APHC010122722025

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3369]**
(Special Original Jurisdiction)

THURSDAY, THE TWENTY SEVENTH DAY OF MARCH
TWO THOUSAND AND TWENTY-FIVE

PRESENT

THE HONOURABLE SRI JUSTICE T MALLIKARJUNA RAO

CRIMINAL PETITION NO: 2641/2025

Between:

Chimakurthi Naga Venkata Sai Kiran **...PETITIONER/ACCUSED**

AND

The State Of Andhra Pradesh and Others **...RESPONDENT/COMPLAINANT(S)**

Counsel for the Petitioner/accused:

1. UMESH CHANDRA P V G

Counsel for the Respondent/complainant(S):

1. PUBLIC PROSECUTOR

The Court made the following ORDER:

1. The Criminal Petition, under section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'BNSS') is filed on behalf of the Petitioner/A20 to grant anticipatory bail in connection with Crime No.23/2024 of CID Police Station, A.P., Mangalagiri.

2. A case has been registered against the Petitioner herein and others for the offence punishable under Sections 318(4), 316(5), 61(2) of Bharatiya Nyaya Sanhita, 2023 (for short, 'BNS').

3. The Prosecution's case, in brief, is that, on 09.10.2024, at 16:30 hrs, the CID Police Station in Mangalagiri received a complaint from Sri Sandeep

Mehra, Zonal Head-Retail of ICICI Bank, Vijayawada. The complaint stated that between October 3 and October 5, 2024, multiple ICICI Bank customers reported several fraudulent activities, including: a) Overdraft (OD) facilities taken on their Fixed Deposits (FDs) without their consent, b) Invalid FD receipts issued, c) Cheques against OD limit reductions fraudulently credited to third-party accounts, and d) Missing jewels from gold loans. After conducting internal checks, it was found that ICICI Bank employees, including the Branch Manager, Regional Head-Sales, and Gold Loan Counsellor, had orchestrated a money transfer fraud using various schemes targeting existing and new customeRs.The total fraudulent amount was approximately Rs.28.34 Crores. The accused employees built personal relationships with customers to encourage them to invest in FDs and gold loans. They falsely promised zero interest on gold loans, enrolled customers in fraudulent schemes, and misused their deposits. The gold was transferred to other branches, and the received amounts were redirected to third-party accounts. Fake receipts were sent to customers to create a false sense of security. Additionally, they manipulated FD accounts and loans, using fake receipts and OTPs to access customer funds and divert money for personal gain. When an audit in 2024 identified discrepancies, the fraudulent accounts were transferred to other private banks and financial institutions. Based on the investigation and statements from Accused No.1, the Petitioner was added as Accused No. 20 in the case.

4. Learned counsel for the Petitioner/A.20 submits that the Petitioner, arraigned as A.20, is alleged to have deposited Rs.1.5 Crores into his account, which was subsequently withdrawn. However, the Petitioner is neither a banker nor an authorized individual, and an examination of the fraud reveals that he was a mere customer deceived into believing he would benefit, similar to other victims. The Petitioner approached A.1 to open an account for his friend Priya, with the amounts deposited into third-party accounts, which were then transferred to the Petitioner’s account, creating the false impression of his involvement in the conspiracy. The Petitioner was unaware of the fraudulent activity, having been misled by A.1, who had earned his trust. Given that some co-accused, including A.3, have been granted bail, continuing the Petitioner's judicial custody serves no purpose, especially since the crime was registered in October 2024. Custodial interrogation is no longer necessary. The Petitioner has a permanent residence, is willing to cooperate with the investigation, and has no prior criminal record. Therefore, it is prayed that anticipatory bail be granted to the Petitioner, as continued detention would violate his fundamental rights under Article 21 of the Constitution.

5. On the other hand, the learned Assistant Public Prosecutor, appearing for the Respondent/State, opposes the grant of anticipatory bail on the ground that the investigation is still pending.

6. I have heard both sides. Learned counsel on both sides reiterated their submissions on par with the contentions presented in the Petition as well as in the Report. Consequently, the contentions presented by the learned counsel need not be reproduced.

7. In ***Mahipal V. Rajesh***[1], the Hon'ble Apex Court held that it is necessary for the Court while considering a bail application, to assess whether, based on the evidentiary record, there existed a *prima facie* or reasonable ground to believe that the accused has committed the crime.

