THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NOs. 3174, 3375, 3047, 3176, 3168 AND 3368 OF 2018

COMMON ORDER:

One Banoji Rao Moganti, Vice Chairman of Agri-Gold Group of Companies is the petitioner in Crl.P Nos. 3174, 3375 & 3047 of 2018, while one Kaja Kishore, Director, Agri-Gold Group of Companies is the petitioner in Crl.P.Nos. 3176, 3168 & 3368 OF 2018. Since the relief sought for in all these petitions is common, all these criminal petitions are disposed of by this common order.

One Banoji Rao Moganti, Vice Chairman of Agri-Gold Group of Companies who is the petitioner in Crl.P Nos. 3174, 3375 & 3047 of 2018, started his career as an employee in Bangalore in the year 1993-94 with a construction company. Further, in the year 1996, Banoji Rao Moganti got appointed as an employee in the Agrigold Farms India Pvt. Ltd. and subsequently promoted as Director and now working as Vice-Chairman of the said company.

One Kaja Kishore, Director, Agri-Gold Group of Companies is the petitioner in Crl.P.Nos. 3176, 3168 & 3368 of 2018 initially worked as an employee in Agrigold Group and subsequently, appointed as Director of the said company.

Both the accused, on behalf of the company M/s Agri Gold Farms & Estates Pvt. Ltd, have introduced the money circulation schemes with various payment options and collected various amounts and failed to repay the amounts. Further, the defacto complainants in the respective crimes as shown in the following table lodged complaints in various crimes and various police stations alleging that the accused cheated and breached the defacto complainant(s) trust.

Crimes in which Banoji Rao Moganti is involved:

		Offences	Defacto complainant	Amount not repaid
Crl.P.No.3174/18	Crime No.7/15 C.I.D P.S. Hyderabad	Sections 406, 420 r/w 120-B IPC	K. Narasimha Rao	Rs.2,34,000/-
Crl.P.No.3375/18	Crime No.189/15 Kurnool II Town P.S	Section 420 IPC & Section 5 of APPDFE Act' & S.156(3) Cr.P.C	S. Siva Shankar	Rs.1,00,000/-
Crl.P.No.3047/18	Crime No.31/15 China Chowk P.S, Kadapa District	Sections 420, 508, 197 IPC r/w Section 156(3) Cr.P.C	Syed Salauddin	Rs.4,29,000/-

Crimes in which Kaja Kishore is involved:

		Offences	Defacto complainant	Amount not repaid
Crl.P.No.3176/18	Crime No.7/15 C.I.D P.S. Hyderabad	Sections 406, 420 r/w 120-B IPC	K. Narasimha Rao	Rs.2,34,000/-
Crl.P.No.3168/18	Crime No.189/15 Kurnool II Town P.S	Section 420 IPC & Section 5 of APPDFE Act' & S.156(3) Cr.P.C	S. Siva Shankar	Rs.1,00,000/-
Crl.P.No.3368/18	Crime No.4/15 Nandyal I Town District	Sections 420, 420, 506 IPC r/w Section 34 I.P.C	Dudekula Hussainamma	Rs.47,830/-

As, Vice Chairman and Director of Agri-Gold Group of companies, engaged number of agents to propagate various schemes sponsored by it. The defacto complainants mentioned in the above crimes joined as members in the recurring deposit schemes launched by the petitioners company. After completion of the schemes, the petitioners were supposed to repay the amounts mentioned in the above tables to the defacto complainants. In the said process, the petitioners, on behalf of Agri Gold Company issued various cheques to the defacto complainant. Further, on presentation of the cheques, the defacto complainants received memos from their concerned banks stating "insufficient funds". Inspite of several requests made by the defacto complainants, the petitioners paid deaf ears for repayment of their amounts. Hence, the above crimes were lodged in the respective police stations and as a counter blast, the petitioners filed the present batch of criminal petitions apprehending their arrest in connection with the above crimes.

The present petitions are filed mainly on the ground that the petitioners are innocent in offences and that, the material collected during investigation did not disclose commission of any offences stated above and that the Investigating Agency exaggerated the cases against these petitioners and multiplied the amount that the Vice Chairman has allegedly infringed and misappropriated the amount and thereby, committed default in repayment of the amount to the depositors. Further, it is the contention that the dispute is purely a business transaction between the petitioners and defacto complainant and at best, it is only a civil wrong and it would not attract offences referred supra. It is also contended that the remedy available to the petitioners is only civil in nature and resorting to Criminal Court is an abuse of process of law.

