THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 3691 OF 2018

ORDER:

This petition is filed, under Section 438 of the Code of Criminal Procedure, 1973, for grant of anticipatory bail to the petitioner-accused No. 10 in Crime No. 583 of 2016 of Uppal Police Station, Rachakonda, now with CID P.S., registered for the offences punishable under Sections 406, 420, 418 and 120-B read with Sections 34 of IPC and 156 (3) of Cr.P.C., Sections 4 and 5 read with Sections 2 (c) and 3 of Prize Chits and Money Circulation Schemes (Banning Act), 1978, Section 45 of RBI Act and Sections 3 and 5 of Protection of Depositors Financial Establishment Rules, 1999.

2. Heard learned counsel for the petitioner and learned Public Prosecutor (T.S.).

3. The case of the prosecution is that one P.Kiran Kumaran and Kali Charan, who were working in Agrigold Farms and Estates as Agents in Dilsukh Nagar and Abids branches respectively, approached Smt. A.Rama Sitha-the *de facto* complainant at her house at Kalyanpuri, Uppal, during the period of October, 2013, and December, 2013, and shown colourful pictures about the schemes and modes of repayment; that believing their words, the *de facto* complainant deposited an amount of Rs.3,50,000/- in green ventures project on her name; that later, she received only Rs.7,500/- as payout/dividend against the above said investment and thereafter she did not receive any other amount; that when she requested many times,

neither the company nor the agents did not respond in proper way and that recently she came to know through media and newspapers that the petitioner along with the other accused cheated her and grabbed thousands of crores from the customers.

4. Learned counsel for the petitioner submits that the petitioner was only an agent of the company and he did commit no offence much less the above offences and that entire investigation is completed in this case.

5. Learned Public Prosecutor has opposed the petition on the ground that the petitioner committed a grave economic offence and the company embezzled to a tune of rupees six thousand crores from thousands of subscribers and that when the petitioner was an agent, he is also equally responsible for the offences committed by the company.

6. It is an admitted fact that the petitioner was an agent of the company and collected Rs.3,50,000/- from the *de facto* complainant but did not repay the same. The main contention of learned counsel for the petitioner is that he is no way concerned with the non-payment of the amount. Section 5 of the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (for short, 'the Act'), says where any financial establishment defaults in the return of the deposit either in cash or kind or defaults in the payment of interest on the deposit as agreed upon, every person responsible for the management of the affairs of the financial establishment including the Promoter, Manager or Member of the financial establishment shall be

punished with imprisonment for a term which may extend to then years and with fine which may extend to rupees one lakh and such financial establishment shall also be liable for fine which may extend to rupees five lakhs. From Section 5 of the Act, it is clear that every person responsible for the management of the affairs of the financial establishment including the Promoter, Manager or Member of the financial establishment shall be punished. Therefore, the petitioner, being an agent of the company, is also equally responsible for the fraud committed by the company and he cannot escape from the liability.

7. The allegations made in the complaint and the material collected during investigation *prima facie* establish that the petitioner, who was an agent of the company, collected Rs.3,50,000/- from the *de facto* complainant and committed default in repayment of the same. Therefore, the petitioner cannot claim pre-arrest bail which is purely discretionary in nature. Grant of pre-arrest bail is not a matter of routine and it is a matter of exception. Unless the petitioner is able to satisfy the Court that there are exceptional circumstances, the Court cannot grant pre-arrest bail. The Apex Court in *Siddharam Satlingappa Mhetre Vs. State of Maharashtra*[1] provides the following factors and parameters that are needed to be taken for consideration while dealing with 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;*
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> *(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;*

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[1] 2010 (12) TMI 1085 SC

(iv) *The possibility of the accused's likelihood to repeat similar or 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;*

(vii) *The Court 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 the accused is implicated with the help of Section 34 and 149 of the 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 free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;*

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

(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."*

In the case on hand, the company collected more than Rs.6,000 crores form thousands of subscribers but failed to repay the same, as a result of which several depositors committed suicide and some of the families are totally ruined. Having considered the above factors and parameters and applying to the present facts of the case, the petitioner is not entitled to seek pre-arrest bail in view of the gravity of the offence.

8. The criminal petition is accordingly dismissed. Pending miscellaneous petitions if any shall stand dismissed in consequence.

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M.SATYANARAYANA MURTHY, J.

16-04-2018.
JSK