

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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**Criminal Petition No.3857 of 2018**

**Between:**

Mallampati Gandhi

S/o. Naga Raju, Aged about 56 years

Occ: Presiding Officer, Labour Court-I,

Nampally, Hyderabad.

R/o.H.No.12-11-1170/1, Boudha Nagar,

Warasiguda, Secunderabad.

... Petitioner/Accused

AND

The State of Telangana,

Rep. by Special Public Prosecutor,

ACB Cases.

... Respondent/complainant

DATE OF JUDGMENT PRONOUNCED: 16.04.2018

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

1. Whether Reporters of Local Newspapers

may be allowed to see the judgments?

Yes / No

2. Whether the copies of judgment may be

marked to Law Reporters / Journals?

Yes / No

3. Whether Their Lordship wish to

see the fair copy of the Judgment?

Yes / No

**U. DURGA PRASAD RAO, J**

**\* THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

**+ Criminal Petition No.3857 of 2018**

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... Respondent/complainant

**! Counsel for Petitioner : Sri C.Nageshwar Rao, Senior Counsel  
for Sri Sreenivas Padala**

**^ Counsel for Respondent : Special Public Prosecutor for ACB**

**< Gist:**

**> Head Note:**

**? Cases referred:**

1) (1987) 2 SCC 364

2) (2013) 7 SCC 466

3) 2017 (4) RCR (Criminal) 646 = MANU/DE/2776/2017

4) (2005) 8 SCC 21

**HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

**Criminal Petition No.3857 of 2018**

**ORDER:**

In this petition filed under Sections 437 and 439 Cr.P.C, the petitioner/AO craves for bail.

2) FIR No.05/RCA-CR-1/2018 dt.16.03.2018 was registered against AO by the Inspector of Police, ACB, City Range-I, Hyderabad for the offence under Section 13(1)(e) r/w 13(2) of Prevention of Corruption Act, 1988 (for short "PC Act, 1988) on the allegation that the AO, who is working as Presiding Officer, Labour Court-I, Nampally, Hyderabad, has acquired assets worth Rs.1,96,44,000/- disproportionate to his known source of legal income.

3) The investigation is reported to be pending.

4) The AO was arrested on 17.03.2018 and his bail application in CrI.M.P.No.215/2018 was dismissed by the Principal Special Judge for SPE & ACB Cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad on 28.03.2018.

5) It is an economic offence. With man's pursuit for materialistic pleasures increased, the economic offences started waxing. The height of the concern for the society in recent period unfortunately is that the law protectors, the guardians of public rights are being frequently involved in economic and white collar offences. This is one of such classic examples.

6) In every bail application including the offences involving economic frauds and white collar crimes, the Courts encounter a crucial issue of individual liberty guaranteed by the Constitution under Article 21 on one hand and societal interest to bring the culprit to book and see that the fair trial and impartial justice are rendered. These two aspects being distinct poles, Courts are required to strike a judicious balance between the two conflicting interests. That is where, we are now.

7) Bail law on economic and white collar offences is well delineated and no more *res integra*. Echoing the concern for economic offences, which are more dangerous and having far reaching impact on society than bodily offences, Hon'ble Apex Court and several High Courts have held that in dealing with such bail applications, Courts are required to analyze and evaluate certain relevant factors cautiously.

i) In *State of Gujarat vs. Mohanlal Jitamalji Porwal and another*<sup>1</sup>, the Apex Court observed thus:

**“Para 5:** xx xx.... *Ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not a persona-non-grata whose cause may be treated with disdain. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being*

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<sup>1</sup> (1987) 2 SCC 364

*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.”*

ii) In ***Nimmagadda Prasad v. Central Bureau of Investigation***<sup>2</sup>, the Supreme Court voiced:

*“**Para 23:** Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fibre of the country's economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole.*

***Para 25:** Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed **seriously** and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.”*

iii) In ***Shivani Rajiv Saxena v. Directorate of Enforcement and others***<sup>3</sup>, the High Court of Delhi observed thus:

*“**Para 13:** The offence alleged against the petitioner falls under the category of economic offences which stand on a graver footing. These crimes are professionally committed by white-collared people which inflict severe injuries on both health and wealth of the nation. Such offences need to be dealt with a heavy hand and releasing such accused on bail will affect the community at large and also jeopardize the economy of the country. The plea of parity is also not tenable in this case since the court did not consider, refer to and discuss the rigours of Section 45(1) of the PMLA. Petitioner has also failed to*

<sup>2</sup> (2013) 7 SCC 466

<sup>3</sup> 2017 (4) RCR (Criminal) 646 = MANU/DE/2776/2017

*bring out any special circumstances for her release on bail being a woman or sick, keeping in mind the nature and gravity of offence, bail application is dismissed.”*

8) Thus the above rulings would emphasize the need to treat the economic offences as being class apart. In the matter of dealing with bail applications in such offences, certain parameters have been propagated by the precedential jurimetrics.

i) In *State of U.P through CBI v. Amarmani Tripathi*<sup>4</sup>, the Supreme Court pointed out the factors to be observed:

*“**Para 18:** It is well settled that the matters to be considered in an application for bail are (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 the 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”.*

ii) In *Nimmagadda Prasad* (supra), the Apex Court has, succinctly enlisted the factors to be weighed.

