HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.2134 OF 2018

ORDER:

Accused Nos.21 in Crime No.151 of 2017 of Bheemunipatnam Police Station, Visakhapatnam, apprehending his arrest, filed this criminal petition under Section 438 of the Code of Criminal procedure, 1973 (for short 'CrPC'), to release him on bail in the event of his arrest in connection with the above crime registered for the offence punishable under Sections 420, 465, 466, 468, 471, 120(b) read with 34 of the Indian Penal Code, 1860 (for short 'IPC') and Section 74 of the Information Technology Act, 2008 and Section 13(1)(c) and (d) read with 13(2) of the Prevention Of Corruption Act, 1988.

The case of the prosecution in brief is that basing on the news item published in Sakshi Telugu Daily Newspaper on 07.05.2017 and 08.05.2017 and another news item published in Andhra Jyothi Telugu Daily Newspaper on 10.05.2017, the District Collector, Visakhapatnam, called for an enquiry report from the concerned Tahasildar, Bheemunipatnam, who in turn submitted his report on 07.05.2017 & 09.05.2017. On the strength of the report submitted by the Tahasildar, Bheemunipatnam, regarding irregularities committed by the then Tahasildar, Bheemunipatnam, the Collector has taken a decision to conduct discrete enquiry, to elicit the truth in the allegations made in the news items and report submitted by the Tahasildar, appointed Sri M.V.Govinda Raju, Special Deputy Collector (LA)

Steel Plant, Visakhapatnam, and Sri B.V.Ramana, Special Deputy Collector, NAOB, Elamanchili.

The District Collector, while enquiry is pending, on receipt of preliminary enquiry report submitted by the then in-charge Tahasildar, Bheemunipatnam by letter dated 15.05.2017, directed the Tahasildar, Bheemunipatnam, to lodge a report against B.T.V. Rama Rao the then Tahasildar (under suspension) Bheemunipatnam, with the police concerned. In turn the Tahasildar, Bheemunipatnam, lodged a report with the police along with the reports and the letter of the District Collector. On the strength of the same, the Station House Officer registered the complaint against B.T.V. Rama Rao and others, in Crime No.151 of 2017 for the offences punishable under Sections 420, 465, 466, 467, 471, 120(B) read with 34 of IPC, Section 74 of IT Act 2008 and Section 13(1)(C) and (D) read with 13(2) of the Prevention Of Corruption Act, 1988, on 17.05.2017 alleging that land measuring Ac.35.00 cents covered by Sy.No.184/6 of Chippada Village has changed hands with wrong documents with collusion of Revenue and Registration authorities and the entire land was registered in the name of Surya Chandra Estate Private Limited without link documents and without relevant entries in the web Land Data. The 1-B Register stands in the name of Seetharamaraju etc. It was also alleged that pattadar pass books were granted illegally for 100 acres of land in Annavaram of Bheemunipatnam Mandal by B.T.V. Rama Rao/A.1, the then Tahasildar of Bheemunipatnam and he himself has taken a pass book for Ac.1.50 cents in favour of his father-in-law and the said

Tahasildar mutated the name of Smt.Kalidindi Ramadevi for the land in Sy.No.184/16 of Chippada Village and it was subsequently transferred to Surya Chandra Estates Private Limited and the land in Sy.No.94/1 of Annavaram Village for Ac.26.00 cents stood registered in the name of MANASAS trust and during January 2016 the then Tahasildar, B.T.V.Rama Rao/A.1 mutated the name of Sri Tantara Surya Rao for Ac.14.00 cents and Sri Pilli Yella Rao for Ac.12.00 cents and some other persons and they filed appeal before the Revenue Divisional Officer, Visakhapatnam. It is further alleged that the said B.T.V. Rama Rao/A.1 issued pattadar pass books without registered documents, basing on the NOCs said to have been issued by Legal heirs of original pattadar and thus created loss of lakhs of rupees to the Government towards stamp duty.

During investigation, the investigating agency found certain alienations of property belonging to Government, at the instance of petitioner, and therefore, the petitioner was arraigned as A.21.