It is submitted that one of the petitioner Banoji Rao Moganti is a physically challenged person, and he is not able to work and even attend nature calls on his own. Further, another petitioner Kaja Kishore is suffering from chronic liver problem and that, on sympathetic grounds, both the petitioners are entitled to claim pre-arrest bail. It is specifically contended that the allegations made in the complaint did not point out complicity of the petitioners and it is contended that the petitioners have nothing to do with the transaction of the business. It is further contended that, so far, the Investigating Agency did not collect any material to connect these petitioners with the offences directly pointing out the complicity with the various offences. But, Section 172(2) Cr.P.C can be used for limited purpose and it cannot be treated as evidence during enquiry or trial. If, that is executed from the consideration, there is a absolutely no material to connect these petitioners with the offences stated supra and such diaries can be used for purpose of Section 165 or Section 154 of the Indian Evidence Act. It is further specifically contended that the entire investigation is completed as on today and the question of petitioners interference with further investigation does not arise, in the event of their enlargement on bail. That apart, the petitioners are apprehending their arrest in connection with the above crimes and agreed to cooperate with further investigation, if any, and prayed to issue a direction to the concerned authorities to release these petitioners on bail in the event of their arrest in connection with above crimes.

During hearing, learned counsel for the petitioners while reiterating the contentions raised in the grounds, would contend that specific material available on record pointing out the complicity of these petitioners. The main endeavour of the learned counsel for the petitioners is that, even though the earlier bail applications were dismissed with respect to Banoji Rao and entire investigation is completed, both the petitioners can renew request at subsequent stage and he placed reliance on the judgment of the Apex Court in **Rani Dudeja v. State of Haryana[1].**

Basing on the principles laid down in the above judgment, learned counsel for the petitioners contended that, there is no bar against entertaining the applications for same relief, even after dismissal of earlier applications filed by the same parties, for the same relief.

[1] (2017) 13 SCC 555

Therefore, filing of applications for the same relief by the same petitioners is maintainable.

The other ground raised before this Court by the learned counsel for the petitioners is that, none of the allegations made in the complaints against the petitioners would constitute offence punishable under Section 5 of 'APPDFE Act', since, it is a civil dispute and placed reliance on the judgment of the Supreme Court in **Rani Dudeja v. State of Haryana** (referred supra) and judgment of this Court in **M. Nagaraj v. The State of Telangana[2],** to substantiate his contention that the dispute is purely civil in nature and it would not attract offence punishable under Section 5 of 'APPDFE Act'. When, the civil remedy is available, approaching criminal courts and the Investigating Agency is abusing the process of the Court and on the strength of the above principles laid down in the above judgments, learned counsel demonstrated that the facts of the case would not attract offence punishable under Section 5 of 'APPDFE Act' and urged that it is only a civil liability.

The other bone of contention raised by the learned counsel for the petitioners is that, the case diary maintained by the Investigating Agency cannot be used as evidence, except for limited purpose under Section 172 Cr.P.C and in the earlier judgment, this Court relied on the material collected during investigation and based on the police diary, this Court dismissed Crl.P.No.6167 of 2017 & batch. But, the order is contrary to judgment reported in **Mohammed Balesharief v. State of A.P[3], Balakram v. State of Uttarakhand and ors[4], Md. Ankoos and ors. v.**

---

[2] 2015 (2) ALD (Crl.) 1022 (AP)
[3] 2016 (1) ALT (Crl.) 56 (A.P)
[4] (2017) 7 SCC 668

The Public Prosecutor, High Court of A.P[5]**, Mukund Lal v. Union of India**[6].

It is further contended that the petitioners were only employees in Agrigold Company on salary and they are not shareholders having interest in the company and never received any profit or dividend from the company and that they were promoted from their initial employment to the cadre of Vice Chairman and Director respectively, therefore, the petitioners being the Vice Chairman and Director of the company are not liable to be prosecuted.

