Goud, Pallavi Kuna, Ganta Ramesh Rao and Smt. P. Anuradha and their statements were recorded under Section 161 Cr.P.C, wherein all the above witnesses have denied to have paid any cash as advance to any of the companies of the accused persons for any purpose and they had never purchased any item or visited the shop/office of the accused persons either on 08.11.2016 or earlier or thereafter. They further stated that the signatures/ handwritings on the said cash advance receipts purported to be given by them either to the three companies belonging to the petitioners on 08.11.2016 does not belong to them. The CCTV footages further disclosed that none visited the premises or shop of the petitioners and thus, the petitioners in all the petitions, with a view to convert their black money into white, created various documents to defraud the State and to cause loss to the general public and deposited huge amount, taking advantage of the clauses of demonetization scheme for deposit of amount. Thus, the petitioners committed various offences referred supra.

It is finally contended that the petitioners filed W.P.No.43672 of 2016 to quash the proceedings under Article 226 of Constitution of India, but the petition was dismissed by order dated 21.12.2016, directing the petitioners to appear before SHO, CCS, Hyderabad daily between 10:00 AM and 5:00 PM for the purpose of investigation. But, the petitioners are not cooperating with the Investigating Officer.

The petitioners also filed bail application for grant of anticipatory bail, but the Metropolitan Sessions Judge dismissed the petitions observing that the petitioners miserably failed to establish any grounds for consideration regarding anticipatory bail order.

It is stated in the counter affidavit that during investigation, they interrogated A-4 Vinutha Bolla & A-5 Neha Gupta in the presence of Smt. Renuka, Women Police Constable. A-5 voluntarily confessed to have committed the offence along with other accused persons and also confessed that Neel Sunder, owner of M/s Astha Lakshmi Gold Bullion also connived and conspired with the other accused in exchange of demonetized currency by fraudulent means. A-4 also confessed to be having knowledge about the conspiracy made by the other accused for fraudulently exchanging the demonetized currency.

It is stated in the counter affidavit that, during investigation, the police unearthed a serious crime affecting the State economy, committed by the petitioners, creating fake customers and fabricating and forging various documents, depositing huge amounts which affects the State economy and it is a serious offence of forgery etc.

It is stated in the counter affidavit that A-2, A-11 and A-13 paid an amount of Rs.5 crores towards Pradhan Manthri Garib Kalyan Yojna as part payment of Income Tax Penalty. Later, on the contrary, A-13 Mr. Neel Sunder of M/s Ashta Lakshmi Gold Bullion confessed that he has accumulated an amount of about Rs.28 crores from his known persons including his own amount and colluded with A-1 to A-12 for exchanging the amount in the wake of demonetization. Later, A-2, A-11 and A-13 submitted retraction affidavits to the Income Tax Department for refund of money or adjustment in future, contending that they deposited the money in the name of three firms namely M/s Musaddilal Gems & Jewels Private Limited, M/s Musaddilal Jewels Private Limited and M/s Vaishnavi Bullion Private Limited. Thus, the entire material collected during investigation disclosed that they fraudulently created several documents by forging, fabrication etc, to avoid tax to the government and to cause substantial loss to the economy of the State and that there is sufficient material to establish *prima facie* offence against the petitioners and that the custodial interrogation of the petitioners is required, to unearth the serious fraud against the economy of State and that they are disentitled to claim anticipatory bail under Section 438, which is purely discretionary in nature and finally prayed to dismiss the petition.

During hearing, Sri Vedula Venkata Ramana, learned Senior Counsel appearing on behalf of the learned counsel for the petitioners Sri Chandrasen Reddy raised the following contentions:

a) The petitioners did commit no offence punishable under the provisions of Indian Penal Code;
b) The material collected so far did not make out any offence punishable under provisions of Indian Penal Code;
c) The petitioners being the Directors of the respective three companies are not vicariously liable for any act of commission or omission, which amounts to an offence;
d) The petitioners had no criminal background and they are reputed business personalities in Hyderabad and gained confidence of various customers in bullion and diamond business and that in event of their arrest, it would cause incalculable loss not only to the reputation but also life and liberty of the petitioners.

It is also contended by the learned Senior Counsel that the entire investigation is completed except filing charge sheet and arrest of the petitioners in the above crime is unnecessary. Therefore, to protect the personal liberty of the petitioners who are reputed bullion merchants in the State of Telangana, they are entitled to claim anticipatory bail, as their apprehension of arrest is reasonable. In support of his contention, learned Senior Counsel placed reliance on three judgments reported in **Keki Hormusji Gharda and others v. Mehervan Rustom Irani and another**[1], **Bhadresh Bipinbhai Sheth v. State of Gujarat and another**[2] and **Sunil Bharti Mittal v. Central Bureau of Investigation**[3]. Learned senior counsel also drawn attention of this Court to the proceedings issued by the Reserve Bank of India on 08.11.2010, withdrawing legal tender with character of existing Rs.500/- and Rs.1000/- bank notes and prayed to enlarge the petitioners on bail in the event of their arrest, in the above crime.