The petitioner filed the present petition alleging that he is innocent of the alleged offence and never committed any offence and he was falsely implicated at the instance of antagonists. When the petitioner is not a Government Servant, arraigning him along with Government Officials, who allegedly committed the offence under Section 13(1) (c) (d) read with 13(2) of the Prevention of Corruption Act and transfer of the F.I.R. to the A.C.B. for investigation and registration of crime against the petitioner along with Government officials is an illegality and unjust. It is specifically contended by the petitioner that he is aged more than 72 years, suffering from old age ailment, in the event of his arrest his reputation would be lowered and apart from that his health would be deteriorated, he is only the Manager and authorised person of Maharaja of Vizianagaram and under their direction only he has been discharging duties to the knowledge of one and all including the revenue officials. Despite the said fact, he was falsely implicated in the above crime and that there is no iota of truth in the allegations and prayed to grant pre-arrest bail.

The Public Prosecutor for the State of Andhra Pradesh filed counter denying the material allegations *inter alia* contending that during investigation, investigating officer examined 24 persons. L.Ws.1 to 24 recorded their statements, collected revenue records. Basing on the said investigation report, Section 13(1)(c) and (d) of the Prevention of Corruption Act was included and that during the course of investigation on 31.07.2017 the investigating officer arrested A.1 and later recorded the statements of L.Ws.25 to 34 and basing on the statements, the investigating officer added 16 persons as accused in addition to 7 accused persons, they are A.8 to A.23. Petitioner is A.21 in the said crime. The investigating officer also recorded the statement of legal heirs of P.V.G. Raju as L.Ws.35 to 46. During investigation, A.2 was arrested and remanded to the judicial custody on 16.10.2017 and A.16 was arrested on 11.11.2017 and on 15.02.2018 A.15 was arrested and remanded them to judicial custody. Thereafter A.1, A.2, A.16 were enlarged on bail and basing on the material and the statements of the witnesses, the petitioner and others were added as accused.

Part of investigation disclosed that the petitioner proclaimed himself as legal representative of Sri Alak Narayan Gajapathi Raju and other legal heirs of Sri P.V.G. Raju, erstwhile Maharaja of Vizianagaram. Whatsoever, he has been working with the said legal heirs and has been looking after their properties. Taking advantage of trust, the petitioner fraudulently obtained no objection affidavits from the legal heirs of P.V.G. Raju of Vizianagaram, conspired with A.8 Namburi Narayana Raju and their henchmen, and handed over the said affidavits to A.8 and others apart from that he issued two letters to the revenue officials, for incorporating the names of A.8 and his henchmen in connection with the properties of the said legal heirs. Moreover, accused offered landed properties on the names of two relatives of Tahasildar (A.1) and Deputy Tahasildar (A.2) towards bribe.

It is also further contended that custody of A.15 is necessary since he is the main accused, who is responsible for such mutations and transfer etc., and prayed for dismissal of the petition.

During hearing, Sri P.Durga Prasad, learned counsel for the petitioner has contended that the petitioner is only a Deewan of P.V.G. Raju, erstwhile Maharaj of Vizianagaram and he has nothing to do with the mutation of properties in the name of A.8 and others and the petitioner did not obtain no objection affidavits from the legal heirs of late P.V.G. Raju, mutated the names of A.8 and others in the revenue records and thereby he did commit no offence and when there is *prima facie* material against the petitioner that he committed offence under sections referred above, he is entitled to pre-arrest bail, atleast taking into consideration of old age ailment and prayed to grant pre-arrest bail.

The Public Prosecutor for the State of Andhra Pradesh opposed the petition on the ground that the land in S.No.184/16 belongs to the Government and transferred the said property in favour of Surya Chandra Estates Private Limited by the petitioner along with A.8 through Agreement Of Sale-cum- General Power Of Attorney is a serious illegality and prayed to dismiss the petition.

