HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.1545 OF 2017

ORDER:

The present criminal petition is filed under Sections 437 & 439 of the Code of Criminal Procedure, 1973 (for short, 'the Code') requesting to grant bail in Crime No.135 of 2016 on the file of Robertsonpet Police Station, Krishna District.

2. The petitioner, who is arraigned as accused, alleged to have committed the offences punishable under Sections 420, 409, 467, 468, 471 & 381 of I.P.C.

3. Heard Sri Ponnavolu Sudhakar Reddy, learned counsel for the petitioner, and the learned Public Prosecutor for the State of Andhra Pradesh.

4. The learned counsel for the petitioner would plead innocence and false implication of the petitioner.

5. Touching the facts, the learned counsel for the petitioner would submit hat the petitioner is the Councillor of 33rd Ward, Machilipatnam, Krishna District. Canara Bank, Machilipatnam, has taken the service of the petitioner as jewel appraiser in the Bank since 2000; in the year 2016 when there was a discrepancy with regard to notice sent to overdue gold loans they were returned on the ground that no persons available in such addresses and some of the persons,

who obtained gold loans from the said Bank, shown service of renewal on which, Bank entertained suspicion and then gold in the Bank was re-appraised with a set of different appraisers of other branches of their Banks and found that gold pledged was found spurious and on verification with some of the customers, it was found that without informing them Gold was pledged. This has been the main allegation, which the learned counsel for the petitioner would project, based on the complaint .

6. His submission has been that the learned I-Additional Sessions Judge, Krishna at Machilipatnam while rejeting the bail in Crl.M.P. No.7 of 2017 on 12.1.2017, has specifically observed that the case diary makes it clear that the petitioner was not allowed to handle loan accounts, original gold ornaments of the customers and without the knowledge of the employees of the Bank, could not have taken place without connivance of the employees of the Bank and not only to escape from the liability, the informant gave complaint only against the petitioner to the investigating officer but also has not shown any of the employees of the Bank as accused and has not taken any steps to conduct the ID party of the gold ornaments and filed charge-sheet. The learned counsel would submit that on that ground charge sheet was returned.

7. The learned counsel for the petitioner, therefore, would submit that the observations made by the learned Sessions Judge would show

that the petitioner was arrested on suspicion and suspicion cannot be constituted for proof and the petitioner is, therefore, entitled to bail.

8. The second main submission made by the learned counsel is that the Investigating Officer has not filed charge sheet within the prescribed period of ninety (90) days provided under Sectidon 167(2) of the Code and though, the charge sheet was filed, but, it was returned with certain objections, and, therefore, the petitioner gets a right accrued for grant of bail and urges to grant bail on certain conditions and that the petitioner is ready to comply with the conditions.

9. The learned Public Prosecutor would strongly resist the request contending that it is not just and ordinary crime being committed by the petitioner; he caused pecuniary loss to the tune of about Rs.3.00 crores by taking undue advantage of his position as a Gold Appraiser engaged in Canara Bank and even has given vivid details which are contained in the complaint filed by the Bank Manager.

10. The learned Public Prosecutor has placed reliance on a ruling of the Hon'ble Division Bench of this Court in **Venkatarayanakota krishnappa Raghavendra Buvanahalli Muniyappa Nagesh Babu v. State of A.P.**[1] to fortify his submission that once charge sheet is filed within the prescribed period of ninety (90) days as provided

[1] 2009 SCC OnLine AP 264 : (2009) 2 AP LJ 268 (HC)

under Section 167 of the Code, its subsequent return to comply with the objections would not give rise to an accrued right to the petitioner.