Sri K. Pratap Reddy, learned Public Prosecutor for the State of Telangana contended that the petitioners involved in a serious crime by avoiding payment of income tax by forgery, fabrication of various documents which will have serious effect on the economy of the State. That apart, the entire material collected during investigation including the statements recorded by the police during investigation under Section 161(3) and payment of Rs.5 crores as Income Tax and penalty to Pradhan Manthri Garib Kalyan Yojna is itself suffice to conclude that the petitioners

[1] (2009) 6 Supreme Court Cases 475
[2] (2016) 1 Supreme Court Cases 152
[3] (2015) 4 Supreme Court Cases 609

created fake customers and fake receipts in all cash advance for purchase of bullion on various dates to cause huge loss to the economy of the State and when the petitioners involved in such serious offences, they are disentitled to claim pre-arrest bail and prayed to dismiss the petitions.

During enquiry in this matter, Justice Suresh Kumar Kait who was dealing with these matters earlier, issued direction to the Deputy Director of Income Tax (Investigation) to appear before the Court in person on 23.01.2017. In obedience of the directions issued by My Learned Brother Justice Suresh Kumar Kait, the Deputy Director of Income Tax appeared before the Court and filed his affidavit explaining the reasons for invoking the provisions of Indian Penal Code and the contents of the affidavit will be dealt with at appropriate stage while deciding these petitions.

Power to grant 'anticipatory bail' is somewhat extraordinary in character and it is only in exceptional cases where it appears that a person might be falsely implicated, or a frivolous case might be launched against him, or "there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail" that such power is to be exercised.

The first contention is that the petitioners did not commit any offence punishable under the provisions of Indian Penal Code, but, whereas the learned Public Prosecutor for State of Telangana contended that the petitioners committed serious offences by creating 5200 fake customers and advance receipts, forged and fabricated those documents within a span of 3 ½ hours immediately after demonetization of high value currency notes of Rs.500/- and Rs.1000/- of which legal tender was withdrawn by the Reserve Bank of India by its proceedings dated 08.11.2016 in DCM (Plg) No.1226/10.27.00/2016-2017, which had its own impact on the State economy.

The first offence allegedly committed by the petitioners is punishable under Section 420 of I.P.C. Section 420 deals with cheating and dishonestly inducing delivery of property. To punish an offender under Section 420 of I.P.C, there must be cheating and dishonest inducing delivery of property. The word 'cheating' is defined under Section 415 I.P.C as whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". The explanation annexed to Section 415 I.P.C further says that a dishonest concealment of facts is a deception within the meaning of Section 415 I.P.C.

Here, the petitioners allegedly concealed the unaccounted income and taking advantage of demonetization, created certain documents by forgery, fabrication, etc, to convert alleged black money into white and also paid part of tax as penalty, but retracted from the said payment and requested to adjust the same towards future tax liability. Here, the complainant made a serious allegation that the petitioners committed fraud, but how fraud is committed is not explained. Moreover, those allegations made in the complaint would not constitute *prima facie* offence punishable under Section 420, since there is no fraudulent, dishonest inducement of any person. Thus, I find no material *prima facie* to conclude that the petitioners did commit an offence punishable under Section 420 I.P.C.

The other offence allegedly committed by the petitioners is punishable under Section 468 IPC, i.e. forgery for purpose of cheating. Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating. Here, the Investigating Agency examined 9 customers out of 5200 by names Md Azam, Md Jaleel, Annaram Pentaiah, Lalitha Jayalaxmi, RVNVR Panduranga Rao, G.Chandrashekar Goud, Pallavi Kuna, Ganta Ramesh Rao and Smt. P.Anuradha. They allegedly stated in the statements recorded by the police under Section 161(3) Cr.P.C that they never visited the office or the shop of the three companies referred supra, as the signatures on vouchers or the receipts did not belong to them. These receipts or vouchers bear the alleged signatures of 5200 customers, more particularly, 9 fake customers referred supra would go to show that for the purpose of cheating the government and to avoid payment of direct tax and to convert black money into white, the petitioners crated such receipts or vouchers by forgery and fabrication. The word 'forgery' is defined under Section 463 I.P.C as whoever makes any false document or false electronic record or part of a document, or electronic record with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause by person to apart with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed commits forgery and Section 464 I.P.C deals with definition of making false documents i.e. fabrication.

A bare look at the definition of forgery means whoever makes any false document or false electronic record or part of a document, or electronic record with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause by person to apart with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed commits forgery. Here, the petitioners allegedly fabricated the vouchers and receipts in the name of 5200 customers within a span of 3 ½ hours. Even according to the allegations made in the petition i.e from 8:30 PM to 12.00 PM (mid night) on 08.11.2016 by receiving crores of rupees as advance for purchase of bullion. When the said persons i.e. 9 fake customers denied their signatures, it amounts to making false document with an intent to cause damage to the public and to defraud the State. Such act *prima facie* would attract the offence punishable under Section 468 IPC, which is punishable for a period of 7 years of imprisonment and with fine.