The other contention urged before this Court is that, one of the petitioner Banoji Rao is a physically challenged person and thereby, the Court must show some sympathy since he is not in a position to attend to nature calls with proper assistance and facilities and therefore, the Court can exercise its jurisdiction under Section 438 Cr.P.C and placed reliance on the judgment of the Supreme Court in **Sureshchandra Ramanlal v. State of Gujarat and anr.**[7] and **Dataram Singh v. State of Uttar Pradesh**[8].

On the strength of the principles laid down in the above judgment, learned counsel for the petitioners contended that the petitioners are not liable to be prosecuted and they are entitled for pre-arrest bail and sought a direction to the Station House Officers of concerned police stations to release the petitioners on bail, in the event of their arrest in connection with the above crimes for the offences stated supra.

Sri P.S. Nagarajan, learned counsel for the petitioners also filed written briefs on behalf of the petitioners in all the petitions in support of his contentions. Whereas, learned Public Prosecutor for the State of

---

[5] (2010) 1 SCC 94
[6] AIR 1989 SC 144
[7] (2008) 7 SCC 591
[8] (2018) 3 SCC 22

Andhra Pradesh would contend that, when the petitioners made a successful attempt to pre-arrest bail in Crl.P.No.6167 of 2017 & batch, the petitioners are not entitled to claim pre-arrest bail based on the same facts. Renewing petitions one after the other successively without any changed circumstances or without any additional material is nothing but misuse of process of the Court and that the petitioners are disentitled to pre-arrest bail. Without any changed circumstances or additional material in support of their contentions, learned counsel for the petitioners specifically contended that, whatever contentions urged before this Court were already dealt with by this Court earlier in Crl.P.No.6167 of 2017 & batch and the said order has attained finality and in the absence of any material, these petitioners are disentitled to claim relief on the present petitions and none of the grounds urged in the present petitions are suffice to grant pre-arrest bail to the petitioners by exercising discretionary power under Section 438 Cr.P.C and prayed for dismissal of these petitions.

Considering rival contentions and perusing the material available on record, the points that arise for consideration are as follows:

1) ***Whether there are any changed circumstances or additional material produced by the petitioner/Bhanoji Rao after dismissal of earlier bail applications in Crl.P.No.6167 of 2017 & batch dated 18.08.2017. If so, whether the petitioner/Bhanoji Rao is entitled to renew his request on the same grounds which he has urged before?***

2) ***Whether the prosecution made out a prima facie case that these petitioners have committed any offences, muchless, offences stated supra?***

3) ***Whether the petitioners are entitled to claim bail on sympathy, as the petitioners are suffering from various ailments, more particularly, petitioner/Banoji Rao in Crl.P.No.3047 of 2018 is suffering from disability and the other petitioner/Kaja Kishore is suffering from chronic liver failure problem and undergoing treatment since long time?***

4) ***Whether the petitioners who allegedly committed a serious economic offence be granted pre-arrest bail and direct the Station House Officers concerned , to release the petitioners on bail, in the event of their arrest?***

P O I N T NO.1

One of the contentions raised by the learned counsel for the petitioners is that, Crl.P.No.6167 of 2017 & batch which were filed by the same petitioner/Bhanoji Rao were dismissed by this Court, a request can be renewed by filing fresh applications and he placed reliance on judgment of the Supreme Court in **Rani Dudeja v. State of Haryana** (referred supra) to contend that the earlier similar bail applications were filed by these petitioners in 2017 and they were dismissed on 18.08.2017 and the Apex Court in the judgments referred supra, upheld the contention of the petitioners therein that the Principle of Doctrine of Resjudicata has no application in bail applications. The Apex Court considered to when bail can be granted and on the strength of this judgment, learned counsel for the petitioners contended that renewal of request is in accordance with law and on that ground, the criminal petitions cannot be dismissed.

It is an undisputed fact that, earlier bail applications Crl.P.No.6167 of 2017 & batch were dismissed on 18.08.2017 and almost every ground urged in the present batch of petitions were raised in the earlier applications in Crl.P.No.6167 of 2017 & batch. In the absence of any major changed circumstances, renewal of request for the same relief would not serve any purpose and it is an undisputed law that, filing of successive bail applications without any changed circumstances would not serve any purpose and the Court cannot grant bail unless there are major changed circumstances after dismissal of the earlier bail applications.

