IN THE HIGH COURT OF KARNATAKA
AT BENGALURU

DATED THIS THE 17TH DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

CRIMINAL PETITION No.2852 OF 2020

BETWEEN

Central Bureau of Investigation
Bank Security & Fraud Branch
No.36, Bellary Road
Ganganagar, Bengaluru-560 032

…Petitioner

(By Sri P.Prasanna Kumar, Spl.P.P.)

AND

T.Kanna Rao
S/o Subba Rao
Aged about 61 years
R/at Flat No.103
Kaiyala Apartments
Prakasham Nagar
Rajamundry
Andhra Pradesh – 533 101

Managing Director
M/s Sri Krishna Stockist &
Traders Private Limited
Having its office at: 1-8-5
1. Pangidi, Kovuru Mandal

West Godavari District
Andhra Pradesh-534 342

…Respondent

(By Smt. B.S.Lavanya &
Smt. B.S.Nagamani, Advocates)(Absent)

This Criminal Petition is filed under Section 439(2) Cr.P.C, praying to set-aside the order dated 04.02.2020 in Spl.C.C.No.36/2020 passed by the XXI Additional City Civil and Sessions Judge and Special Judge for CBI Cases, Bengaluru (CCH-4) thereby granting the relief of the bail to the respondent/accused No.2 and consequently cancel the bail granted to the respondent/accused No.2.

This Criminal Petition coming on for orders this day, the Court made the following:

ORDER

This is a petition filed under Section 439(2) of Cr.P.C. The petitioner is Central Bureau of Investigation. The XXI Additional City Civil and Sessions Judge and Special Judge for CBI Cases, Bengaluru (CCH-4) granted bail to the respondent on 04.02.2020 in Spl.C.C.No.36/2020. This petition has been filed seeking cancellation of bail.

2. The background is:

The Central Bureau of Investigation registered a case against 14 accused persons including the petitioner in relation to offence punishable under Section 120B read with Sections 420, 468 and 471 of IPC, and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act. After investigation charge sheet came to be filed.

The petitioner approached this Court by filing Crl.P.No.5112/2018 seeking anticipatory bail. Since there was no representation on several dates of hearing, the petition was dismissed for default. Again the petitioner moved this Court by filing Crl.P.No.8112/2018 for anticipatory bail and the same was dismissed by this Court vide order dated 25.02.2019 holding that the petitioner was not entitled to claim anticipatory bail in the set of circumstances alleged against him. However liberty was granted to him to surrender before the investigating officer and then move the Special Court by making an application under Section 439 of

Cr.P.C. On 04.02.2020 the Special Court granted bail to the respondent.

3. Sri P.Prasanna Kumar, Special Public Prosecutor appearing for the petitioner argues that while granting bail to the respondent, the Court below very clearly observed that the respondent had not at all co-operated with the investigating officer for completion of investigation and that his attitude would make it clear that he had no regard and respect for law to face the trial. It was also observed by the Court below that the apprehension of the investigating officer would appear to be genuine. That after committing fraud to the banking institution to the tune of more than Rs.80 crores, he must have transferred that money to foreign countries. Having made an observation like this, the trial Court's conclusion to grant bail merely for the reason that charge sheet has been filed, is nothing but arbitrary exercise of discretionary power. There was no case for granting bail, mere filing of charge sheet should not entail in granting of bail. Therefore the petitioner has approached this Court seeking cancellation of bail.

4. Sri P.Prasanna Kumar, refers to two judgments of the Supreme Court in the case of **DINESH M N (S.P.) VS. STATE OF GUJARAT (2008)5 SCC 66 & CENTRAL BUREAU OF INVESTIGATION VS. V.VIJAY SAI REDDY (2013)7 SCC 452** to argue that the bail granted on irrelevant consideration is liable to be cancelled.

5. Learned counsel for the respondent Smt. B.S.Lavanya and Smt. B.S.Nagamani are absent. Even on 24.11.2020 they were absent. On 08.12.2020 also counsel for the respondent were absent. However a direction was given to Sri P.Prasanna Kumar, learned counsel for the petitioner to ascertain whether the respondent was regularly appearing before the trial Court. Today his submission is that the respondent is not appearing before the trial Court.

6. The allegation against the respondent is that he and other accused furnished false documents, fabricated balance sheets and false valuation reports for sanction of loan and thus caused wrongful loss to the extent of more than Rs.80 crores i.e., Rs.80,00,93,046.08 as on 30.09.2017 to

Industrial Finance Corporation of India Limited (hereinafter referred to as 'IFCI' for short) .