The third offence allegedly committed by the petitioners is punishable under Section 471 I.P.C. i.e. using as genuine a forged document or electronic record and the punishment prescribed for the offence is same as punishment of forgery i.e. two years of imprisonment or fine or both.

As discussed above, the petitioners *prima facie* forged a document i.e. receipts and vouchers claiming that they received advance amount for sale of bullion from 5200 customers and the statements of 9 persons whom the Investigating Agency examined would *prima facie* establish that the petitioners used a forged document as genuine for the purpose of depositing the demonetized high value currency notes worth Rs.500/- and Rs.1000/- with effect from 08.11.2016 from 08:00 PM. Therefore, there is *prima facie* material against the petitioners for the offences punishable under Section 471 I.P.C.

The fourth offence allegedly committed by the petitioners is punishable under Section 474 I.P.C which deals with punishment for possessing a document i.e. forged record of the Court or public document or forgery of valuable security, knowing it to be a forged and knowing it to be used as genuine. But here, the petitioners did not commit any forgery of record of the Court, public record or valuable security. Therefore, the alleged offences committed by the petitioners would not fall within the ambit of Sections 466 & 467 punishable under Section 474 I.P.C. Hence, I find no *prima facie* material to conclude that the petitioners committed the offence punishable under Section 474 I.P.C.

The fifth offence allegedly committed by the petitioners is punishable under Section 477-A I.P.C i.e. which deals with falsification of accounts, whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, electronic record paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book electronic record, paper, writing, valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. The explanation thereto explained that it shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be subject of the fraud, or any particular day on which the offence was committed.

Here, in this matter, the accounts were falsified by the petitioners themselves with the aid of employer or by themselves or they abated the employer who omitted or altered the accounts by creating false documents i.e. vouchers or receipts from fake customers who are 5200 persons in number. Thus, the act committed by the petitioners *prima facie* falls within Section 477-A I.P.C.

The sixth offence allegedly committed by the petitioners is punishable under Section 201 I.P.C which deals with causing disappearance of evidence of offence, or giving false information to screen offender. But the allegations would not *prima facie* attract Section 201 I.P.C, since the petitioners themselves are the alleged offenders. Moreover, the other offences allegedly committed by the petitioners is punishable under Section 212 of I.P.C i.e. harbouring offender. But the material on record would not *prima facie* fall within Section 212 I.P.C.

The other offences allegedly committed by the petitioners are punishable under Sections 109 & 120-B r/w 34 I.P.C. Section 109 deals with punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment. Here, the petitioners being the Directors of the three companies stated supra, forged the signatures of various fake customers, more particularly, the signatures of the fake customers whom the Investigating Agency examined. Further more, the petitioners used those documents to claim receipt of advance, cash consideration for sale of bullion from 5200 persons at a single premises within a span of 3 ½ hours without any security or assistance of the police force, even to count such huge cash either manually or by machines, it is impossible, consequently it cannot be believed *prima facie* and they also abetted the concerned staff members to falsify the accounts allegedly and it would fall within the ambit of Section 109 I.P.C

Section 120-B I.P.C deals with punishment of criminal conspiracy. Section 120-A I.P.C defined criminal conspiracy as follows:

When two or more persons agree to do, or cause to be done

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Here, all the Directors of the three companies referred supra allegedly conspired together to forge the signatures of fake customers who are 5200 in number and the vouchers and receipts to claim receipt of advance sale consideration for purchase of bullion and fabricated documents, abated the falsified accounts, thereby, I find *prima facie* material against the petitioners to conclude that the petitioners committed the offence punishable under Section 120-B of I.P.C.

All the Directors of the three companies which are floated by the same persons and most of the Directors are the Directors of one family, except one or two, in the same premises and very physical existence of companies and transacting business is doubtful.

According to the proceedings issued by the Reserve Bank of India date 08.11.2016, in pursuance of Gazette Notification No.2652 dated 08.11.2016 issued by Government of India, Rs.500/- & Rs.1000/- denomination of bank notes of existing serious issued by Reserve Bank of India shall cease to be legal tender with effect from 09.11.2016 to the extent specified in the notification. A new series of bank notes called Mahatma Gandhi (New) Series having different size and design, highlighting the cultural heritage and scientific achievements of the Country, will be issued. Bank branches will be the primary agencies through which the members of public and other entities will be exchanging the Specified Bank Notes in other valid denominations or depositing the Specified Bank Notes for crediting to their accounts, upto and including the December, 30, 2016, made certain arrangements referred in the proceedings.

According to 3(C)(ii) of the guidelines in the Gazette Notification dated 08.11.2016, there shall not be any limit on the quantity or value of the specified bank notes to be credited to the account maintained with the bank by a person, where the specified bank notes are tendered; however, where compliance with extent Know Your Customer (KYC) norms is not complete in an account, the maximum value of specified bank notes as may be deposited shall be Rs.50,000/- Further, directed the banks to send by e-mail or fax to the Controlling Officer about exchange of Rs.500/- &

Rs.1000/- demonetized notes at the closure of the business of the bank on each day starting from 10.11.2016 in the prescribed proforma given in the Gazette Notification.

