Crl.OP.No.21555 of 2023

C.V.KARTHIKEYAN, J.

The petitioner seeks bail in Crime No.2 of 2021 registered by the respondent Police for the offence under Sections 408, 409, 465, 468, 471, 477(A) of IPC.

2.The petitioner is arrayed as A1 in this case. The case of the prosecution is that the petitioner was the former Secretary of the Primary Agricultural Cooperative Society, Needamangalam. It is alleged that during the check period between 01.04.2014 and 30.08.2016, the petitioner by various acts of omission, commission had misappropriated a sum of Rs.21,71,200/-. The petitioner had the benefit of grant of anticipatory bail by a learned Single Judge of this Court in Crl.O.P.No.17386 of 2021. At that particular point of time, it has been stated before the learned Single Judge that the other co-accused had been enlarged on Anticipatory Bail and it had been further recorded by the learned Single Judge as follows:

> *"Apart from that, the learned counsel, on instructions, further submits that the petitioner, without prejudice to his rights, is ready to deposit a sum of Rs.15,72,593/- to the*

credit of the crime number and also conceded the same to be disbursed to the defacto complainant. However, the learned counsel submitted that before disbursing the amount to the defacto complainant, an affidavit of undertaking shall be obtained from the defacto complainant stating that in the event of the petitioner succeeding the case, the amount of Rs.15,72,593/- will be returned to him".

3. Trusting the statement made in the Court, the learned Single Judge had granted Anticipatory bail by an order dated 21.09.2021 and had directed the petitioner herein to deposit a sum of Rs.15,72,593/- to the credit of Crime No.2 of 2021 before the Judicial Magistrate No.I, Thiruvarur, within a period of four weeks from the date of receipt of a copy of that particular order. The petitioner had not deposited any amount. Since he had not deposited the amount as per the undertaking given before this Court, the Judicial Magistrate had taken steps to cancel the bail and the petitioner had been secured and was taken into custody. The undertaking given still stands.

4.The learned Senior Counsel appearing on behalf of the petitioner claims that while granting bail, such a condition cannot be imposed. It is not a fresh condition but reiteration of what the petitioner already undertook namely he will deposit a sum of Rs.15,72,593/- to the credit of crime number before the concerned Judicial Magistrate. That undertaking still holds. He had not so deposited. It is clear that the petitioner had, with malafide intention given false instructions to the Advocate only to mislead the Court, to obtain an order of anticipatory bail by surreptitious means. Once there is an element of mis-representation leading to passing of a judicial order, the element of fraud comes into play. If fraud comes into play, it supervenes every solemn act.

5.The learned Senior Counsel placed reliance on string of judgments. He claimed that the Court cannot impose any condition for grant of anticipatory bail.

6.In this connection, he placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Munish Bhasin and others Vs. State (Government of NCT of Delhi) and another* reported in *(2009) 4 SCC 45.* That was a case where anticipatory bail was sought. While granting anticipatory bail, maintenance was directed to be paid to the wife and child. It had been stated by the Hon'ble Supreme Court that such condition should not be imposed. In the instant case, the condition had been imposed, not as a condition by the Court but on a voluntary submission made by the counsel undertaking to deposit the said amount. It must be kept in mind that the said amount is alleged to have been misappropriated by the petitioner herein. Therefore, it is only a reiteration of the earlier undertaking and the petitioner having not satisfied the same, cannot now claim innocence and seeks that no such condition should be imposed. On facts, the said judgment is distinguishable.

7. The learned Senior Counsel for the petitioner also placed reliance on the judgment of a learned Single Judge of the Delhi High Court dated 27.09.2022 in Bail Application No.2242 of 2022 in the case of *Gagandeep Singh Adhi Vs. State NCT of Delhi.* The petitioner therein had been implicated in FIR No.129 of 2018 registered under Sections 420, 406 r/w 34 of IPC. It had been stated that the petitioner had been granted anticipatory bail on some settlement which had been entered into. It had been observed that the applicant had paid a sum of

Rs.1,00,000/- and a further sum of Rs.1,15,000/- to the defacto complainant. Since the substantial condition had not been complied with, the anticipatory bail earlier granted was cancelled and the charge sheet had been filed. Thereafter, the learned Single Judge had examined the impact of Covid-19 and the directions of the Hon'ble Supreme Court dated 07.05.2021, wherein, the High Powered Committee had directed for release of all inmates, who had earlier been granted interim bail. I have not been drawn attention to facts that Covid-19 pandemic still exists. Therefore, the Judgment based on that particular aspect is not applicable to the facts of this case.

