THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.3382 of 2018

ORDER:

This criminal petition is filed under Section 438 of Criminal Procedure Code (for short "Cr.P.C") seeking release of the petitioner/Accused No.2 on bail in the event of his arrest in connection with Crime No.135 of 2018 of Chaitanyapuri Police Station, Rachakonda Commissionerate/Cyberabad, registered for the offences punishable under Sections 406, 419, 420, 468, 471 and 120(b) of Indian Penal Code (for short "IPC").

The case of the prosecution in brief is that the petitioner and others have obtained credit cards of HDFC Bank giving misleading employment particulars, availed the credit facility but did not repay the amount and have become overdue. On verification, it was found that the photographs appearing on the passports in different names etc., the total over due amount comes to Rs.41,66,325-50 ps. Thus, the petitioner along with other accused have committed the offences, as referred to supra.

The present petition is filed on the ground that the petitioner/Accused No.2 did not commit any offence, that there is no *prima facie* material to proceed against him and therefore, the petitioner is entitled to pre-arrest bail and prays to issue a direction to the Station House Officer concerned to release him on bail in the event of his arrest in connection with the Crime No.135 of 2018.

During hearing, Smt.Sesharajyam, learned senior counsel, contended that the petitioner is innocent and he has not committed any offence, as alleged, that no *prima facie* case is made out against him, that the petitioner has changed his name from Nimmagadda Paparao to Nimmagadda Phani Chowdary, vide Gazette publication, dated 07.10.2016 and therefore, he did not change his name and applied for credit card giving misleading and false particulars and hence the petitioner is entitled to pre-arrest bail.

The learned Public Prosecutor for the State contended that the material collected during course of investigation clearly shows that the petitioner/accused No.2 opened bank accounts with different names, obtained credit cards, availed credit facility provided to him and therefore, he is not entitled to claim pre-arrest bail, since it is an economic offence.

The case of the petitioner is that the petitioner was initially known as Nimmagadda Paparao and later he changed his name by making necessary publication in the Gazette Notification, dated 07.10.2016, and from the date of publication, he was known as Nimmagadda Phani Chowdary.

The petitioner availed Card/Loan No.36088611436422 in the name of Nimmagadda Phani Chowdary, disclosing his employment in USS Data Solutions Private Limited and credit limit is Rs.75,000/- and the current outstanding is Rs.73,850-20 ps as on the date of closing of investigation. Similarly, the same petitioner, in the name of Phani Nimmagadda, availed the Card/Loan No.5522748102087451, disclosing his employment in Corosoft Technologies Private Limited, the credit limit is Rs.75,000/- and the amount due is Rs.1,24,162-62 ps. The same petitioner also in the name of Nimmagadda Phani Chowdary, availed card/loan No.4361137 (PL), without disclosing his avocation or employment, the credit limit is Rs.4,31,000/- and the outstanding amount is Rs.3,50,847/-.

During course of investigation, the jurisdiction police raided the house of the petitioner and seized certain documents, including the passport. The material collected by the police shows that the petitioner availed personal loan in the name of Nimmagadda Phani Chowdary, so also credit facility upto a limit of Rs.75,000/- and later as Phani Nimmagadda with a limit of Rs.75,000/- disclosing that he was working in USS Data Solutions Private Limited and later in Corosoft Technologies Private Limited.

The material on record also discloses that the petitioner again availed credit facility vide Card/Loan No.5166579797 (CD) in the name of Nimmagadda Chowdary without disclosing his real name as Nimmagadda Phani Chowdary, credit limit is Rs.27,100/- and the outstanding amount is Rs.18,569/-.

Thus, the petitioner has obtained credit cards/loans and availed the credit facility in different names, disclosing different avocations and therefore, the petitioner appears to have intentionally availed the loans and credit facility and committed default in payment of due amount to the bank. It is a serious economic offence and thereby the petitioner is not entitled to claim pre-arrest in view of the judgment of the Apex Court in *Nimmagadda Prasad v. Central Bureau of Investigation*[1].

Following the judgment of the Apex Court in *State of Gujarat v. Mohanlal Jitamalji Porwal and another*[2], the Supreme Court arrived at a conclusion in *Nimmagadda Prasad*[1] case. In *Mohanlal Jitamalji Porwal*[2] case, the Apex Court made a serious observation for considering bail for a serious economic offence and held in paragraph 5 as follows:

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[1] AIR 2013 SC 2821
[2] (1987) 2 SCC 364

> "……………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."

In view of Law declared by the Apex Court, when the accused committed serious economic fraud, he is disentitled to claim pre-arrest bail.

In *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others*[3], the Hon'ble Apex Court laid the following guidelines to exercise to grant pre-arrest bails to the accused:

> The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:
>
> 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 facts 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 accuser'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 case of large magnitude affecting a very large number of people;

[3] 2011 Crl.L.J. 3905

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 case in which accused is implicated with the help of Section 34 and 149 of IPC, 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 witnesses 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.

By applying above guidelines to the present facts of the case, taking into consideration the seriousness in the offence committed by the petitioner/Accused No.2, which is an economic offence, there is possibility to interfere with the investigation, if the petitioner is enlarged on bail, I am not inclined to grant pre-arrest bail to the petitioner/Accused No.2.

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 Cr.P.C is illegal. As such the petitioner does not deserve any sympathy to exercise discretionary power under Section 438 Cr.P.C.

In the result, the Criminal Petition is dismissed.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.SATYANARAYANA MURTHY,J

Date: 03.04.2018
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