Taking advantage of the clause, the learned Senior Counsel Sri Vedula Venkata Ramana contended that when there is no limit on deposit the demonetized currency notes, the deposit made by the petitioners is not a violation of the norms or guidelines issued by the Reserve Bank of India. Even otherwise, it would not amount to an offence punishable under any of the provisions of the Indian Penal Code. No doubt, there is no limit for depositing the demonetized currency notes, but subject to compliance of Know Your Customer (KYC) norms. Moreover, it is not the contention of the State that the petitioner committed any offence under the Income Tax Act, but committed a serious offence of forgery, fabrication, falsification of accounts and criminal conspiracy. Therefore, the said guideline is of no assistance to claim any immunity from the offences referred above.

The learned Public Prosecutor for the State of Telangana, Sri K.Prathap Reddy would contend that the allegations made in the complaint and the evidence so far collected during investigation i.e. statements of 36 witnesses examined during investigation and recorded their statement under Section 161(3) disclosed *prima facie* material against the petitioners to establish that they committed various serious offences not only by forgery of signatures of fake customers, but also against the State and such conversion of black money into white of more than Rs.100 crores by their act would certainly will have serious effect on the State economy. That apart, the intention of the Government is to unearth the black money through demonetization from the tax evaders. Utilising such opportunity, the petitioners made a serious effort to convert black money into white in the guise of norms issued by the Reserve Bank of India, by creating fake customers who are 5200 in number within a span of 3 ½ hours by forging their signatures on the vouchers. Such offenders are not entitled to claim pre-arrest bail or anticipatory bail.

The Deputy Commissioner of Income Tax explained the reasons for invoking the provisions of Indian Penal Code, by filing affidavit disclosing the details of deposits in each of the banks. The summary of total cash advances allegedly received on the night of 08.11.2016 by the three companies is as under:

Name of the company	**No. of customers who are claimed to have given cash advance (all in 500 and 1000 denomination notes)**	**Amount of cash advance said to have been received on 08.11.2016 from 9.00 Pm onwards (Rs. In Crores)**	**Premises where the cash advance is stated to have been collected on 08.11.2016 from 9.00 Pm onwards**
Musaddilal Gems and Jewels P. Ltd	3105	57.85	Shanti Kiran, H.No.8-2-12/88&89/MB, Road No.2, Opp. KBR park, Banjara Hills, Hyderabad
Vaishnavi Bullion P Ltd	2153	40.11	
Musaddilal Jewellers P Ltd	352	6.55	
-do-	280	4.61	Punjagutta show room
-do-	98	1.80	Vijayawada show room
Total	**5988**	**110.92**	

The Deputy Director of Income Tax also disclosed about the survey conducted under Section 133A of the Income Tax Act, 1961 and found the fraud due to deposit of more than Rs.110.92 crores in the bank branches referred supra by fabricating certain documents, forged the signatures of fake customers and falsified the accounts for wrongful gain i.e. for converting the black money into white, taking advantage of the guidelines issued by the Reserve Bank of India. Therefore, he lodged a complaint in those circumstances, but not otherwise.

Even according to the petitioners, evasion of tax is punishable under the provisions of Income Tax Act and the maximum punishment is two years of imprisonment or fine, invocation of the provision of Indian Penal Code is nothing but circumventing the provisions of Income Tax Act and resorting to take action against the petitioners by the police under the provisions of Income Tax Act by abuse of process of the Court. The Income Tax Department also during investigation, under the provisions of Income Tax Act examined one S. Mallesh, Director & Accounts Head of Musaddilal Gems & Jewels Private Limited and M/s Vaishnavi Bullion Private Limited on 01.12.2016 and 02.12.2016. According to his statements, in those two companies, there were no regular business transactions and no employees were engaged and those companies were not opened on 08.11.2016 and that he left the office at about 6:00 PM and he was not called back and he did attended the office on 09.11.2016 at about 10:00 AM. The statement of Jeelani Basha, Cashier, security guards who were on duty during the night on 09.11.2016 at the premises Shanti Kiran, H.No.8-2-12/88&89/MB, Road No.2, Opp. KBR park, Banjara Hills, Hyderabad, out of the 60 declaration letters given by the customers, 12 persons have been located and identified, their statements were recorded which clinches the issue that those letters were not given and the signatures thereon were forged. Apart from that, the CCTV footages collected during investigation also disclosed that no customer visited the premises of the companies referred above, but conveniently the petitioners who are conversant with the Income Tax laws created fake customers who alleged paid less than Rs.2 lakhs each, somehow to avoid compliance of certain requirements under Section 139(5)(c) read with Section 114 B of Income Tax Act i.e. correction to avoid collection of Income Tax under Section 206(1)(B) of Income Tax Act. Thus, the material allegedly collected by the Income Tax Department during investigation and the material collected by the Investigating Agency i.e. Central Crime Station, Hyderabad *prima facie* establishes that these petitioners committed offences punishable under Sections 468, 471, 477(A), 109, 120-B r/w 34 I.P.C.