8. The learned Senior Counsel then stated that the petitioner herein who was a Secretary, is not a public servant. In this connection, the learned Senior Counsel placed reliance on the Judgment of the Hon'ble Supreme Court in the case of *S.S.Dhanoa Vs Municipal Corporation and others* reported in *1981 SCR (3) 864.* Whether the petitioner is a public servant or not is an issue to be examined only when the respondent invoke the provisions of the Prevention of Corruption Act, 1989. The respondent had only alleged that the petitioner is guilty of offences as

stipulated in the Indian Penal Code. Any person who commits an offence as defined under the Code can always be so charged. If at all he is to be charged under any provision or offence under the Prevention of Corruption Act, 1989, then a pre-condition should be that the charged person should be a public servant.

9. The learned Senior Counsel placed reliance of Section 21 of IPC, but it is clear that the only offence against the petitioner is of misappropriation. Therefore, this Judgment would not come to the rescue of the petitioner.

10.The learned Senior Counsel then placed reliance on the Judgment of the Hon'ble Supreme Court in the case of *Kerala State Co-operative Agricultural and Rural Development Bank Limited Vs The Assessing Officer, Trivandrum in Civil Appeal Nos.5005 – 5007 of 2019***.** That was a case where the provisions of Section 10 of the Travancore Cochin Co-operative Societies Act, 1951, had been examined and it was further examined whether the employees of the Society, more particularly, a Co-operative Society with Limited Liability as defined under Section 2(g) of that particular Act could be termed as a public servant. Again as stated, the petitioner had been charged for misappropriation and at this stage, it is not relevant whether the society is a bank or whether he is a public servant. What is relevant is establishment of the charge of misappropriation namely taking public money and putting it to his private pocket. If that is established then whoever he is and whatever public office he holds he will be answerable to the charges. At this stage, while considering the application seeking bail, the Judgment may not be helpful to the petitioner herein.

11. The learned Senior Counsel also placed reliance on yet another Judgment of the Hon'ble Supreme Court for speedy trial in the case of *Pankaj Kumar Vs. State of Maharashtra and others* reported in *(2008) 16 SCC 117*. But it is to be noted that when anticipatory bail was granted, the petitioner had undertaken that he would return back a sum of Rs.15,72,593/. Owing to that particular undertaking, the respondent would necessarily have gone slow in their investigation, since if that amount had been paid, as states by the learned Single Judge, it would have been disbursed to those who have suffered the loss. Therefore, it is not a question of the trial being delayed by the respondent, but the charge

sheet could not be filed only owing to the petitioner having not complied with the condition. In view of that particular fact, the ratio laid down in this judgment is not applicable to the present case.

12. The learned Senior Counsel for the petitioner further stated that the first information report is pre-mature. I am not able to understand as to what pre-mature would mean in registration of the first information report. When a complaint has been lodged alleging cognizable offence, investigation will have to be done and after investigation, the final report will have to be filed. If it is known that there is further information, which had materialised subsequent to the lodging of the compliant or subsequent to the registration of the FIR, further investigation can always be directed by the Court. Therefore, it is not a case of one complaint, one FIR and one final report. The Code provides for further investigation. It is ongoing process and therefore, there cannot be a plea of pre-mature registration of any FIR. Once a complaint discloses a cognizable offence, the duty of the Station House Officer is to register a first information report. It is forwarded to the Judicial Magistrate and if the final report is filed after investigation, taking cognizance of the same is a judicial order

and application of mind is required by the Judicial Magistrate before issuing process to the accused. These are all checks and balances and they can always be examined during the course of trial. At this stage, this particular argument is rejected by me.

13.This Criminal Original Petition stands dismissed.

10.10.2023

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C.V.KARTHIKEYAN, J.

vkr

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