In "**Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav**[9]" the Apex Court held that the principles of *res judicata* and such analogous principles although are not applicable in a criminal proceeding, still the Courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher Court or a co-ordinate bench must receive serious consideration at the hands of the Court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the Courts must give due weight to the grounds which weighed with the former or higher Court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be re-agitated on the same grounds, as the same it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

When a bail application is rejected there is no bar to entertain another application afresh since principle of *res judicata* has no application, however there must be some new ground to be made out to

[9] AIR 2005 SC 921

apply for bail again after rejection of earlier bail application (vide: "***Gama v. State of U.P.***[10]")

Whereas Delhi Court in "***Rajender Singh v. State***[11]" held that after rejecting bail application 12th time, allowed bail when the application was filed for 13th time on the ground that there are new developments in the investigation.

In ***"State of Tamil Nadu v. S.A.Raja"*** (referred supra) the Apex Court held in paragraphs 8 & 9 when a learned Single Judge of the same Court had denied bail to the respondent for certain reasons and that order was unsuccessfully challenged before the appellate forum, without there being any major change of circumstances, another fresh application should not have been dealt with within a short span of time unless there were valid grounds giving rise to a tenable case for bail. Of course, the principles of *res judicata* are not applicable to bail applications, but the repeated filing of the bail applications without there being any change of circumstances would lead to bad precedents.

Similarly in "***Parvinder Singh v. State of Punjab***[12]" the Apex Court held that dismissal of earlier bail application would not render fresh bail application legally not maintainable and Court can always consider fresh circumstances and subsequent events.

Thus, the law consistently laid down by the Apex Court and other Courts is that if there are major changed circumstances subsequent to dismissal of earlier bail application, the Court can entertain application for bail, consider the same and decide afresh. Merely, on the ground that the earlier application was dismissed, the Court cannot straightaway

[10] 1987 Crl.L.J. 242 (All)
[11] 1988 Cr.L.J 749 (Del.)
[12] (2003) 14 SCC 615

dismiss the fresh bail application and if major changed circumstances are shown to the satisfaction of the Court, the Court can grant bail.

But, in the present case, no major changed circumstances are brought to the notice of this Court except filing some applications and dismissal. Hence, those circumstances are not suffice to conclude that same are major subsequent developments in investigation etc. to enable the Court to grant bail.

In view of the law declared by the Apex Courts in various judgments, it is difficult to accept the contention of the learned counsel for the petitioner that there are major changed circumstances which entitled the petitioner to claim bail under Sections 438 of Cr.P.C. Therefore, filing of successive bail applications without any major changed circumstances would not serve any purpose and even incarceration in jail for long period as pre-trial detention is also not a ground to enlarge the petitioner on bail, in view of **Pappu Yadav**[1] case.

The only changed circumstances brought to the notice of this Court is that, in the earlier judgment in Crl.P.No.6167 of 2017 & batch, the learned Single Judge of this Court made an observation that, no disability certificate was produced. But, now, it is produced before this Court which is filed along with the petition. The Department of Medical Education, Government of Andhra Pradesh issued a certificate certifying that Banoji Rao is suffering from physical disability. But, in Crl.P.No.6167 of 2017 & batch also similar certificate was produced, but there were no changes circumstances since the Banoji Rao was suffering from such physical disability since long time even before his joining in Agri Gold initially as an employee.

It is also brought to the notice of this Court that the entire investigation is completed and note on Agri Gold cases mentioned in the website www.cidwebsite.govin clearly disclosed that the entire investigation is completed even by the date of filing earlier applications by the end of 2016 and even if this is taken into consideration, it is not a changed circumstance after dismissal of earlier bail applications. If, the earlier applications were dismissed erroneously, the remedy open to the petitioners is to approach the Higher Courts. But, such mistake cannot be rectified by this Court entertaining other applications within a short span of time, after dismissal of earlier applications in Crl.P.No.6167 of 2017 & batch. Therefore, there is absolutely no changed circumstance or no additional material is produced by the petitioners to enable this Court to grant pre-arrest bail to Banoji Rao. Similarly, Kaja Kishore who is suffering from chronic liver disease also failed to bring any new material or any changed circumstances to the notice of this Court and therefore, as per the law declared by the Apex Court in the judgments referred supra, as there are no major changed circumstances or new material is brought on record after dismissal of Crl.P.No.6167 of 2017 & batch, thereby, this court cannot grant pre-arrest bail to these petitioners at this stage.