The main endeavour of the learned Senior Counsel is that the petitioners did commit no offence and there by they are not liable for prosecution under the provisions of Income Tax Act. Even if they have violated the provisions of Income Tax Act, the action to be taken against them is only under Income Tax Act, but not under Indian Penal Code, this contention is without any substance, since the petitioners forged the signatures of fake customers on the vouchers and receipts to claim that they received huge amount from 5200 customers within a span of 3 ½ hours time after demonetization of high value currency notes of Rs.500/- & Rs.1000/- and to deposit the same, obviously for different reasons known to them. Such offence of forgery is not punishable under the provisions of Income Tax Act. Similarly, the offences punishable under Sections 468, 471, 477(A), 109, 120-B r/w 34 I.P.C are not governed by the provisions of Income Tax Act. Therefore, lodging a complaint against the petitioners by the Deputy Director of Income Tax with the Police, Central Crime Station, Hyderabad for the alleged offences is not an illegality, since the Deputy Director of Income Tax who received information about commission of an offence by the petitioners gave information to the police to enable them to set the law into motion. Hence, lodging a complaint by the Deputy Director of Income Tax with the police is not an illegality. On this ground, the petitioners cannot claim an anticipatory bail.

The second contention raised before this Court is that the petitioners are only Directors of the company and if the three private limited companies have committed any offence under the provisions of Indian Penal Code, the person who is dealing with day-to-day business alone is responsible for the acts of the company under the penal provisions, but not other Directors. No doubt, this contention is supported by the law laid down by the Apex Court in **Sunil Bharti Mittal**[3] case, where the Apex Court while dealing with the corporate liability discussed about the liability of the Directors and held as follows:

> "It is abundantly clear from the above that the principle which is laid down is to the effect that the criminal intent of the "alter ego" of the company, that is the personal group of persons that guide the business of the company, would be imputed to the company/corporation. The legal proposition that is laid down in the aforesaid judgment is that if the person or group of persons who control the affairs of the company commit an offence with a criminal intent, their criminality can be imputed to the company as well as they are "alter ego" of the company.
>
> In the present case, however, this principle is applied in an exactly reverse scenario. Here, company is the accused person and the learned Special Magistrate has observed in the impugned order that since the appellants represent the directing mind and will of each company, their state of mind is the state of mind of the company and, therefore, on this premise, acts of the company is attributed and imputed to the appellants. It is difficult to accept it as the correct principle of law. As demonstrated hereinafter, this proposition would run contrary to the principle of vicarious liability detailing the circumstances under which a direction of a company can be held liable.
>
> (iii) Circumstances when Director/Person in charge of the affairs of the company can also be prosecuted, when the company is an accused person:
>
> 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.
>
> 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."

Even according to the principles laid down in the above judgment, an individual who has perpetrated the commission of an offence on behalf of the company can be made as an accused along with the company, if there is sufficient evidence of his active role coupled with criminal intent. The 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, there is no quarrel about the law declared by the Apex Court in **Sunil Bharti Mittal**[3] case. But, obviously, it is difficult to record *prima facie* satisfaction of this Court that the individual Directors of the three companies has played active role coupled with criminal intent at this stage, as the investigation in the case is at foetus stage. If, I record any such finding at this stage, it is nothing but prematurely expressing opinion. Therefore, before completion of investigation, I am unable to express any opinion as to the liability of the other Directors, since it is for the Investigating Agency to find out whether other Directors are participating effectively in the day-to-day affairs of the company or not. Therefore, basing on the law declared by the Apex Court in the above judgment, the independent Directors of the respective companies cannot be exonerated for their criminal liability under various provisions of Indian Penal Code, *prima facie*, at this stage.

In **Keki Hormusji Gharda**[1] case, the Supreme Court discussed extensively regarding vicarious liability and held that the Indian Penal Code, save and except some matters does not contemplate any vicarious liability on the part a person. Commission of an offence by raising a legal fiction or by creating a vicarious liability in terms of the provisions of a statute must be expressly stated. The Managing Director or the Directors of the Company, thus, cannot be said to have committed an offence only because they are holders of offices.

The main endeavour of the learned counsel for the petitioners is that the petitioners are reputed business personalities in the Hyderabad city and apprehending their arrest in connection with the above crime. If, they are arrested and sent to judicial custody, they would sustain incalculable loss of reputation both in the business community and in the general public, including customers who are transacting business with the petitioners, besides violation of their fundamental right of liberty guaranteed under Article 21 of Constitution of India.

Whereas, the learned Public Prosecutor for the State of Telangana contended that it is the duty of the Investigating Agency to unearth a serious fraud, forgery of signatures, fabrication of documents by examining the persons who transacted business who are 5200 in number. Unless the documents and papers are seized, examination of those persons is required to find out whether they actually transacted the business that these petitioners within a span of 3 ½ hours on 8.11.2016 after demonetization of currency and to collect such information, the custodial interrogation of the petitioners is imperative and in the event of enlarging the bail, there is every possibility of interfering with the investigation and tampering of records maintained by the companies either in hard copies or soft copies, including computers and thereby it is difficult for the Investigating Agency to complete investigation fairly.