7. The order of the Court below contains certain observations that during investigation, the respondent was issued with notices to appear before CBI Authorities for investigation purpose. More than 10 times notices were issued and that he did not respond at all. He was found to be absconding from the address given by him. The investigation did not proceed. Even after filing of charge sheet, the Court issued summons instead of warrant for securing presence of the respondent. The respondent received summons and did not appear before the Court. Accused No.3 is the wife of the respondent and she was released on bail. The trial Court further observed, *"The attitude of the respondent/accused No.2 would make it clear that he has no regard and respect for law. Apprehension of the investigating officer appears to be genuine that after committing fraud to the banking institution to the extent of more than Rs.80 crores, he must have transferred defrauded funds to foreign countries like Malaysia and other countries*." Despite these observations

the Court below proceeded to grant bail taking into consideration that other accused have been released on bail and that charge sheet has also been filed.

8. It is very clear that the trial Court having observed the conduct of the respondent and existence of prima-facie materials against him with regard to his involvement in the crime, the trial Court granted bail to him only for the reason that investigation had been completed. Discretion to grant bail should be exercised if the Court finds that prima-facie materials about commission of offence do not exist. Filing of charge sheet cannot be a sole ground for granting bail. Therefore it is clear that the trial Court has not exercised its discretion properly while granting bail. It is indeed that the Court below imposed conditions at the time of granting bail, and that liberty is also given to the petitioner i.e., CBI to seek cancellation of bail in case of violation of any of the conditions, but it is the submission of Sri P.Prasanna Kumar that if the petitioner approaches the Court below for cancellation of bail taking the ground that irrelevant factors have been taken into consideration for grant of bail, it could

amount to seeking review of its own order. Since it is not permitted, the petitioner has approached this Court for cancellation of bail. I find that his submission is acceptable.

9. The Hon'ble Supreme Court in the case of ***Dinesh M.N. vs. State of Gujarat***, (supra) has clearly observed:

> *26. Another significant factor which was highlighted by the State before the High Court was that an FIR allegedly was filed to divert attention from the fake encounter. The same was not lodged by the Gujarat Police. The accused was the leader of the Rajasthan team and the other officials were Abdul Rehman, Himanshu Singh, Mohan Singh, Shyam Singh and Jai Singh. The first named Abdul Rehman had lodged the FIR. It is pointed out from the General Diary in respect of entry on 26.11.2005 that accused Dinesh was present. In FIR CR-I 5/2005 also the presence of Dinesh has been noted. The relevance of these factors does not appear to have been noticed by the High Court. In other words, relevant materials were kept out of consideration. Once it is concluded that bail was granted on untenable grounds, the plea of absence of supervening circumstances has no leg to stand.*

10. Then in the case of ***Central Bureau of Investigation vs. V.Vijay Sai Reddy*** (supra) the Hon'ble Supreme Court while dealing with an application under Section 439(2) of Cr.P.C., made the following observations:

> *35. We have highlighted the above aspects to show that the High Court has mistakenly taken into account the irrelevant materials and kept out the relevant materials, which had to be considered for the grant of bail.*
>
> *36. Taking note of the fact that cancellation of bail necessarily involves the review of a decision already made, it should always be exercised very sparingly by the court of law.*
>
> *37. In the light of the above discussion, we are of the view that the special Judge committed an error in granting bail and the same was erroneously affirmed by the High Court.*
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> *38. Taking note of all the aspects discussed above, without expressing any opinion on the merits, we set aside both the orders of the Special Judge and the High Court granting bail to A-2 and allow the appeal filed by the CBI with a direction to complete all the investigation relating to the*

remaining three charge sheets and file appropriate report before the trial Court within a period of four months from today. Thereafter, the respondent herein is free to renew his prayer for bail before the trial Court and if any such petition is filed, the trial Court is free to consider the prayer for bail independently on its own merits without being influenced by the present appeal.

11. It is very clear that the trial Court granted bail considering the sole ground that charge sheet had been filed; it ignored the important aspects such as the conduct of petitioner in remaining away during investigation and possibility of his non availability for trial. These are the factors which should have been considered by the trial Court. Therefore exercise of discretion for granting bail does not appear to be proper. Bail can be cancelled. Hence the following:

ORDER

The petition is allowed.

The bail granted by the Court below on 04.02.2020 to the respondent in Spl.C.C.No.36/2020 is hereby cancelled.

SD/-
JUDGE

Kmv/-