According to the petitioner, he was only Deewan in the estate of P.V.G. Raju, erstwhile Maharaj of Vizianagaram, possessed huge extent of immovable property and created trust in the name of MANASAS governed by Hindu Religious Charitable Endowment Act. Therefore, the property in S.No.184/16 of Chippada Village is the property belonging to MANASAS trust, Vizianagaram, as per notification issued under Section 22-A(1)(c) of the Registration Act and it is also shown in the list of properties maintained under Section 43 of Religious Charitable and Endowments Act as property of MANASAS trust and alienation of the properties in favour of Surya Chandra Estate is clear contravention of Section 22-A(1)(c) of the Registration Act and there is material prima facie to conclude that the petitioner committed the offence punishable under Sections 420, 465, 466, 468, 471, 120(b) read with 34 of the Indian Penal Code, 1860 (for short 'IPC') and Section 74 of the Information Technology Act, 2008 and Section 13(1)(c) and (d) read with 13(2) of the Prevention Of Corruption Act, 1988.

It is the case of the petitioner from the beginning that he was worked as Deewan under P.V.G. Raju, erstwhile Maharaj of Vizianagaram and obtained no objection affidavits to mutate the names of A.8 and others in the revenue records from the legal heirs of late P.V.G. Raju. The said no objection affidavits issued by Poosapati Alak Narayana Gajapathi Raju, Poosapati Monish Gajapathi Raju, Vyricherla Sudani Dev, Poosapati Madhuri Gajapathi Raju for mutating the land in the name of the third parties who are in possession while asserting that they have no right, title or interest in an extent of Ac.26.00 cents after donating Ac.106.40 cents to the MANASAS trust in Patta No.69 covered by Sy.No.94 of Annavaram Village, Bheemunipatnam Mandal. These affidavits are pertaining to the land in Annavaram Village in Sy.No.94, whereas the land which is alienated in the name of Surya Chandra Estate Private Limited is in Chippada Village in Sy.No.184/16 of Chippada Village, Bheemunipatnam Mandal. Therefore, these two affidavits, one was given by four persons and the other was submitted by three persons, are of no assistance to this petitioner. Therefore, based on the affidavits, revenue authorities cannot mutate the names of the petitioner in the revenue records for the land in Sy.No.184/16 of Chippada Village as owner and the petitioner is the prime accused, who is responsible for mutating the names. Even otherwise when the immovable property is to be transferred in favour of third parties mere issuing the affidavit is not sufficient that will not divest the title that vested on the person who gave an affidavit and apart from that the investigation in this case is not completed as on today. The special investigating team was appointed and report is to be submitted by the Team to find out who is responsible for the entire land scam at Visakhapatnam.

When a notification was issued under Section 22-A(1)(c) of the Registration Act prohibiting registration of certain documents by the registration authorities executed by any person in respect of the land belonging to Hindu Religious Charitable trust and registration of the Agreement Of Sale-cum-General Power Of Attorney in favour of the Manager, Surya Chandra Estate, who was arraigned as one of the accused is a clear contravention of the notification issued by the Department and transfer of the property by the Manager in favour of Surya Chandra Estates Private Limited is another serious offence i.e. alienation of land belonging to MANASAS trust, which is a public religious and charitable endowment and for these entire transfers the petitioner alone is responsible, and therefore, the petitioner is not entitled to claim pre-arrest bail as there is *prima facie* material to conclude that he is responsible for the entire episode.

The Public Prosecutor produced the bunch of revenue records as Annexure-III maintained under Section 22(A)(1)(c) of the Registration Act, to show that the land belongs to MANASAS Trust, Vizianagaram. He also produced the records regarding the land values of Annavaram Village, Bheemunipatnam Mandal, to prove that the petitioners committed mischief grabbing the lands belonging to the public trust, which is notified under Section 22(A)(1)(c) of the Registration Act. It is also contended that the investigation is not completed, in case the petitioners are enlarged on bail by using their influence, there is possibility of interference with further investigation and prayed to dismiss the petition at this stage.