*“**Para 24:** While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words “reasonable grounds*

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<sup>4</sup> (2005) 8 SCC 21

*for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”*

With the above jurisprudence on bails, the case on hand has to be perused.

9) Learned Senior Counsel for petitioner—Sri C.Nageshwar Rao, while strongly refuting the accusation against the AO would seek for bail on the following main plank of argument:

a) Firstly, out of the 19 items of the properties cited by the IO, Items 1 to 4 and 6 to 13 were alone related to petitioner and his family members and they were acquired with the prior permission of the High Court. Whereas Items 14 to 19 do not belong to him and they relate to his mother-in-law, sister-in-law and co-brother. If this aspect is properly considered, there can be no scope for holding him guilty of possessing disproportionate assets. Hence, there is no *prima facie* case against him.

b) Secondly, he would argue that the Vigilance Cell of High Court granted permission to register a case in a post-haste manner without calling for an explanation from the Officer on his assets.

c) Thirdly, it is argued that the ACB officials already searched his house and bank locker and seized the concerned records and nothing more is left for further search and seizure. Added to it, the other

records relating to service particulars of the petitioner are available with the High Court, who is the employer of the petitioner and therefore, there is no question of petitioner either meddling with the investigation or tampering the records.

d) Fourthly, learned counsel would submit that the AO is suffering with multiple health problems. He is already on pacemaker in the heart and he was recently recommended surgery for transplantation of liver besides he is having high blood pressure. Therefore, his continued incarceration in uncongenial and unhygienic atmosphere would aggravate his health problems.

e) Above all, the marriage of the petitioner's son—Sameer is fixed to be performed on 06.05.2018. The AO being father, his presence is essential.

On all the above submissions, learned Senior Counsel sought for bail.

10) In oppugnation, learned Special Public Prosecutor for ACB(Telangana) ("Spl.P.P.") would argue that with the permission of Hon'ble High Court a discrete enquiry was conducted against the AO and report was submitted and thereupon the High Court accorded permission to ACB to register FIR against AO and to proceed further and hence, it is preposterous for the petitioner to contend that the High Court accorded permission to register the case in a post-haste manner.

a) Secondly, arguing on the existence of *prima facie* case, learned Spl.P.P. would argue that at the time of registration of FIR the disproportionate assets were roughly assessed to a tune of Rs.1,96,44,000/-. However, after conducting searches in six places excluding the bank locker and the house of J.Nagakumari, sister-in-law of AO, the disproportionate assets were revised to Rs.2,50,40,881/-. He would emphasize that after completion of entire investigation the value of disproportionate assets may increase further. Hence, there exists a strong *prima facie* case, he would avouch.

b) Thirdly, opposing the bail, learned Spl.P.P. would submit that the investigation is in the inception stage and a thorough investigation relating to financial transactions between the petitioner/AO and his sister-in-law—J.Nagakumari is very much essential. He would submit that petitioner's daughter, his sister-in-law and co-brother—Pulla Rao started M/s.Deepu Constructions wherein, from the resourceful information the IO came to know, the petitioner/AO has pumped his ill-gotten money. There was a huge investment of about 5 crores during the year 2014-15 by N.Pullu Rao. Therefore, a threadbare investigation is necessary to know the financial resources of Pulla Rao and Nagakumari and Sravani the daughter of AO and to confirm whether the AO laundered money in the said construction firm in their names. Learned Spl.P.P. would further submit that the investigation has to unearth the huge amounts paid by AO towards Margadarshi chits in the name of his family members. The IO has to investigate about the withdrawal of Rs.41

