HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.3038 OF 2018

ORDER:

This Criminal Petition, under Section 438 of Cr.P.C., is filed by the petitioner, who is arrayed as accused No.1 in Crime No.451 of 2017 of Pendurthy Police Station, Visakhapatnam City, apprehending his arrest in connection with the above Crime, registered for the offences punishable under Sections 420 and 406 of I.P.C. and Section 5 of the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999.

2. Heard, the learned counsel for the petitioner, learned Public Prosecutor (A.P.) appearing for the respondent-State, and perused the record.

3. The case of the petitioner, in brief, is that he being the Managing Director of a non-banking company of Sonall Bhoominirmala and Farms (India) Private Limited, collected an amount of Rs.4,00,00,000/-, through de-facto complainants, being its agents, from different customers, in the form of installments and fixed deposits by issuing bonds to the respective customers and, even after maturity, failed to repay the amount of the customers since December 2014 and, thus, cheated the de-facto complainants and several customers.

4. Learned counsel for the petitioner submits that the petitioner repaid the deposited amount during the year 2013-14 and, failed to repay the deposited amount only from the year 2014 onwards, as its agents did not credit the amount collected by them to the Company and that the amount of depositors is secured by Ac.15.00 cents of land stood in the name of the Company, value of which is around Rs.1,05,00,000/- and, finally,

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

5. On the other hand, learned Public Prosecutor (A.P.), appearing for the respondent-State, contended that the earlier bail petition filed by the petitioner was dismissed by this Court and the material collected so far discloses that this petitioner collected an amount of Rs.4,00,00,000/- from various depositors and failed to repay the same and finally prayed to dismiss the Petition.

6. It is an admitted fact that the petitioner is the Managing Director of the Sonall Bhoominirmana and Farms (India) Private Limited and, it is equally true, that the petitioner collected huge amount through its agents to a tune of Rs.4,00,00,000/- on the promise that, if any person deposits an amount of Rs.1,000/- p.m. for a period of 12 months *i.e.,* Rs.12,000/- p.a., he would be paid Rs.13,455/- in cash or a sale deed for an extent of 1,344 Sq. feet would be executed in his/her favour after expiry of one year. But, the investigation so far conducted reveals that the petitioner fell due to a tune of Rs.4,00,00,000/- to its customers.

7. Learned counsel for the petitioner submits that the actual amount due to the customers, at this stage, is only Rs.15,00,000/- but not Rs.4,00,00,000/-. But, it is difficult for this Court to decide whether the amount due by the petitioner is Rs.15,00,000/- or Rs.4,00,00,000/-, in an application filed under Section 438 of Cr.P.C.

8. Grant of pre-arrest of bail is not a matter of course and in exceptional circumstances the Court can grant pre-arrest bail to the accused having concluded that there is no material to conclude that this petitioner committed any non-bailable offence, *prima-facie*. Here, in this case, a fraud to an extent of collecting Rs.4,00,00,000/- by the petitioner

either directly from the customers or through its agents and repayment of the deposited amount for some time during the year 2013-14 is not in dispute. At the same time, according to the learned counsel for the petitioner, only an amount of Rs.15,00,000/- is due to the customers, which is secured in the form of Ac.15.00 cents of land stood in the name of the company. But, the agents committed default in crediting the amount collected by them and, hence, requested this Court to grant interim pre arrest bail for a period of two weeks to unearth the fraud committed by the agents. But, it is not the case of fraud committed by the agents, but the depositors are the ultimate sufferers to whom the petitioner is directly liable for payment of the amount.

9. 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 and Others Vs. State of Punjab***[1], 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.

[1] AIR 1980 SC 1632

10. 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*; 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 concern for grant or refusal 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.

11. At the stage of granting of bail, the Court can only go 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 (***Satish Jaggi Vs. State of Chhattisgarh***[2]).

[2] (2008) 1 SCC (Cri.) 660

12. The Apex Court in ***Gobarbhai Naranbhai Singala Vs. State of Gujarat***[3], relying on ***State of U.P. Vs. Amarmani Tripathi***[4], held that while considering the application for bail, what is required to be looked is

> 1) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
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> 2) Nature and gravity of the charge;
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> 3) Severity of the punishment in the event of conviction;
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> 4) Danger of the accused absconding or fleeing if released on bail;
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> 5) Character, behaviour, means, position and standing of the accused;
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> 6) Likelihood of the offence being repeated;
>
> 7) Reasonable apprehension of the witnesses being tampered with; and
>
> 8) Danger, of course, of justice being thwarted by grant of bail.

13. If these principles are applied to the present facts of the case, the offences allegedly committed by the petitioner herein are serious economic offences and, hence, the Court cannot grant bail as a matter of routine.

14. If, totality of the circumstances of the case is taken into consideration, the act of the petitioner is a serious economic offence and in such case, the petitioner is not entitled to claim even a regular bail as

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[3] 2008 Cri.L.J 1618
[4] 2005 (8) SCC 21

held by the Apex Court in ***Nimmagadda Prasad Vs. Central Bureau of Investigation***[5].

15. In ***State of Gujarat Vs. Mohanlal Jitamalji Porwal and another***[6], 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."

16. If, the principles laid down by the Apex Court in the above judgment are applied to the present case, as the investigation is not completed and the amount involved in the crime is in crores of rupees, the petitioner cannot be enlarged either on interim pre-arrest bail or on pre-arrest bail, at this stage.

17. Accordingly, the Criminal Petition is dismissed.

In consequence, miscellaneous petitions, if any, pending in this Petition shall stand dismissed.

M.SATYANARAYANA MURTHY, J

Date: 27.03.2018.
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[5] AIR 2013 SC 2821
[6] (1987) 2 SCC 364

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