

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.4388 of 2017

ORDER:

1 This criminal petition is filed, by the petitioner/accused No.5, under Section 438 Cr.P.C., seeking anticipatory bail in Crime No.RC 01 (A)/2017 on the file of the Station House Officer, Central Bureau of Investigation, Visakhapatnam registered for the offences punishable under Sections 120-B, 420, 468, 468 r/w 471 of IPC and under Sections 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988.

2 The learned counsel for the petitioners strenuously submitted that the petitioner is a skilled person and gave his opinion with regard to the value of the property, therefore, the alleged act will not come within the ambit of Sections 120-B, 420, 468 and 471 of IPC. He further submitted that the allegations made in the complaint do not constitute any offence, much less the offences alleged to have been committed by the petitioner and hence this is a fit case to grant anticipatory bail to the petitioner.

3 ***Per contra***, the learned Special Public Prosecutor for CBI submitted that the petitioner, in collusion with the branch manager of the bank and the loanes, created valuation certificate, without existence of land in some cases and thereby caused financial loss to the bank to a tune of Rs.20.16 crores. He further submitted that the allegations made in the complaint prima facie constitute the offences alleged to have been committed by the petitioner.

4 The facts leading to filing of the present petition, briefly, are as follows:

5 Basing on the complaint lodged by Dhananjay Lele, General Manager, Retail Banking Group, IDBI Bank Limited, Zonal Office, South-3, Hyderabad, the Station House Officer, CBI, Visakhapatnam registered a case in Crime No.RC 02 (A)/2017 for the offences punishable under Sections 120-B, 420, 468 and 471 of IPC and under Sections 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988. The case of the prosecution is that the petitioner along with the branch manager of the bank and loanees created valuation certificates in respect of government land and in certain cases, without there being any land in existence. It is further alleged that the petitioner without verifying the existence of the land and without following the rules and regulations, issued valuation certificates in collusion with the loanees, thereby caused huge financial loss to the bank.

6 To substantiate the argument, the learned counsel for the petitioner has drawn the attention of this Court to the ratio laid down in ***Central Bureau of Investigation v. K. Narayana Rao***¹ wherein the Hon'ble apex Court held at para No.27 as follows:

27. In the banking sector in particular, rendering of legal opinion for granting of loans has become an important component of an advocate's work. In the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skills. A lawyer does not tell his client that he shall win the case in all circumstances. Likewise a physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and while undertaking the performance of the task

¹ (2012) 9 SCC 512

entrusted to him, he would be exercising his skill with reasonable competence. This is what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of the two findings, viz., either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess.

7 As per the principle enunciated in the case cited supra, legal opinion given by the advocate will not fall within the ambit of Section 420 of 109 of IPC. The learned counsel for the petitioner mainly placed reliance on this judgment to impress this court that the valuation certificate given by a valuer can be treated on par with the legal opinion given by an advocate. With great respect to the learned counsel for the petitioner, a valuer in a bank cannot be equated with an advocate. The advocate profession, by any stretch of imagination, cannot be equated with the profession carried out by a valuer of the bank. Therefore, I am unable to accede to the contention of the learned counsel for the petitioner that the principle enunciated in the case cited supra is equally applicable to the valuer.

8 The learned counsel for the petitioner has further drawn the attention of this Court to the ratio laid down in **Hema Mishra v. State of Uttar Pradesh**² wherein the Hon'ble apex Court held at Para Nos.30 and 31 as follows:

30. It is pertinent to explain there may be imminent need to grant protection against pre-arrest. The object of this provision is to relieve a person from being disgraced by trumped up charges so that liberty of the subject is not put in jeopardy on frivolous grounds at the instance of the unscrupulous or irresponsible persons who may be in charge of the prosecution. An order of anticipatory bail does not in any way, directly or indirectly; take away for the police their right to investigate into charges made or to be made against the person released on bail.

31. The purposes for which the provisions of anticipatory bail are made are quite obvious. One of the purposes of the arrest is that the accused should be available to the investigating machinery for

² (2014) 4 SCC 453

further investigation and questioning whenever he is required. Another purpose is that the trial should not be jeopardized and for this purpose the restrictions on the movements of the accused are necessary. The genuineness of the alleged need for police custody has to be examined and it must be balanced against the duty of courts to uphold the dignity of every man and to vigilantly guard the right to liberty without jeopardizing the state objective of maintenance of law and order.

9 This decision sounds cautions to the Courts to consider whether the unscrupulous person lodged the complaint with an ulterior motive to harass the accused or not. No doubt, the Court has to scrutinise the material placed before it meticulously by keeping in mind the personal liberty of an accused.

10 In the instant case, as rightly pointed out by the learned Special Public Prosecutor for CBI, the petitioner has given opinion more than 100 cases. In some cases, the loanees are not having any land. This Court is unable to understand how the valuer has given the valuation certificate without owning the land by the loanees. A perusal of the record also reveals that the valuer has given the valuation certificate without verifying whether the land in question is a patta land or a government land. Committing error unwittingly by human being cannot be ruled out completely. The Court can certainly come to the rescue of the person who commits a bonafide mistake. But, in the instance case, in 102 cases, the valuer has given the valuation certificate knowing fully well that the loanees are not having title to the property. It is needless to say that the valuer alone cannot cheat the bank without the help of other officials.

11 A perusal of the record prima facie reveals that the petitioner, in connivance with the loanees and other bank officials,

has submitted the valuation certificate by quoting more value than the real value of the property.

12 The material placed before the Court clearly reveals the role played by the petitioner as well as the involvement of the petitioner in the commission of the alleged offences. Moreover, the petitioner herein is also an accused in Crime No.RC 02 (A)/2017 and Crime No.RC 03 (A)/2017 on the file of the Station House Officer, Central Bureau of Investigation, Visakhapatnam, registered for the same offences.

13 Having regard to the facts and circumstances of the case and also the gravity of the offences alleged to have been committed by the petitioner, this Court is of the considered view that this is not a fit case to grant anticipatory bail to the petitioner.

14 In the result, the petition is dismissed.

Date: 1st August 2017
Kvsn

T.SUNIL CHOWDARY, J