

THE HONOURABLE SMT JUSTICE K. SUJANA

CRIMINAL PETITION No.14613 of 2024

ORDER:

This Criminal Petition is filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for grant of pre-arrest bail to the petitioner, who is arrayed as accused No.1 in FIR.No.1686 of 2024 dated 20.11.2024 before the Narsingi Police Station.

2. The brief facts of the case are that the petitioner and complainant had jointly invested in the stock market for over a year, with the petitioner earning substantial returns. The complainant requested the petitioner to invest his money in the same venture, to which the petitioner agreed, and they orally agreed on a profit-sharing ratio. Between 18.01.2024 and 30.09.2024, the petitioner paid to the complainant Rs.3,37,50,000/-, including his share of the profits. However, when the complainant asked the petitioner to reveal his investment strategy, the petitioner refused, leading to a grudge. To secure his investments, the complainant requested the petitioner to provide assurance, resulting in the petitioner

issuing blank cheques as surety, along with cheques from OM Excellence, belonging to Accused No.2, as third-party surety. However, complainant alleged that petitioner issued dishonored cheques with forged signatures, blocked accounts, and stop payment instructions. Additionally, in April 2024, the petitioner shared forged bank deposit slips totaling over 60 crores, claiming transactions to the account of complainant, which were later proven fake. The recipient account, OM Excellence, belonged to Vijay Saraf, an associate of petitioner, who allegedly aided in these fraudulent activities. The complainant alleged that petitioner acted with fraudulent intent, breached trust, committed forgery, and engaged in financial deceit, as such, case was registered against the petitioner, for the offences as alleged.

3. Heard Sri Y.Soma Shrinath Reddy, learned counsel for petitioner, Sri Syed Yasar Mamoon, learned Additional Public Prosecutor for respondent No.1- State, and Sri K.Lakshmi Narsimha, learned counsel for respondent No.2.

4. Learned counsel for the petitioner submitted that the complainant alleged that the petitioner had issued dishonored cheques, but a thorough reading of the complaint would

reveal that no offences, as alleged against the petitioner, are attracted. He contended that the complainant had invested money by taking blank cheques as surety from the petitioner, and therefore, there was no breach of trust by the petitioner. He lamented that the complainant had given a criminal cloak to a civil dispute, which is an abuse of the legal process, and that the petitioner is innocent, having no criminal antecedents, and is a law-abiding citizen who undertakes to cooperate with the investigation and not tamper with witnesses. While advocating that even assuming that the allegations against the petitioner were true, the complainant ought to have pursued a remedy under the Negotiable Instruments Act instead of filing a criminal case, prayed this Court to grant anticipatory bail to the petitioner by allowing this Criminal Petition.

5. On the other hand, learned Additional Public Prosecutor opposed the anticipatory bail petition stating that the allegations leveled against the petitioner are serious in nature, and that the investigation in the case is not yet completed. Therefore, he prayed the Court to dismiss the Criminal Petition.

6. Learned counsel for respondent No.2 opposed the submissions made by learned counsel for petitioner, stating that the learned counsel for petitioner suppressed filing of writ petition and quash petition before this Court and no relief was granted in the said petitions. He contended that the said suppression itself is sufficient ground for dismissing the criminal petition. Therefore, prayed this Court to dismiss the criminal petition.

7. Having regard to the rival submissions made and on going through the material placed on record, it is noted that the first allegation leveled against the petitioner is with regard to forging three bank deposit slips, totaling to Rs.60 crores of IndusInd Bank which were drawn to the account of complainant in Axis Bank ; and second allegation is with regard to forging signatures on the cheques given to complainant as surety and their dishonor due to various reasons, whereas, the learned counsel for respondent No.2 pointed out suppression of facts by petitioner, relating to filing of writ petition and quash petition, whereunder, no relief was granted to petitioner. The averments of the case would show

that dispute between the parties is monetary dispute and there are couple of business transactions between them.

8. Learned counsel for the respondent relied upon the judgments of the Hon'ble Supreme Court in **Srikant Upadhayay and Ors. v. State of Bihar and Anr**¹, wherein it is observed that the power to grant anticipatory bail is extraordinary and should be exercised with caution. While bail is often considered the rule, anticipatory bail is not. Its grant depends on the discretion of the court, considering the facts and circumstances of each case. The court must balance individual freedom with the need to prevent miscarriage of justice and tampering with evidence.

9. In addition to that, learned counsel for the respondent relied upon the judgment of the Hon'ble Supreme Court in **Adri Dharan Das v. State of W.B.**², wherein it is observed that Section 438 of the Code grants anticipatory bail to individuals who believe they may be arrested for a non-bailable offence. To invoke this section, the applicant must show reasonable grounds for their belief, beyond mere fear or vague apprehension. The Court must examine the grounds

¹ 2024 INSC 202

² (2005) 4 Supreme Court Cases 303

and decide whether to grant relief. Anticipatory bail cannot be invoked after arrest, and blanket orders should not be passed, as they may protect unlawful activities. The provision aims to secure individual liberty, not shield against accusations.

10. When the matter was posted for orders, learned counsel for the respondent sought to be heard, stating that the petitioner had already filed a writ petition and a quash petition. He requested the Court to defer hearing, arguing that this anticipatory bail petition was not maintainable since the quash and writ petitions were pending. However, learned counsel for the petitioner countered by citing the judgment of the Hon'ble Supreme Court in **Kamlesh and Anr v. The State of Rajasthan and Anr**³, which holds that the rejection of a quash petition does not automatically bar an individual from seeking anticipatory bail, and that each application must be considered on its merits.

11. Furthermore, the judgments cited by the learned counsel for respondent No.2 pertain to the requirement that the petitioner must demonstrate reasonable grounds for fearing arrest, beyond mere apprehension. However, in the

³ Criminal Appeal No.1006 of 2019

present case, the petitioner is accused of non-bailable offences in the FIR, which constitutes sufficient grounds for filing an anticipatory bail petition. Additionally, the contention of learned counsel for respondent No.2 that the petitioner cannot simultaneously seek relief under Section 482 of the Cr.P.C. and apply for bail is without merit. The observation of the Hon'ble Supreme Court in the case of **Kamlesh** (supra 3) comes to the aid of the petitioner. Moreover, the transactions between the parties appear to be contractual, rendering custodial interrogation unnecessary. Therefore, this Court deems it fit to grant pre-arrest bail to the petitioner, subject to compliance of following conditions, and ensuring his presence during the investigation and trial:

- i. The petitioner shall surrender before the Station House Officer, Narsingi Police Station, within two weeks from today, and on such surrender, the said Station House Officer shall release them on bail on executing a personal bond for Rs.25,000/- with two sureties, for the like sum each.

- ii. The petitioner shall abide by the other conditions stipulated in Section 482(2) of Bharatiya Nagarik Suraksha Sanhita, 2023 and co-operate with the Investigating Officer in investigating the case.

12. Accordingly, this Criminal Petition is allowed.

Miscellaneous applications, if any pending, shall stand closed.

K. SUJANA, J

Date: 18.12.2024
SAI

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SAI