P O I N T NO.2

One of the contentions raised by the learned counsel for the petitioners is that, there was not *prima facie* material against these petitioners to connect them with the offences stated supra and this Court in Crl.P.No.6167 of 2017 & batch had discussed at length a *prima facie* material available against these petitioners in paragraphs 9,10,11,12,14 & 15 and concluded that the Agri Gold Group of Companies would fall within the definition of 'Financial Establishment' under Subsection 2(c) of A.P. Protection of Depositors & Financial Establishments Act, 1999 (for short 'APPDFE Act'), based on the principle in **Soma Suresh Kumar v. Government of Andhra Pradesh**[13] and rejected the plea of the petitioners while holding that the material on record disclosed that these petitioners *prima facie* committed an offence under Section 5 of APPDFE Act. In the present petitions also, learned counsel for the petitioners raised the same contention before this Court, but, this Court cannot decide whether the petitioners would fall within the definition of 'depositors' as this Court already recorded a finding on this in Crl.P.No.6167 of 2017 & batch, which attained finality, since no S.L.P is preferred against such finding recorded in paragraph 15 of the order in Crl.P.No.6167 of 2017 & batch dated 18.08.2017. This Court also discussed about *mens rea* of the petitioners and their false implications, depriving their personal liberty which is contrary to Article 21 of the Constitution of India, but, concluded that the Agri Gold Firm Estates Private Limited and other sister concerns incorporated under the Companies Act have collected huge amount of Rs.6,380.42 crores from 32,02,628 depositors, either directly by these petitioners or their agents appointed by the company with a promise to pay the same with higher rate of interest and such conclusion would fall within purview of Sub-sections (b) and (c) of Section 2 of APPDFE Act. Therefore, the finding recorded by this Court in earlier batch of cases Crl.P.No.6167 of 2017 & batch cannot be disturbed at this stage, even on the basis of the law declared by this Court relied on by the learned counsel for the petitioners.

---

[13] (2013) 10 SCC 677

The Agri Gold Farm Estates India Private Limited Company was incorporated under the Companies Act in the year 1995-96. Banoji Rao has been associated with the said company in different capacities. In Crl.P.No.6167 of 2017 & batch, this Court already extracted the relevant portions of the agreement between Banoji Rao and prosecution, while highlighting the responsibilities of Banoji Rao as Vice Chairman. From the declaration of the agreement, it clearly indicates that as per the agreement, Banoji Rao has been working as Vice Chairman. Thereby, the petitioners are liable for the acts on their part as Vice-Chairman and Director of the company in collection of deposits and failure to pay the amount. Therefore, a perusal of the record revealed that, all the sister companies are under the control of the same management, however, the company is a juristic personality. But, at this stage, it is easy to conclude that a perusal of the record *prima facie* reveals that the Agri Gold Group of Companies have diverted huge funds from the Agri Gold Group of Companies to other sister companies without following the procedure with an ulterior motive to cheat the an amount of Rs.6,380.42 crores from 32,02,628 depositors to sister companies for the reasons best known to the petitioners.

This Court in Crl.P.No.6167 of 2017 & batch discussed the ratio laid down in **S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla**[14] and **Sunil Bharti Mittal v. Central Bureau of Investigation**[15] to decide the criminal liability of Director of the company under Section 138 of Negotiable Instruments Act. In **K. Sitaram v. CFL Capital Financial Service Limited**[16], the Apex Court in paragraph no.21 held as follows:

[14] (2005) 8 SCC 89
[15] (2015) 4 SCC 609
[16] JT 2017 (6) SC 52

> "With regard to the contention of learned senior Counsel for the Appellants herein that there can be no vicarious liability attributed to the Director, Deputy Director of a Company unless the Statute specifically creates so, no doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company that too when the criminal act is that of conspiracy. Thus, an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which an individual can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically invoking such a provision."