So far, the Investigating Agency examined only 9 fake customers whose details were traced, but still, some more customers who allegedly transacted business by paying advance cash consideration after 08:30 PM on 08.11.2016 to find out the truth in the transactions. If the petitioners are enlarged on bail in the event of their arrest in connection with the above crime, the petitioners being rich and reputed business personalities in Hyderabad City, may influence those customers and such interference cannot be ruled out. Similarly, there is every possibility of interfering with the investigation and tampering of evidence, if a pre-arrest bail is granted to these petitioners.

Learned Senior Counsel contended that for grant of pre-arrest bail under Section 438 Cr.P.C, certain principles have been laid down by the Apex Court and at best, the Courts are bound to follow the guidelines laid down by the Apex Court in **Bhadresh Bipinbhai Sheth[2]** case. The Apex Court only reiterated the 10 guidelines laid down in **Siddharam Satlingappa Mhetre vs State Of Maharashtra[4]** which are 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 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

[4] AIR 2011 SC 312

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;

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.

The learned counsel also drawn the attention of this Court to the principles laid down in **Gurbaksh Singh Sibbia and Ors. v. State of Punjab**[5] and reiterated the duty of the Court while deciding an application filed under Section 438 of Cr.P,.C and the guidelines to be followed for grant of such bail.

There is no quarrel regarding the law laid down by the Apex Court in **Bhadresh Bipinbhai Sheth**[2] case. But, the relief under Section 438 Cr.P.C is purely discretionary and the Court has to exercise its discretion judiciously. But, nowhere in the guidelines in judgments, the Court did not explain do not speak as to how the Court can exercise its judicial discretion in a petition filed under Section 438 Cr.P.C.

Section 438 Cr.P.C deals with direction for grant of hail to person apprehending arrest and it reads as follows:

(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-

[5] AIR 1980 SC 1632

bailable offence, he may apply to the High Court or the Court of Session for direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may thinks fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required: (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of attest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

The power of the Court under Section 438 Cr.P.C is purely discretionary and this Court has to exercise its power judiciously based on settled principles. But, the circumstances to exercise such jurisdiction may vary from case to case. The law regarding grant of anticipatory bail is elaborately discussed by the Constitution Bench of the Apex Court in **Gurbaksh Singh Sibbia**[5] case, as the power of granting 'anticipatory bail' is somewhat extraordinary in character and it is only in exceptional cases where it appears that a person might be falsely implicated, or a frivolous case might be launched against him, or "there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail" that such power is to be exercised. No hard and fast rule can be laid down in discretionary matters like grant or refusal of bail whether anticipatory or regular bail. The Apex Court further held that, 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. Therefore, anticipatory bail can be granted even in serious cases like economic offences and States should have no consideration for grant or refusal of grant of anticipatory bail, as there can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it. Therefore, while dealing with the application for grant of pre-arrest bail or anticipatory bail, the Court must take into consideration the guidelines issued in **Gurbaksh Singh Sibbia**[5] case. Though, according to the judgment of the Supreme Court, even in economic offences, the Court can grant anticipatory bail, subject to satisfaction of other grounds.

In **Siddharam Satlingappa Mhetre**[4] case, the Apex Court carefully analyzed the principles in various judgments and considering the law on anticipatory bails in other countries, laid down 10 guidelines which are referred supra.

On the strength of the same principles in **Jai Prakash Singh v. State of Bihar**[6], the Supreme Court held that Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. The Courts are expected to deal with very serious matters seriously, but not in casual and cavalier manner and grant of anticipatory bail by extending unwarranted sympathy towards accused by exercising discretion. Court might not exercise its discretion in derogation of

[6] AIR 2012 SC 1676

established principles of law, rather it had to be in strict adherence to them. Discretion had to be guided by law, duly governed by rule and could not be arbitrary, fanciful or vague and Court must not yield to spasmodic sentiment to unregulated benevolence. Any order *dehors* grounds provided in Section 438 of CrPC is illegal.

In view of the law declared in the above judgment, the Courts shall not extend undeserved sympathy to the accused and that the Court while exercising discretion has to follow the settled principles and at the stage of consideration of anticipatory bail while dealing with application for pre-arrest bail, the Court is under obligation to indicate in the order, reasons for *prima facie* coming to the conclusion as to why bail was being granted, particularly, where the accused was charged for having committed serious offences. It is necessary for the Courts dealing with the applications for pre-arrest bail to consider several circumstances. Though, the conclusive finding in regard to the points urged by the petitioners is not accepted by the Court, considering the bail applications, yet, giving reasons, is different from discussing merits or demerits. At the stage of granting bail, a detailed examination of evidence and elaborate documentation of merits of the case is not to be undertaken, but that does not mean that while granting bail, some reasons for *prima facie* conclusions as to why bail was being granted is required to be indicated.

In **Lavesh v. State (NCT Delhi)**[7] the Apex Court held that conduct of accused immediately after incident as well as after

[7] (2012) 8 SCC 730

interim protection granted by Court, has to be taken into consideration for the reason that unless free hand was given to investigating agency, particularly, in light of allegations made against the petitioners, the petitioners cannot be enlarged on bail.