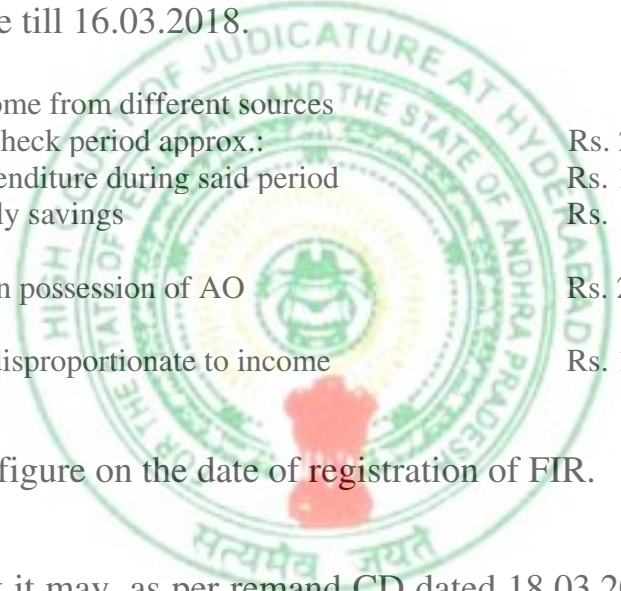
lakhs from the bank account and expenditure details. Added to it, the AO applied for permission to purchase 11.67 acres of agricultural land worth Rs.32 lakhs in Yedamolu village, W.G.District. However, as per the information secured by IO he was purchasing 14 acres of land worth more than two crores and the said aspect also requires a thorough investigation. In this regard, the IO has already addressed 16 letters to different authorities to secure authenticated information and replies are being awaited from the concerned. Since the investigation is in the crucial stage, if granted bail, the AO being a Judicial Officer and law knowing person will certainly use his legal skills to sabotage the investigation and thereby, the IO cannot be able to conduct a fair investigation to disinter the truth.

c) Responding on the health problems of AO, the Spl.P.P. would submit that on the direction of Principal Special Judge for SPE and ACB Cases, Hyderabad, the AO was referred to NIMS wherein after conducting all tests on 25.03.2018 and holding that his condition was stable and normal, he was discharged from the said hospital. Any medical requirement occurs, the jail authorities can well attend to and therefore, on the medical ground he may not be enlarged. With regard to the proposed marriage of AO's son, learned Spl.P.P. would vehemently argue that in view of gravity of the offence and pending investigation, the request may not be considered as the petitioner may misuse his liberty to trample the crucial evidence. He thus prayed to dismiss the bail application.

11) The point for determination is:

*“Whether there are merits in this petition to grant bail”*

12) **POINT:** As already discussed supra, the bail application has to be tested on the touchstone of relevant factors propounded by the Apex Court. The first among them is about the existence of *prima facie* accusation against the AO. It is pertinent to note that as per FIR No.05/RCA/CR/1/2018 dated 16.03.2018, the petitioner/AO joined in Judicial Department on 05.05.1994 and thus, his check period is taken from said date till 16.03.2018.



|                                                                |                    |
|----------------------------------------------------------------|--------------------|
| His income from different sources during check period approx.: | Rs. 2,87,37,000-00 |
| His expenditure during said period                             | Rs. 1,93,58,000-00 |
| His likely savings                                             | Rs. 93,79,000-00   |
| Assets in possession of AO                                     | Rs. 2,90,23,000-00 |
| Assets disproportionate to income                              | Rs. 1,96,44,000-00 |

This was the figure on the date of registration of FIR.

a) Be that it may, as per remand CD dated 18.03.2018, which was prepared after conducting the searches in the house of AO and five other places on 17.03.2018, the IO arrived at different figures as follows:

|                                                                |                    |
|----------------------------------------------------------------|--------------------|
| His income from different sources during check period approx.: | Rs. 2,87,37,000-00 |
| His expenditure during said period                             | Rs. 1,98,83,000-00 |
| His likely savings                                             | Rs. 88,54,000-00   |
| Assets in possession of AO                                     | Rs. 3,38,94,881-00 |
| Assets disproportionate to income                              | Rs. 2,50,40,881-00 |

Thus, after conducting preliminary searches the value of disproportionate assets increased to Rs.2,50,40,881/-. This figure does not include in itself the worth of valuable articles recovered from the locker of AO in SBI, Warasiguda Branch, Hyderabad. No doubt, in the grounds of bail application, it is the contention of AO that out of 19 items cited, items 1 to 4 and 6 to 13 alone belong to him and his family members and rest of the items belong to his sister-in-law and others. Even if the said contention is taken into consideration, the value of items 1 to 4 and 6 to 13 mentioned in remand report roughly comes to Rs.2,16,78,881/-. However, his savings for the said period were only worth Rs.88,54,000/-. Therefore, even if his contention is accepted, still the worth of disproportionate assets comes to Rs.1,28,24,881/- (Rs.2,16,78,881/- minus Rs.88,54,000/-).