Learned counsel for the petitioner also drawn the attention of this Court to the Judgment of the Apex Court in **Gurbaksh Singh Sibbia and Others v. State Of Punjab**[1] wherein the Apex Court highlighted the legislative intention in incorporating Section 438 CrPC enabling the courts to direct the station house officer to release the alleged accused persons on bail in the event of their arrest. According to the Constitutional Bench Judgment of the Apex Court, no one can accuse the police of possessing a healing touch nor indeed does anyone have misgivings in regard to constraints consequent upon confinement in police custody. But, society has come to accept and acquiesce in all, that follows upon a police arrest with a certain amount of sangfroid, insofar as the ordinary rut of criminal investigation is concerned. It is the normal day-to-day business of the police to investigate into charges brought before them and, broadly and generally, they have nothing to gain, not favours at any rate, by subjecting ordinary criminal to needless harassment. But the crimes, the criminals and even the complaints can occasionally possess extraordinary features. When the even flow of life becomes turbid, the police can be called upon to inquire into charges arising out

[1] 1980 AIR 1632

of political antagonism. The powerful processes of criminal law can then be perverted for achieving extraneous ends. Attendant upon such investigations, when the police are not free agents within their sphere of duty, is a great amount of inconvenience, harassment and humiliation. That can even take the form of the parading of a respectable person in hand-cuffs, apparently on way to a court of justice. The foul deed is done when an adversary is exposed to social ridicule and obloquy, no matter when and whether a conviction is secured or is at all possible. It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced into the Code of 1973.

At paragraph 31, the Apex Court further observed that the Bill introduces a provision for the grant of anticipatory bail. This is substantially in accordance with the recommendation made by the previous Commission. We agree that this would be a useful addition, though we must add that it is in very exceptional cases that such a power should be exercised. Thus the reason for incorporation of this provision is to protect the persons against their arrest unnecessarily.

In **Siddharam Satlingappa Mhetre vs State Of Maharashtra And Ors**[2] the Apex Court laid down the following guidelines

> *"(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*

[2] (2011) 1 SCC 694

(b) 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;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) 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 the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;

(h) 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 free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) 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 in entitled to an order of bail." (vide ***Sidharam Sattilingappa Mhetre*** *case referred supra)*

Power under Section 438 CrPC is purely discretionary and the Court has to exercise its power judicially based on settled principles, but the circumstances may vary from case to case and the law regarding grant of bail is literally discussed by the Constitutional Bench in **Gurbaksh Singh Sibbia** 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 rules can be laid down in discretionary matters like the 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** case. Though, according to the judgment of the Apex Court, even in economic offences, the Court can grant anticipatory bail, subject to satisfaction of other grounds.

In **Satish Jaggi V. State of Chhatishgarh & Others**[3] the Apex Court made it clear that at the stage of granting bail, the Court can go only into the question of the prima facie case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial. In the latter judgment in **Gobarbhai Naranbhai Singala vs State Of Gujarat & Ors**[4] the Apex Court held as follows:

> "This Court in Amarmani Tripathi case (supra) had held that while considering the application for bail, what is required to be looked is,

[3] ((2008) 1 SCC (Cri) 660)
[4] (2008) 3 SCC 775

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
(ii) nature and gravity of the charge;
(iii) severity of the punishment in the event of conviction;
(iv) danger of accused absconding or fleeing if released on bail;
(v) character, behaviour, means, position and standing of the accused;
(vi) likelihood of the offence being repeated;
(vii) reasonable apprehension of the witnesses being tampered with; and
(viii) danger, of course, of justice being thwarted by grant of bail."

Since the investigation is not completed, there is possibility of interference with further investigation, and the petitioner being Deewan, who is well acquainted with the department and other persons who got names of A.8 and others mutated in the records by submitting false affidavits of no objection.

Yet another contention of the counsel for the petitioner is that the petitioner is not a government servant or public servant and thereby registration of crime against him along with other accused who are government servants is an irregularity. But this contention cannot be accepted in view of the law laid down by the Apex Court in **P. Nallammal and another v. State, represented by Inspector of Police[5].**

By applying the principles laid down by the Apex Court, taking into consideration of the seriousness of the offence and impact on the society, I find no ground to issue a direction to the Station House Officer, Bheemunipatnam Police Station to release

[5] (1999) 6 Supreme Court Cases 559

the petitioner on bail in the event of his arrest in connection with the above crime.

In the result, the criminal petition is dismissed.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

19.04.2018
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