In the present case on hand, the petitioners filed W.P.No.43777 of 2016 and obtained interim order from the Court not to arrest them. This Court directed them to appear before the Investigating Agency, fixing specific date and time, but the Government Pleader for Home before the Court complained that they are not cooperating to complete the investigation. Thereby, the petition was disposed of with a specific direction to follow the procedure under Section 41-A. Even in the present petition, Justice Suresh Kumar Kait when the matter was heard, granted interim anticipatory bail for the time being. But, during hearing, the learned Public Prosecutor complained that the petitioners are not cooperating for completion of investigation. Apart from that, the petitioners paid Rs.5 crores towards tax and penalty, but after obtaining interim order, they filed an affidavit retracting their earlier request and demanded to adjust towards future tax liability. In such a case, if such conduct of the petitioners and totality of the circumstances are taken into consideration, it is difficult to grant anticipatory bail to the petitioners in serious crime which affects economy of the State and such offence is against public interest.

In view of the law declared by the Apex Court in various judgments referred supra, the Court has to strike balance between the fundamental right and individual liberty guaranteed under

Article 21 of Constitution of India and societal interest and such discretion to grant anticipatory bail under Section 438 Cr.P.C has to be exercised in exceptional circumstances where the Court satisfied that the petitioners did commit no offence *prima facie* and that there is no possibility of interfering with the further investigation or fleeing from justice, so also the seriousness of the crime.

In the present facts, the petitioners committed a serious offences, the total amount involved in the crime is more than Rs.110 crores by allegedly forging the signatures of 5200 customers within a span of 3 ½ hours, that too during night time. I am unable to comprehend such situation where 5200 customers transacted business worth more than Rs.110 crores during night time within a span of 3 ½ hours. It is highly improbable in ordinary course of events and even obtaining signatures of 5200 customers on vouchers and receipts, may take days together, but the petitioners by their ability allegedly obtained signatures 5200 customers and transacted business more than Rs.110 crores and that too paid advance for purchase of bullion in future. Whether the petitioners delivered gold to the customers in pursuance of alleged receipt of cash is to be enquired into, atleast to accept their contention. The office or business premises of the petitioners also would not accommodate such huge number of 5200 person and the transaction with 5200 customers could not be completed within a span of 3 ½ hours. Transferring the cash deposits to other bullion merchants like Ashtalakshmi bullion Merchant is another strong circumstance to conclude that the petitioners made serious attempts to keep the transactions out of the hand of dealers. If, totality of the circumstances of the case is taken into consideration, the act of the petitioners is a serious economic offence and in such case, the petitioners are not entitled to claim even a regular bail as held by the Apex Court in **Nimmagadda Prasad v. Central Bureau of Investigation**[8].

Following the judgment of the Apex Court in **State of Gujarat v. Mohanlal Jitamalji Porwal and another**[9], the Supreme Court arrived at a conclusion in **Nimmagadda Prasad**[8] case. In **Mohanlal Jitamalji Porwal**[9] case, the Apex Court made a serious observation for considering bail for a serious economic offence and held in paragraph 5 as follows:

> "…………..The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest."

In the present case also, the observations made in **Mohanlal Jitamalji Porwal**[9] case would apply directly for the reason that the demonetization of a high valued currency notes of Rs.500/- & Rs.1000/- was announced at 8:00 PM on 08.11.2016. But, within

[8] AIR 2013 SC 2821
[9] (1987) 2 SCC 364

half an hour, the petitioners started creating various documents and completed creation of 5200 documents as if they transacted business within 3 ½ hours. It is impossible in regular course of business to count such huge cash of Rs.110 crores either manually or by machines, besides preparing receipts and vouchers and obtaining the signatures of various customers who are 5200 in number. This itself creates a serious doubt about the transaction *prima facie* and though there is no limit for depositing old currency notes i.e. demonetised high value currency notes, but, it is subject to Know Your Customer (KYC). Moreover, avoiding payment of tax by creating documents either by forgery or otherwise or falsifying the accounts will have its own impact on the State economy, since the amount involved in the offence is more than Rs.110 crores and it is a calculated plan deliberately achieved by the petitioners, obviously for different reasons known to them. Thus, the offence allegedly committed by the petitioners is grave and serious offence against the State. In such case, the petitioners are disentitled to claim pre-arrest bail.

In **Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director**[10] the Supreme Court held that, a balance has to be struck between right to individual liberty guaranteed under Article 21 of the Constitution of India and interest of society as no right can be absolute. No doubt, in the event of the petitioners arrest, certainly, their Fundamental Right guaranteed under Article 21 of Constitution of India will be infringed. Fundamental Right under Article 21 of Constitution of India is not an absolute right and such

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[10] AIR 2007 SC 451

liberty can be deprived of in accordance with law. Arrest of a person in the process of investigation is permissible under the provisions of Criminal Procedure Code and such act of arrest by the police is deprivation of right of liberty of an individual in accordance with law. Therefore, it does not amount to violation of Fundamental Right guaranteed under Article 21 of Constitution of India. To strike a balance between the individual right of liberty and societal interest, the Court must take into consideration the impact of such serious crime, both on the society at large and on the economy of the State. The Central Government demonetized high value currency notes only in the interest of society to unearth the black money, but, on account of relaxations, the petitioners wanted to scuttle the very purpose,convert their black money into white by illegal means i.e. by forgery, fabrication of accounts, etc, by creating fake customers. In such case, the balance will tilt towards the interest of the society at large.