Based on the principle laid down in **K. Sitaram v. CFL Capital Financial Service Limited** (referred supra), this Court in Crl.P.No.6167 of 2017 & batch concluded that the petitioners who are working in different capacities in the company are *prima facie* responsible, and on elaborate consideration of the law declared by the Courts, turned down the contention urged before the Court with regard to liability of the Vice-Chairman and Director of the Company.

Similarly, this Court in Crl.P.No.6167 of 2017 & batch also considered each and every contention urged in the present petitions. Based on the police case diary, the Court concluded that there is a *prima facie* material against these petitions. The contention of the learned counsel for the petitioners Sri P.S. Nagarajan is that, the police case diarycannot be used as evidence, during trial or enquiry, but, the assistance of the material in the diary can be taken by Court during trial. The present proceedings are only an enquiry and therefore, the Court can take assistance of the case diary to decide the *prima facie* case against these petitioners in view of Section 172(2) Cr.P.C.

According to Section 172 (2) Cr.P.C, any criminal court may send for the police diaries of a case under enquiry or trial in such Court, and may be used such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Thus, it is incumbent upon a Court to peruse the case-diary while trying offences of serious nature especially when prosecution and defence case are both inadequate. If the case-diary is used by the Court to contradict the Police Officer who made it or by the Police Officer to refresh the memory, the accused person or his agent has a right to see that portion of the diary which has been referred to for either of these purposes, that is to say, the accused person or his agent is entitled to see the particular entry which has been referred to and so much of the diary as in the opinion of the Court is necessary in the particular matter to the full understanding of the particular entry so used, but no more. Therefore, the court may use such diary to assist in the inquiry or trial by suggesting means of further elucidating points which need clearing up and which are material for the purpose of doing justice between the State and the accused, but entries in the case-diary cannot by themselves be taken as a evidence of any date, fact or statement therein contained. Therefore, based on part-I case diary, the Court cannot conclude that these petitioners have committed any offence.

Taking assistance of the entries in police diary, in view of permissibility under Section 172(2) Cr.P.C, cannot vitiate and even if, such finding of the Court is erroneous, still this Court cannot come to a different conclusion to maintain judicial discipline, as such interference would amount to reviewing the order passed by this Court in Crl.P.No.6167 of 2017 & batch.

This Court having considered each and every contention raised by the petitioners in Crl.P.No.6167 of 2017 & batch, which are identical to the contentions raised in the present petitions, passed a well considered and reasoned order in Crl.P.No.6167 of 2017 & batch and the said order has attained finality. Therefore, filing petitions on the same grounds is nothing but an abuse of process of the Court without change in any major circumstances or producing any new additional material in the batch of petitions. Hence, I am not inclined to express any different opinion in the present batch of criminal petitions which are filed by the same petitioners, to maintain judicial discipline and in view of the limited scope of enquiry in petitions filed under Sections 438 Cr.P.C. Accordingly, the point is answered in favour of the prosecution and against the petitioners.

P O I N T NO.3

Learned counsel for the petitioners contended that Banoji Rao is a handicapped person and he is not in a position to answer the nature calls by his own and Kaja Kishore is suffering from chronic liver disease. Both the petitioners produced material in support of their contention.

No doubt, Banoji Rao is suffering from physical disability and Kaja Kishore is suffering from chronic liver disease. Though Banoji Rao is suffering from physical disability, he allegedly committed serious economic offence and cheated the public by collecting Rs.6,380.42 crores from 32,02,628 depositors and diverted huge funds from the Agri Gold Group of Companies to other sister companies with the aid of other employees and other Directors allegedly. When the disability did not come on the way of committing fraud and committing serious economic offences, it cannot be taken as a ground to grant pre-arrest bail to Banoji Rao and the Courts are bound to pass order in accordance with law and extension of sympathies will have no role in the orders passed by this Court under Section 438 Cr.P.C. Similarly, Kaja Kishore is also suffering from chronic liver disease. But, that by itself is not a ground to grant pre-arrest bail to him. If, for any reason, the petitioners are arrested in connection with the above crimes, the Investigating Agency is directed to provide necessary medical treatment in the Government Hospital, subject to availability, if not, in any other hospital where such facility is available. But, on the ground that the petitioners are suffering from ill-health, pre-arrest bail cannot be granted.

