HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.8284 OF 2018

ORDER:

The petitioner by name Shaik Bajee Babu is A.2 among 2 accused of crime No.293 of 2018 of Arundalpet Police Station, Guntur District, registered for the offences punishable under Sections 420, 406, 506, 384 r/w 34 IPC dated 09.07.2018 is seeking anticipatory bail.

The report of the defacto complainant B.Subba Rao speaks that he as Ex-Service men retired from Singareni as E.P. Operator in 2010 and residing at Guntur. He invested in Kapil Chits Private Limited, Arundalpet Branch, Rs.10,00,000/- each in 4 chits by joined as member, details furnished by him and he was paying the amounts every Montyh on 5th or 6th from Satish Babu-A1 was coming and collecting the cheques from him of the installment payments either in the name of the company or self cheques from what he obtains and making entry in the book available with him of the said payments by Satish Babu. While so, he became the highest bidder of one of the 4 chits, No.P-2 FGTS03 on 28.02.2018 and to pay that amount said Satish Babu on next day on 01.03.2018 obtained signatures of him on several papers. A week later said Satish Babu paid to him by DD from the company Rs.1,67,000/- saying for the remaining amount the company would give within one week later another DD which he also believed. For the chit which he bid, he has given the other 3 chits as surety as in all by then he paid

Rs.13,00,000/- none of the others he bid. Said Satish Babu without payment even after the time expired of what he promised dodged from which the defacto complainant went to A.2-Bajee Babu the Manager of the chit fund company (Branch Office) supra and the Manager Bajee Babu who is the petitioner-A2 stated that he is not entitled to any amount as what he has to pay to adjust in all the chits from out of the bid amount as I have given the affidavit and shown the notarized Xerox copy of the affidavit to him and he was also abused and insulted by said Bajee Babu. It is his say that in fact he never issued any letter to adjust to the chits of third parties known to him as mentioned in the alleged affidavit nor he went to the notary much less signed after such writing and it is the accused persons Nos.1 & 2 managed and Satish Babu joined Kapil Chit Fund and colluded and created to knock away the amount due to him and whatever the amounts collected not even entered in the company records which he could verify later from the statement of account he obtained. When he questioned thereafter as to why he was cheated and deceived by misappropriation of his amount, the accused persons pleaded to pardoned by saying it is a mistake happened from what they misused the amounts of the other subscribers, they could adjust and they could return his amounts and one cheque bearing No.00038 for Rs.4,65,000/- drawn on Karur Vysya Bank, Lakshmipuram Branch, Guntur dated 09.05.2018 issued and signed by Satish Babu that was returned dishonoured for no funds. As both deceived him and misappropriated his amounts by cheating and threatened to take action. No doubt there is no offence under Section 384 IPC that attracts, but for Sections 420, 406 & 506 or even Section 409 IPC if any read with 34 IPC from the facts supra.

So far as the petitioner-A2 concerned, he is the Branch Manager and A.1 is the agent of the company. Undisputedly it is also the responsibility of the Branch Manager from the amounts collected by their agents to reimburse whatever paid by the subscribers. Even after the so called cheating and deception and misappropriation if at all the petitioner-A2 Bajee Babu could have taken action against Satish Babu by police report under Sections 420 & 409 IPC but did not do so and even the account was irregular in remitting the installments by the subscriber of the chits maintained with the chit fund company branch supra for the 4 chits in question. There are no even notices issued to regularize which is also duty of the branch manager and had it been it could be known if at all exclusive deception and chit of the agent Satish Babu with no concern of the petitioner-branch manager Bajee Babu.

In the factual background supra, the petitioner-A2 anticipatory bail was ended in dismissal on 26.07.2018 in Crl.M.P.No.1125 of 2018 before the learned III Additional Sessions Judge, Guntur, in saying from the gravity of the offence and investigation is pending not chosen to grant anticipatory bail.

In the present anticipatory bail application it is the contest that he is innocent and falsely implicated and the transaction is only between the A.1 and the defacto complainant for which he is no way concerned nor party to any fabrication of the documents alleged and even the cheques issued by A.1 in favour of the defacto complainant and not by A.2 or the chit fund company. The defacto complainant stood as surety to other chit members having signed in the bonds and also signed on the notary affidavit stating those persons failed to pay for whom he stood as surety to adjust out of the amount of the chit knocked in his favour and having done so the crime registered on his report is by false implication to harass and with no bonafides.

Though it is the said contention of the learned counsel for the petitioner in the anticipatory bail application a perusal of the material on record shows whatever the documents placed reliance by the petitioner-branch manager of the chit fund company as if of defacto complainant stood as guarantor for others and the amount adjusted out of the bid amount and otherwise the same was utilized only by A.1 and the petitioner cannot be made liable or the A.1 already filed debtor IP by showing no immovable properties, but for the debts due including to the defacto complainant covered by cheque for Rs.4,65,000/- and 6 others in total of Rs.25,45,500/-, the filing of the IP will not absolve the liability of the A.1 concerned for the offence of cheating and criminal misappropriation and so far as the petitioner-A2 branch manager concerned, but for he is privy prima facie from the material on record it is his duty to co-relate with the installment amounts collected from customers with the statement of the customers and what are the amounts remitted to the chit fund company.

Once such is the case, that was not done and no action was initiated by report against A.1 after knowing the facts from the defacto complainant, the petitioner is not entitled to the concession of anticipatory bail.

Having regard to the above, this Criminal Petition is dismissed. However, petitioner is at liberty to surrender and move for regular bail.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 25.09.2018
ska