In **Gurpal Singh v. State through C.B.I**[11] referring the case in **V. Nandanan Vs. DIG of Police (Crime), Hyderabad & another**[12], held that anticipatory bail is not to be granted as a matter of course in all cases where the applicant has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence. Grant or refusal of such bail must depend upon variety of circumstances, the cumulative effect of which must enter the judicial verdict. The power under the Section has to be exercised sparingly and in exceptional cases

[11] 1999(49)DRJ193
[12] 1986 Cri.L.J. 1052

using the discretion on the facts of each case. An order under Section 438 being an exceptional type there must be a special case made out for passing such an order. It should not be allowed to circumvent the normal procedure of arrest and investigation or to prejudice the investigation. Ulterior motives of harassment and reasonable possibility of the accused not absconding are only some of the considerations. Some little facts may be necessary in the exercise of the discretion to grant or refuse the prayer. Further, the Court held that in exercising the judicial discretion in granting anticipatory bail the court should not be unmindful of the difficulties likely to be faced by the investigating agency and the public interest likely to be affected thereby.

In **Pukar Ram v. State of Rajasthan**[13] the Supreme Court held that Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal.

In **State (CBI) v. Anil Sharma**[14] the Supreme Court observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful information and

[13] AIR 1985 SC 969
[14] AIR 1997 SC 3806

also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual.

Similarly, in **State of Andhra Pradesh v. Bimal Krishna Kundu**15 the Apex Court observed that, it is disquieting that implications of arming respondents, when they are pitted against this sort of allegations involving well orchestrated conspiracy, with a prearrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence.

Relying on all the above judgments, the Delhi High Court in **Gurpal Singh**[11] case held as follows:

> "In the present case, allegations of conspiracy and financial irregularities involving the funds of the bank have been made. The petitioner in collusion with Mr. K. S. Bains and some other persons is alleged to have or is suspected, which cannot be said at this stage to be wholly baseless or motivated, to have derived personal benefits for himself and also for Mr. K. S. Bains by committing financial irregularities and to helping JBML etc. wrongfully and causing loss to the bank. Public interest is involved. In these circumstances, if anticipatory bail is granted, it will thwart investigation and thereby prejudice the case of the prosecution and it may not be possible to unearth fully the gravity of the conspiracy, resultant financial loss to the bank, financial gains, if any, derived by the bank's officers and other companies involved. It will hamper investigation and thereby public interest will suffer if anticipatory bail is

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[15] AIR 1997 SC 3589

granted. The learned Addl. Session Judge has not found it a fit and proper case for granting anticipatory bail."

In view of the law declared by the various Courts, before granting anticipatory bail, the Court must consider the effect of enlarging the petitioner on the ground of infringement of Fundamental Right of individual liberty and also effect on the society at large.

In the present case, as stated before the Court in W.P.No.43777 of 2016 by the Government Pleader for Home and the learned Public Prosecutor before this Court about non-cooperation of the petitioners in completing the investigation and requirement of custodial interrogation of the petitioners to unearth the fraud to trace the details of 5200 customers, who allegedly transacted business with the petitioners within a span of 3 ½ hours, a custodial interrogation is necessary. When custodial interrogation is required, granting pre-arrest bail would have its own impact on the said interrogation, as the petitioners would be guarded with an order of bail and such grant of anticipatory bail would impede the very purpose of custodial interrogation and the said interrogation would remain as a mere ritual and it would be difficult for the Investigating Agency to unearth the said serious fraud against the State and it would directly effect the society at large.

Keeping in view the law declared by the Apex Court and this Court referred supra, it is difficult for me to exercise my discretion to grant pre-arrest bail for the following reasons:

1. There is *prima facie* material against the petitioners to conclude that they committed offences punishable under Sections 468, 471, 477(A), 109, 120-B r/w 34 I.P.C.

2. The entire transactions are based on the receipts and vouchers issued to various customers who are 5200 in number and those vouchers or bills are computer generated and in case, the petitioners are protected from pre-arrest by granting anticipatory bail, it would be difficult to find out the details of those customers, so as to find truth in the transactions, since there is a possibility of influencing those witnesses and tampering the evidence.

In view of my foregoing discussion, I find no ground to enlarge the petitioners granting anticipatory bail to the petitioners in the Criminal Petition Nos.124, 125, 132, 155 And 157 of 2017 in the event of their arrest in relation to Crime No.263 of 2016 of Central Crime Station, Hyderabad, for the offences punishable under Sections 420, 468, 471, 474, 477(A), 201, 212, 109, 120-B r/w 34 I.P.C and consequently, all the criminal petitions are liable to be dismissed.

In the result, the criminal petitions are dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

30.01.2017
SP