Learned counsel for the petitioners has placed reliance on the judgment in **Dataram Singh v. State of Uttar Pradesh** (referred supra), wherein, in paragraph 7 of the judgment, the Apex Court observed as follows:

> "However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory."

But, the principle laid down in the above judgment cannot be applied to the present facts of the case, for the simple reason that, on account of the inhuman attitude of the petitioners for return of collected amount of Rs.6,380.42 crores from 32,02,628 depositors, which the petitioners appropriated for their personal benefit and on account of alleged commission of offence, hundreds of agents and depositors committed suicide leaving behind agony and trauma to their families. When the petitioners not guilty of their inhuman attitude, no sympathy and compassion need be extended to these petitioners, on account of illegality, while granting pre-arrest bail.

In **Dataram Singh v. State of Uttar Pradesh** (referred supra), the Apex Court discussed about the scope to grant pre-arrest bail and held that a humane attitude is required to be adopted by a Judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by the Apex Court in **In Re-Inhuman Conditions in 1382 Prisons**[17]. In the same judgment, the Supreme Court also adverted to the decisions in **Nikesh Tarachand Shah v. Union of India**[18], **Gurbaksh Singh Sibbia v. State of Punjab**[19], **Nagendra v. King-Emperor**[20], **Emperor v. Hutchinson**[21] wherein it was observed that grant of bail is the Rule and refusal is the exception and on the strength of these principles, learned counsel for the petitioners mainly contended that the Court can grant pre-arrest bail to these petitions, though earlier bail applications were dismissed.

Further, the principle laid down in **Dataram Singh v. State of Uttar Pradesh** (referred supra), varies from case to case and while deciding such bail applications, the Court has to ensure the material and consequences on account of commission of such serious economic offences. Therefore, taking into consideration all the facts and circumstances of the case, and mostly commission of suicide by agents and depositors on account of default committed by these petitioners in repayment of deposit amount, I am not inclined to extend sympathies and human approach to these petitioners to grant pre-arrest bail. Hence, I find that ill-health of the petitioners is a minor problem and it is not a ground to grant pre-arrest bail to these petitioners. Hence, the contention of the learned counsel for the petitioners is not accepted and

[17] (2017) 10 SCC 658
[18] 2017 (13) SCALE 609
[19] (1980) 2 SCC 565
[20] AIR 1924 Cal 476
[21] AIR 1931 All 356

accordingly, the point is answered in favour of the prosecution and against the petitioners.

P O I N T NO.4

The main contention of the prosecution is that the petitioners committed serious economic offences involving Rs.6,380.42 crores collected from 32,02,628 depositors. This Court also discussed about the principles for grant of pre-arrest bail in Crl.P.No.6167 of 2017 and concluded that there is a *prima facie* material, concluded that these petitioners have committed various offences *prima facie* stated supra and the order attained finality. Therefore, this Court cannot review the order passed by this Court in Crl.P.No.6167 of 2017, exercising power under Section 438 Cr.P.C in a different application filed by the same petitioners on the same provision of law, on the same material and grounds.

When the petitioners allegedly committed serious economic offences, they are disentitled to claim pre-arrest bail, as it is the duty of the Court to strike balance between societal interest and fundamental right guaranteed under Article 21 of the Constitution of India.

Power to grant '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.

For grant of pre-arrest bail under Section 438 Cr.P.C, certain principles have been laid down by the Apex Court and at best, the Courts are bound to follow the guidelines laid down by the Apex Court in

Bhadresh Bipinbhai Sheth[21] case. The Apex Court only reiterated the 10 guidelines laid down in **Siddharam Satlingappa Mhetre vs State Of Maharashtra**[22] which are as follows:

> i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
>
> ii. 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;
>
> iii. The possibility of the applicant to flee from justice;
>
> iv. The possibility of the accused's likelihood to repeat similar or the other offences.
>
> v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
>
> vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
>
> vii. 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 accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
>
> viii. 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 the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
>
> ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
>
> x. 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 is entitled to an order of bail.

The learned counsel also drawn the attention of this Court to the principles laid down in **Gurbaksh Singh Sibbia and Ors. v. State of Punjab**[23] and reiterated the duty of the Court while deciding an application filed under Section 438 of Cr.P,.C and the guidelines to be followed for grant of such bail.

