

**THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**CRIMINAL PETITION No.400 of 2017**

**ORDER:**

This Criminal Petition, under Section 438 of the Criminal Procedure Code, 1973, is filed by the petitioners to enlarge them on bail in the event of their arrest, as they are apprehending arrest in connection with Crime No.208 of 2016 on the file of III Town Police Station, Nellore, SPSR Nellore District, registered for the offences punishable under Sections 409 and 420 IPC.

The main allegations against these petitioners are as follows:

On 31.08.2015, the petitioner No.1/A.2 pledged 12 gold bangles weighing 260.0 grams and obtained loan of Rs.4,68,000/-; on 28.05.2015 the petitioner No.2/A.3 pledged gold locket weighing 172.0 grams and obtained loan of Rs.3,00,000/-; and, on 30.06.2015 the petitioner No.3/A.4 pledged gold locket weighing 148.0 grams and obtained loan of Rs.2,66,000/- from Union Bank of India, Main Branch, Trunk Road, Nellore. All the petitioners obtained loans by pledging gold ornaments, on the certificates issued by one J. Eswar who was working as Gold Appraiser in the said Bank. During audit, it was detected that the pledged gold items were not pure and they are of inferior quality and on reappraisal of the said gold ornaments, it was found that only 20% of the metal is gold and 80% of metal is silver and thus, the petitioners allegedly cheated the bank in collusion with the Gold Appraiser of the bank – J. Eswar, and obtained huge amount of Rs.10 lakhs as loan and thereby committed offence punishable under Sections 409 and 420 IPC.

Section 409 IPC deals with Criminal breach of trust by public servant, or by banker, merchant or agent. But in the instant case, the petitioners are neither public servants nor bankers or merchants or agents and as such, they did not commit any criminal breach of trust *prima facie* with the assistance of public servant or by banker, merchant or agent. Therefore, the facts of the case would not *prima facie* attract the offence under Section 409 IPC. However, on perusal of the material, I find *prima facie* material against the petitioners herein which would attract the offence punishable under Section 420 IPC. Though the petitioners did not commit any default of the loan obtained by them, still the act of the petitioners in pledging the ornaments with the bank pretending them to be pure gold ornaments and obtaining false certificates from the Gold appraiser – J. Eswar, would fall within the ambit of Section 420 IPC.

In view of the above, this Court is unable to exercise discretion to grant pre-arrest bail to the petitioners, as it is *prima facie* found that the petitioners/parties have cheated the bank and obtained huge amount as loan from the bank which involves public money. If such persons are allowed by ordering release of the petitioners on pre-arrest bail, the same would amount to encouraging fraud against the public at large. Therefore, I am not inclined to grant pre-arrest bail to the petitioners. The Criminal Petition is *de void* of merit and is liable to be dismissed.

Accordingly, this Criminal Petition is dismissed.

As a sequel to it, miscellaneous petitions, if any pending in this case, shall stand closed.

**M. SATYANARAYANA MURTHY, J**

27<sup>th</sup> January, 2017  
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Dt. 27-01-2017

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