

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No.8143 of 2021

ORDER:

This petition is filed under Sections 437 and 439 of Code of Criminal Procedure, 1973 seeking regular bail to the petitioner/A-6 in connection with Crime No.100 of 2021 of Central Crime Station, Hyderabad, registered for the offences punishable under Sections 406, 420, 409, 421, 422, 120-B read with Section 34 IPC.

2. The case of the prosecution is that the de-facto complainant- Deputy Vice President, HDFC Bank, lodged a report stating that A2 and other Directors of Karvy Stock Broking Limited (KSBL), Gacibowli, Hyderabad, approached the complainant Bank and availed several credit facilities from the Bank and accordingly, in 2019, the Bank has sanctioned a sum of Rs.1,85,00,00,000/- against Securities and Bank Guarantees, but they failed to repay the facilities and misused the shares of its clients for raising funds/loans from various Banks and they have misappropriated the funds to the tune of Rs.1,37,64,47,188/- with interest to the Bank and unauthorizedly diverted the borrowed funds to its subsidiary companies, thereby caused wrongful loss to the Bank and to the general public at large.

3. Heard Mr. P. Vikram, learned counsel representing Ms. Aahana, learned counsel for petitioner and learned Assistant Public Prosecutor for respondent-State.

4. Learned counsel for the petitioner submits that initially, the petitioner was arrested in Cr.No.78 of 2021 on 03.09.2021 and later, PT warrants were executed and her date of arrest is shown as 17.09.2021. He further submits that A2 in the present crime was already enlarged on

statutory bail by the Court below and that as the petitioner is languishing in jail from the last 94 days, she is entitled for default bail. Learned counsel has relied on the judgment reported in **Viswanathan v. State of Andhra Pradesh, rep. by its Public Prosecutor, High Court at Hyderabad and another**¹, wherein this Court, relying on the judgments of **Tupakula Appa Rao v. State of Andhra Pradesh**² and **Sundeeep Kumar Bafna v. State of Maharashtra**³, held as under;

“ On facts, the learned Single Judge in Tupakula Appa Rao's case (supra) further observed at para-10 that the accused was arrested in connection with only one crime and sent to judicial remand and his arrest has not been shown in the other crimes either purposefully or negligently or otherwise. Therefore, he cannot surrender himself before the Court in as much as physical presence is necessary, unless he is produced before the Court. In such circumstances can his custody in one crime be deemed to be in custody another crime is the moot question”.

He also relied on the decision of Hon'ble Apex Court in **Rakesh Kumar Paul Vs. State of Assam**⁴, wherein it was held thus:

30. In view of the above discussion, my findings are as follows:

1. I agree with both my learned brothers that the amendment made to the Prevention of Corruption Act, 1988 by the Lokpal and Lokayuktas Act, 2013 applies to all Accused charged with offences under this Act irrespective of the fact whether the action is initiated under the Lokpal and Lokayuktas Act, 2013, or any other law;
2. Section 167(2)(a)(i) of the Code is applicable only in cases where the Accused is charged with (i) offences punishable with death and any lower sentence; (ii) offences punishable with life imprisonment and any lower sentence and (iii) offences punishable with minimum sentence of 10 years;
3. In all cases where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment then Section 167(2)(a)(ii) will apply and the Accused will be entitled to grant of 'default bail' after 60 days in case charge-sheet is not filed.
4. The right to get this bail is an indefeasible right and this right must be exercised by the Accused by offering to furnish bail.

Relying on the above judgment, learned counsel submits that petitioner is languishing in jail from the last 94 days and so far, police have not filed the charge-sheet, hence, she is entitled for grant of bail under Section 167(2) Cr.P.C.

¹ 2018 SCC Online, Hyd 484

² 2002 (a) ALD (CrL.) 67 (AP)

³ 2014 (16) SCC 623

⁴ 2017 (2) ALT (CrL.) 141 (SC)

5. On the other hand, learned Assistant Public Prosecutor does not dispute the fact that no charge-sheet is filed in this case. However, he submits that investigation in the crime is still in progress, as such, at this stage, if the petitioner is enlarged on bail, she will hamper the investigation process. Hence, she is not entitled for bail.

6. Section 167 (2) Cr.P.C reads thus:

“(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-

(a) ¹ the Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub- section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

(b) no Magistrate shall authorize detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorize detention in the custody of the police. ¹ Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail;]. ²

Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorizing detention.”

7. Further, it is apt to note that the Hon’ble Apex Court in **Uday Mohanlal Acharya v. State of Maharashtra**⁵ observed that personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorize detention of accused in custody up to a maximum period, as indicated in the proviso to sub Section (2) of Section 167 of Cr.P.C, any further detention beyond the period without filing of a challan by the investigating agency would be a subterfuge and would not be in accordance with law

⁵ (2001)5 SCC 453

and in conformity with the provisions of the Criminal Procedure Code, and as such, it could be violative of Article 21 of the Constitution of India. The Hon'ble Apex Court in its recent judgment in **S.Kasi v. State**⁶ observed that the indefeasible right to default bail under Section 167 (2) Cr.P.C. is an integral part of the right to personal liberty under Article 21 of the Constitution, and the said right to bail cannot be suspended even during pandemic as is prevailing now. It was emphasized that the right of the accused to be set at liberty takes precedence over the right of the State to carry on the investigation and submit a charge sheet. Additionally, it is well- settled that in case of any ambiguity in construction of a penal statute, the Courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedure providing for the curtailment of the liberty of the accused.

8. In view of the foregoing reasons, taking into consideration the fact that A2 in the present crime was already enlarged on statutory bail; that charge-sheet is not filed within the statutory period of sixty days, as contemplated under Section 167 (2) of Cr.P.C., and petitioner is languishing in jail for more than 90 days, this Court deems it appropriate to grant bail to the petitioner.

9. In the result, the criminal petition is allowed and the petitioner/A-6 shall be enlarged on bail in connection with Crime No.100 of 2021 of Central Crime Station, Hyderabad, on her executing a personal bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties for a like sum each to the satisfaction of the XII Additional Chief

⁶ 2020 SCC OnLine SC 529

Metropolitan Magistrate, Nampally, Hyderabad. The petitioner shall cooperate with investigation and shall not influence the witnesses and tamper with evidence. If the petitioner fails to comply with any condition, the prosecution is at liberty to file an appropriate application seeking cancellation of bail.

10. As a sequel, pending miscellaneous applications, if any, shall stand closed.

LALITHA KANNEGANTI, J

6th December, 2021

sj