Thus, a careful scrutiny of the aforesaid figures would manifest that even if the contention of petitioner is accepted and some errors in the appraisal of the income, expenditure and assets are taken into consideration, still, AO possessing assets disproportionate to his income cannot be ruled out at this juncture. Of course, I must hasten that this is only a theoretical analysis to know about the existence or non-existence of *prima facie* case to consider the bail application. Ultimate truth has to be exhumed after investigation. Hence, there exists a strong *prima facie* case against AO which requires a thorough investigation.

b) The contention of petitioner that the Registry of High Court has granted permission to register FIR in a post-haste manner does not hold water because, the letter dated 17.03.2018 of Director General, ACB to the Registrar General would show that upon securing permission, the ACB at first conducted discrete enquiry against AO and submitted a report and after satisfying with the *prima facie* material, the High Court accorded permission to register the FIR against AO. Hence it appears a methodical exercise was undertaken prior to registration of FIR.

13) The second factor to be considered is the nature and gravity of charge and severity of punishment in the event of conviction. The offence alleged is under Section 13 (1)(e) r/w 13(2) of PC Act, 1988 for possessing assets disproportionate to the known sources of income of AO. The offence is punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and also liable to fine. Hence going by the Schedule II of Cr.P.C., the offence is a cognizable and non-bailable offence. Since the offence alleged falls in the category of economic and white collar offence, more than the term of punishment, its impact on the society in the event of conviction being recorded shall also be taken into consideration. It is not out of place here to mention that each time a Judicial Officer is accused of committing bribery or other related offence, the reputation of judicial institution itself stands for trial. The judicial edifice is built not with bricks and cement but with belief and confidence reposed by the public on the institution. That is why

absolute honesty and integrity are regarded as the minimum qualifications for a Judicial Officer to hold the mace of justice. A minutest impious deed of even a single individual will bring disrepute to the majesty of justice. In that context, the impact of the offence has to be viewed even at the stage of bail, particularly when *prima facie* case is found out.

14) The next factor to be considered is the possibility of AO meddling with investigation and tampering the evidence. In this regard, the submission of Spl.P.P. is that the investigation is at the infancy and the IO has to investigate the affairs of M/s.Deepu Constructions wherein the daughter and sister-in-law of AO are Directors and huge amount of Rs.5 crores was invested in it during 2014-2015 by N.Pulla Rao. The IO apprehends that the AO has pumped in his ill-gotten money into said firm. Further, investigation is also required to be made with regard to purchase of 14 acres of land by AO in Yedavolu village as he obtained permission to purchase only Ac.11.67 cts. The cost of the land is about Rs.2 crores. That apart, investigation shall be made regarding huge amount paid by AO towards Margadarsi Chits in the name of his family members and his withdrawal of Rs.41 lakhs from the bank account, his purchasing the car in the name of his mother-in-law and some other related transactions and if AO is at large, he will meddle with investigation. This Court finds force in the above submission. AO being Judicial Officer, there is a possibility of his finding out the ways to stifle the crucial evidence and scuttle the process of investigation with his legal

acumen. Such a possibility cannot be obviated. The contention of AO that the entire investigation is completed with the searches conducted at various places and his service record is available with the High Court and hence, he cannot tamper with the evidence cannot be countenanced in view of the crucial part of investigation still left over.

15) The ill-health of the petitioner/AO is concerned, the bail order in CrI.M.P.No.215 of 2018 would show that on the direction of Principal Special Judge for SPE and ACB Cases, Hyderabad the AO was shifted to NIMS from Gandhi Hospital wherein after conducting all tests the authorities discharged him finding him fit. Therefore, the trial Court considering the discharge summary issued by NIMS, which revealed his fit condition, did not accede to grant bail on the health grounds. I find no reason to come to a different conclusion.

16) So far as the proposed marriage of AO's son is concerned, the petitioner only produced a manuscript of '*lagna patrika*' showing the marriage is fixed to be performed on 06.05.2018. No printed wedding card is produced for verification. Even assuming that his son's marriage is going to be held on 06.05.2018, in view of gravity of the offence and pending investigation at the crucial stage, a regular and full-fledged bail cannot be granted to AO at this stage.

17) Therefore, while dismissing the bail application, it is observed that in case the marriage of AO's son is scheduled to take place on 06.05.2018, the petitioner/AO is given liberty to produce the wedding card along with his affidavit affirming the said fact before the

Principal Special Judge for SPE and ACB cases, Hyderabad, in which case the learned Judge shall direct the concerned jail authorities to enlarge him on bail for a temporary period between 04.05.2018 and 09.05.2018 (both days inclusive) on AO executing a personal bond for Rs.50,000/- (Rupees fifty thousand only) with two sureties each for likesum to the satisfaction of said Court. The AO shall surrender before the jail authorities before 5.00 PM on 09.05.2018.

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**U. DURGA PRASAD RAO, J**

Date: 16.04.2018

Scs/Murthy

Note:

- 1) L.R Copy to be marked: YES / NO
- 2) Issue C.C today.

