THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.4024 OF 2018

ORDER:

This Criminal petition, under Section 438 of the Code of Criminal Procedure, 1973 (for short 'CrPC'), is filed by the petitioner/Accused in crime No.192 of 2017 of Malkapuram Police station, Visakhapatnam, registered for the offence punishable under Section 420 of the Indian Penal Code, 1860 (for short 'IPC') and Section 4 read with 56 of Andhra Pradesh Chit Fund Act.

The case of the prosecution in brief is that on 19.10.2017 the *de facto* complainant lodged a complaint with the police alleging that the petitioner induced various neighbours to admit them as subscribers in the private chit being run by her for the last 15 years, and accordingly, the *de facto* complainant and others joined as members and paid monthly installments for several months, but the petitioner did not repay the amount paid by them as members of the private chit, and absconded. On the strength of the complaint, the police registered the crime and issued F.I.R.

It is the contention of the petitioner that she is running chit business for the last 15 years and it is registered chit. The *de- facto* complainant committed default in payment of 9 installments. As per the provisions of A.P. Chit Fund Act, if any subscriber committed default in payment of installment, the petitioner need not pay the amount and the alleged commission of offence is neither supported by any documentary nor oral evidence and in the absence of any material, based on the allegations, the petitioner cannot be arrested and prayed to grant pre-arrest bail in connection with the above crime.

The Public prosecution for the State of Andhra Pradesh has contended that the petitioner committed default in repayment of the amount to a tune of one crore rupees and she was found absconding, and so far 16 witnesses were examined, the investigation is not completed, in case the petitioner is enlarged on bail in the event of her arrest, there is possibility of interference with the investigation and prayed for dismissal of the petition.

Though the petitioner's counsel admitted that the petitioner is running chit business for the last 15 years allegedly registered under the provisions of the A.P. Chit Fund Act, no piece of material is produced to take advantage of various provisions of the Act or non-payment of amount by the *de facto* complainant, but he contended that in view of the provisions of Chit Fund Act, when a person committed default, if the chit is registered chit under the provisions of the Act, the petitioner is entitled to take advantage of the provisions of the Act.

But here the petitioner did not produce any material to establish, *prima facie,* that it is a registered chit. In the absence of any material to establish that it is a registered chit, the petitioner is not entitled to claim benefit under the provisions of the Chit Fund Act. Apart from that the petitioner committed default in repayment of the amount to a tune of one crore rupees and found absconding for the last many years, she is not entitled to pre-arrest bail, as it is a serious economic offence against the Society, who paid amount as subscribers of the chit.

Grant of pre-arrest bail is not a matter of course and it is a matter of exception. When the petitioner allegedly committed serious economic offences, she is 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.

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[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.

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

[1] (1980) 2 SCC 565

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.

In **Siddharam Satlingappa Mhetre vs State Of Maharashtra And Ors**[2] the Apex Court laid down the following guidelines to exercise power while granting bail under Section 438 CrPC.

> *"(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
>
> *(b) 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;*
>
> *(c) The possibility of the applicant to flee from justice;*
>
> *(d) The possibility of the accused's likelihood to repeat similar or other offences;*
>
> *(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*
>
> *(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;*
>
> *(g) 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 the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;*

[2] (2011) 1 SCC 694

(h) 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;

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

(j) 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 in entitled to an order of bail."

Even if the parameters laid down by the Apex Court applied to the present facts of the case, gravity of the offence and the impact of the case to be taken into consideration, the poor subscribers excepting high returns in the chit joined as subscribers and paid amount, but the petitioner having collected huge amount, committed default to a tune of one crore rupees to various subscribers and it is a serious offence and that too investigation is not completed. Hence, I find no substance in the contention of the counsel for the petitioner to conclude, *prima facie,* that the petitioner did commit no offence.

In view of my foregoing discussion, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

M.SATYANARAYANA MURTHY, J

12.04.2018
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