THE HONOURABLE SRI JUSTICE SANJAY KUMAR

CRIMINAL PETITION NO.1621 OF 2019

O R D E R

The petitioner is A1 in Crime No.2 of 2018 on the file of the Central Bureau of Investigation, BS & FC, Bangalore, registered under Sections 120-B, 420, 468 and 471 IPC. By way of this petition, he seeks anticipatory bail under Section 438 CrPC.

The case of the prosecution, based on the complaint lodged by the State Bank of India (hitherto, the State Bank of Hyderabad), is that the petitioner-A1, being the Promoter Director of M/s.Servomax India Private Limited, misutilized bank funds along with the other accused by committing offences under the provisions set out *supra*. The alleged loss caused to the bank was to the extent of nearly Rs.300.00 Crore.

Earlier, the petitioner-A1 approached the learned XXI Additional City Civil & Sessions Judge and Special Judge for CBI Cases at Bangalore, *vide* Crl.Misc.No.4477 of 2018, seeking anticipatory bail in relation to this crime. By order dated 15.12.2018, the Bangalore Court allowed the application directing that in the case of arrest of the petitioner-A1 by the CBI, BS & FC, Bangalore, in relation to FIR No.2 of 2018, he should be released on bail upon executing a personal bond for Rs.10,00,000/- along with two sureties for a like sum each to the satisfaction of the Investigating Officer, subject to certain conditions. The conditions imposed were to the following effect: The petitioner-A1 should surrender before the Investigating Officer within ten days from the date of the order, failing which the order automatically stood cancelled; he should not tamper with the prosecution witnesses and the evidence and co-operate with the Investigating Officer during the investigation; and that he should not go abroad without prior permission from the jurisdictional Court and he should surrender his passport before the said Court. The Bangalore Court also restricted the life of the bail order to two months from that day, leaving it open to the petitioner-A1 to approach the appropriate forum for seeking relief. Having surrendered before the Investigating Officer within the time stipulated, as directed, the petitioner-A1 filed Crl.M.P.No.113 of 2019 under Section 438 CrPC before the learned Metropolitan Sessions Judge, Hyderabad. However, by order dated 25.02.2019, the learned Metropolitan Sessions Judge, Hyderabad, dismissed the petition. Perusal thereof reflects that the reasons cited for the dismissal were the nature, gravity and magnitude of the offence; the depth of the allegations; the quantum involved; and the fact that, if proved, the petitioner-A1 would be directly and vicariously liable. The learned Metropolitan Sessions Judge, Hyderabad, also took note of the prosecution's plea that if pre-arrest bail was granted, the petitioner-A1 would be shielded and the same would sabotage the effort to bring out the verifiable truth from him.

Having suffered the aforestated order, the petitioner-A1 filed this application under Section 438 CrPC again seeking anticipatory bail.

The Inspector of Police, Central Bureau of Investigation, BS & FC, Bangalore, filed a counter-affidavit. Therein, he referred to the details of the case levelled against the petitioner-A1 and the other accused. The Inspector claimed that the investigation so far had revealed that the petitioner-A1, along with the other accused, were responsible for diversion of the huge loans that were sanctioned and released by the State Bank to M/s.Servomax India Private Limited. He stated that the allegations against the petitioner-A1 were of a serious nature involving wrongful loss of Rs.298.97 crores to the bank, as on 14.03.2016, and therefore, a detailed investigation was essential to bring out all the relevant facts so as to identify the persons involved and fix accountability in accordance with law.

He asserted that there were adequate and reasonable grounds to believe that the petitioner-A1 was likely to thwart the legal process and therefore, his petition for anticipatory bail should be dismissed in the interest of justice.

Heard Sri L.Ravi Chander, learned senior counsel appearing for Sri P.Subash, learned counsel for the petitioner-A1, and Sri K.Surender, learned special standing counsel for the CBI.

Sri L.Ravichander, learned senior counsel, would assert that the stage has not yet arrived to determine the culpability of the petitioner-A1 and that this Court should be guided by settled legal principles in relation to grant of anticipatory bail. He would rely upon the observations of the Supreme Court in DATARAM SINGH V/s. STATE OF UTTAR PRADESH[1] to the effect that a fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. The Supreme Court further pointed out that yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail is the exception. He would also place reliance on the observations of the Supreme Court in SANJAY CHANDRA V/s. CENTRAL BUREAU OF INVESTIGATION[2]. Therein, the Supreme Court observed as under:

> '39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds: the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of

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[1] (2018) 3 SCC 22
[2] (2012) 1 SCC 40

> cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.'

In para 46 of the judgment, the Supreme Court further observed that it was conscious of the fact that the accused were charged with economic offences of huge magnitude and that the offences alleged, if proved, may jeopardise the economy of the country, but at the same time, it could not lose sight of the fact that the investigating agency had already completed the investigation and the charge-sheet was already filed before the Special Court and therefore, the presence of the accused in custody would not be necessary for further investigation.

The petitioner-A1 and the other accused in this crime are also charged with an economic offence of sufficiently large magnitude and unlike the fact situation in SANJAY CHANDRA[2], the investigation in this case is yet to be completed. Further, it is the specific contention of Sri K.Surender, learned standing counsel, that grant of anticipatory bail at this stage may harm the investigation and impede the possibility of unearthing all the ramifications of the crime.

Significantly, despite the fact that the Bangalore Court granted an order on 15.12.2018 and pursuant thereto, the petitioner-A1 presented himself before the Investigating Officer within ten days therefrom, there is no indication of the Investigating Officer having taken any steps as against the petitioner-A1 either by arresting him or in the alternative, issuing him an appropriate notice. Further, it may also be noticed that the offences alleged against the petitioner-A1 are under Sections 120-B, 420, 468 and 471 IPC and convictions and sentencing in relation to any or all of these offences would not entail imprisonment for a term exceeding seven years in the normal course, as all such sentences would usually run concurrently. In that view of the matter, the law laid down by the Supreme Court in ARNESH KUMAR V/s. STATE OF BIHAR[3] would be squarely applicable. It would be relevant to note the observations and directions of the Supreme Court as set out in para 11 of the judgment.

> '11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:
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> 11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;
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> 11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)*(b)(ii)*;
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> 11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;
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> 11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;
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> 11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;
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> 11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;
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> 11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

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[3] (2014) 8 SCC 273

> 11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.'

In terms of para 12 of the above judgment, the directions given by the Supreme Court in that case, which arose under Section 498 IPC, were to be applied not only to such cases but also to all such cases where the offence was punishable with imprisonment for a term which may be less than seven years or which may extend to seven years. That being the case presently, the directions of the Supreme Court in ARNESH KUMAR[3] would have to be followed and implemented by the Central Bureau of Investigation.

On the above analysis, this Criminal Petition is disposed of directing the Central Bureau of Investigation to abide by and implement the directions of the Supreme Court, as set out in paragraphs 11.2 to 11.6 of ARNESH KUMAR[3], extracted *supra*.

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SANJAY KUMAR, J

22nd APRIL, 2019

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