---

[22] AIR 2011 SC 312
[23] AIR 1980 SC 1632

There is no quarrel regarding the law laid down by the Apex Court in **Bhadresh Bipinbhai Sheth v. State of Gujarat and another** (supra). But, the relief under Section 438 Cr.P.C is purely discretionary and the Court has to exercise its discretion judiciously. But, nowhere in the guidelines in judgments, the Court did not explain do not speak as to how the Court can exercise its judicial discretion in a petition filed under Section 438 Cr.P.C.

Section 438 Cr.P.C deals with direction for grant of bail to person apprehending arrest and it reads as follows:

> (1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.
>
> (2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may thinks fit, including-
>
>> (i) a condition that the person shall make himself available for interrogation by a police officer as and when required: (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;
>>
>> (iii) a condition that the person shall not leave India without the previous permission of the Court;
>>
>> (iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of attest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

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 Ors. v. State of Punjab** (supra), 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. 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 and Ors. v. State of Punjab** (supra). Though, according to the judgment of the Supreme Court, even in economic offences, the Court can grant anticipatory bail, subject to satisfaction of other grounds.

In **Siddharam Satlingappa Mhetre vs State Of Maharashtra** (referred supra), the Apex Court carefully analyzed the principles in various judgments and considering the law on anticipatory bails in other countries, laid down 10 guidelines which are referred supra.

On the strength of the same principles in **Jai Prakash Singh v. State of Bihar**[24], the Supreme Court held that Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and

[24] AIR 2012 SC 1676

would not misuse his liberty. The Courts are expected to deal with very serious matters seriously, but not in casual and cavalier manner and grant of anticipatory bail by extending unwarranted sympathy towards accused by exercising discretion. Court might not exercise its discretion in derogation of established principles of law, rather it had to be in strict adherence to them. Discretion had to be guided by law, duly governed by rule and could not be arbitrary, fanciful or vague and Court must not yield to spasmodic sentiment to unregulated benevolence. Any order *dehors* grounds provided in Section 438 of CrPC is illegal.

In view of the law declared in the above judgment, the Courts shall not extend undeserved sympathy to the accused and that the Court while exercising discretion has to follow the settled principles and at the stage of consideration of anticipatory bail while dealing with application for pre-arrest bail, the Court is under obligation to indicate in the order, reasons for *prima facie* coming to the conclusion as to why bail was being granted, particularly, where the accused was charged for having committed serious offences. It is necessary for the Courts dealing with the applications for pre-arrest bail to consider several circumstances. Though, the conclusive finding in regard to the points urged by the petitioners is not accepted by the Court, considering the bail applications, yet, giving reasons, is different from discussing merits or demerits. At the stage of granting bail, a detailed examination of evidence and elaborate documentation of merits of the case is not to be undertaken, but that does not mean that while granting bail, some reasons for *prima facie* conclusions as to why bail was being granted is required to be indicated.

In **Lavesh v. State (NCT Delhi)[25]** the Apex Court held that conduct of accused immediately after incident as well as after interim protection granted by Court, has to be taken into consideration for the reason that unless free hand was given to investigating agency, particularly, in light of allegations made against the petitioners, the petitioners cannot be enlarged on bail.

If, totality of the circumstances of the case is taken into consideration, the act of the petitioners is a serious economic offence and in such case, the petitioners are not entitled to claim even a regular bail as held by the Apex Court in **Nimmagadda Prasad v. Central Bureau of Investigation[26]**.

Following the judgment of the Apex Court in **State of Gujarat v. Mohanlal Jitamalji Porwal and another[27],** the Supreme Court arrived at a conclusion in **Nimmagadda Prasad[8]** case. In **Mohanlal Jitamalji Porwal[9]** case, 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."

---

[25] (2012) 8 SCC 730
[26] AIR 2013 SC 2821
[27] (1987) 2 SCC 364

In view of the law declared by the Apex Court in the long line perspective catena of judgments, it is difficult to exercise discretion under Section 438 Cr.P.C and consequently, the point is answered in favour of the prosecution and against the petitioners.

In view of my foregoing discussion, all the criminal petitions are liable to be dismissed.

In the result, the criminal petitions are dismissed.

Consequently, miscellaneous petitions pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:11.04.2018

SP