11. The submission in regard to the petitioner gaining an accrued right on account of failure of the Investigating Agency to file charge sheet within the prescribed period under Section 167(2) of the Code is concerned. Certainly, the submission of the learned counsel that a right accrues to the petitioner for grant of bail is misconceived when the observations of the Hon'ble Division Bench of this Court in paragraph Nos.21 and 22 of the decision referred supra, applied. The observations and conclusion would run in paragraph Nos.21 and 22, thus:

> "21. From the conspectus of discussion, referred to above, we are of the view that once a charge sheet is filed for a cognizable offence by the investigating officer contains all particulars mentioned in sub-section (2) of Section 173 is a valid police report irrespective of fact that it does not contain some of the documents required to be filed under Section 173 (5) particularly, various reports as mentioned in our earlier paragraphs. If the said reports are not appended to police report that can be produced by supply copies of the same to the accused at a later stage with the permission of the Court. It is the discretion of the prosecution to enclose the statements recorded under Section 161 Cr.P.C. of all the persons whom the prosecution proposes to examine as its witnesses.
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> 22. We accordingly answer the question referred as under:
> Once the charge sheet is filed within 90 days, but was returned for compliance of certain technical objections of not filing the scientific expert's opinion, is a proper compliance under Section 173 (2) Cr.P.C. and the same will not confer any right on the accused to seek bail, as a matter of right. Even in a case where the charge sheet is filed after 90 days, but before accused seeks bail availing the benefit under proviso to sub-section

(2) of Section 167, his indefeasible right will be extinguished on filing such charge sheet."

Therefore, the said submission is rejected.

12. Turning to the main submission, when kept in view, the allegations levelled against the petitioner as contained in the complaint lodged by the Branch Manager, though, the petitioner has been in judicial remand for more than three (3) months period, still, he cannot be enlarged on bail. The amount that accounts for wrongful loss is to the tune of Rs.2.96 crores precisely. The very detection of crime, came to light only 15 years after the petitioner's services were engaged and worked continuously. The petitioner as a Jewel Appraiser was entrusted with the duties of appraising the jewels, records the details of the jewel, weighs them and enters gross weight and net weight and assesses the value and certifies the same in the loan application when a customer comes to pledge jewels to obtain loan. The sanction of loan is mainly based on appraised value assessed by the petitioner and the loan amount would be credited to the customers savings account and the customer withdraws the amount by way of cheque or using withdrawal slips.

13. When notices were sent through registered post to the loanees, some of them were returned assigning the reason that there was "no such addressee" and in some of the cases "left the place" and in some of the cases "refused" and in other cases "left without instructions".

When they were making enquiries to know about the whereabouts of certain customers whose notices were returned and contacting other customers, they found that the loans were not renewed, but the petitioner as appraiser has given the loan tickets to them to misguide them and when the petitioner was enquired about it, he gave evasive reply. Suspecting the same, they arranged for re-appraisal of gold packets in their branch and got conducted the appraisal by the jewel appraisers working in their other branches. During the process, they found that (1) the loan applications for some accounts were missing, (2) gold pledged was found to be spurious, (3) some of the customers have not applied for any gold loan from their branch but their signatures were forged by the petitioner to pledge spurious gold with the bank and misappropriated the funds. The Bank officials suspected that the loan applications were stealthily removed by the petitioner so as to destroy evidence against him to screen the evidence of forgery and misrepresentation and misappropriation of bank loan amounts. Certain other relevant details are to be found in the complaint. The material on record would reflect serious offences having been committed by the petitioner going to the extent that the Gold pledged turning out to be spurious, signatures of some of the purported customers being forged by the petitioner and pledging spurious Gold with the Bank, misappropriating funds and even going to the extreme stage of destroying evidence against him so as to screen the evidence of forgery, the petitioner is, certainly, not entitled to bail as it cannot be ruled out that he would get a chance to gain over the victims. Certainly, it is not a fit case to grant bail to the petitioner as in fact the investigating officer has to resubmit the charge-sheet. Hence, the request is rejected.

14. The Criminal Petition is, therefore, dismissed at the admission stage itself.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

A. SHANKAR NARAYANA, J

April 28, 2017

gbs/PV