8. In ***Rakesh Baban Borhade Vs. State of Maharashtra and another***[2], the Hon'ble Apex Court observed that:

> *"Anticipatory bail not to be granted as a matter of rule but should be granted only when a case is made out and the Court is convinced that the accused would not misuse his liberty".*

9. In ***Shri Gurbaksh Singh Sibbia and others Vs. State of Punjab***[3], the Hon'ble Apex Court held that "The question whether to grant bail or not

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[1] (2020) 2 SCC 118
[2] 2015 SAR (Criminal) 156

depends for its answers upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict".

10. In ***Siddharam Satrlingappa Mhetre V. State of Maharashtra and others***[4]*,* the Hon'ble Supreme Court held thus:

> *"Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under Section 438 Cr.P.C. should also be exercised with caution and prudence."*

11. The learned counsel for the Petitioner submits that the ingredients of Section 316(5) of the BNS are not applicable to the facts of the case, as the property was not entrusted to the Petitioner, who is neither a public servant, banker, merchant, nor agent. At most, the provisions of Sections 61(2) and 318(4) of BNS may be applicable, which are punishable with imprisonment for up to seven years. Furthermore, the Petitioner is entitled to the benefit of Section 35(3) of the BNSS.

12. The Prosecution, in this case, has primarily relied on documentary evidence regarding the transactions in the bank account of the Petitioner to establish his involvement in the commission of the offence. According to the material placed, an amount of Rs.1.5 crores was withdrawn in cash by the Petitioner/A.20, from his account. In addition to the Petitioner's withdrawal, it is noted that a middleman was also involved in withdrawing an additional Rs.1.5 crores in cash.

13. This Court, upon reviewing the circumstances, prima facie observes that prior to withdrawing this substantial sum, the Petitioner must have had knowledge that the amount in question did not belong to him. If this is indeed the case, then when the Petitioner made the withdrawal, he would have been duty-bound to notify the bank officials that an amount of Rs.1.5 crores, which did not belong to him, had been credited to his account. However, the

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[3] (1980) 2 Supreme Court Cases 565
[4] (2011) 1 Supreme Court Cases 694

Petitioner did not take any steps to inform the bank about this discrepancy, nor did he raise any concerns. The absence of such a notification leads the Court prima facie to infer that the Petitioner acted with a (dishonest) intention in withdrawing the funds.

14. Furthermore, this Court notes that even after the registration of the crime, the Petitioner has not provided any explanation regarding the whereabouts of the withdrawn amount. He has neither returned the money nor offered any account of what happened to it. In addition, the investigating officer has not recovered the withdrawn sum. This omission raises serious concerns regarding the Petitioner's actions and the possibility that he may have intentionally hidden or misappropriated the funds.

15. In light of these facts, this Court finds that custodial interrogation of the Petitioner is necessary. The purpose of such an interrogation would be to recover the amount that was withdrawn under questionable circumstances. Given the gravity of the offence and the Petitioner's failure to account for the misappropriated funds, it is essential to ensure that further investigations are carried out to determine the fate of the withdrawn money and to ascertain the Petitioner's role of involvement in the crime. Therefore, this Court holds that custodial interrogation is justified in order to facilitate the recovery of the amount and to fully uncover the details of the Petitioner's role in the offence.

16. Upon perusal of the material on record, this Court prima facie finds that even based on the uncontroverted allegations, there exists a doubt whether the ingredients of section 316(5) of BNS align with the facts of the case. The Petitioner's counsel contends that section 316(5) of BNS was included merely to deprive the Petitioner to have the benefit of notice under section 35(3) of BNSS. However, such a possibility cannot be ruled out. Besides sections 316(5) of BNS, other sections mentioned in the First Information Report (F.I.R.) may carry punishments of less than seven years, thereby warranting the applicability of section 35(3) of BNS in the present scenario.

17. The learned Assistant Public Prosecutor asserts that the procedure outlined in Section 35(3) of BNSS, cannot be mandated to be enforced. He contends that it is within the purview of the police authorities to decide whether to adhere to Section 35(3) or Section 35(1)(b) of the BNSS. He further asserts that issuing a directive to follow a specific course of action is unwarranted, as it would essentially amount to instructing the police on how to conduct their investigation. He points out that the Court may refrain from intervening in the investigative process, and discretion should be left to the concerned police officers.

18. While considering the similar submissions in ***W.P.No.3848 of 2020***, this Court passed an order ***dated 28.04.2020***, observing that *even in the case of Arnesh Kumar (3 supra), the Hon'ble Supreme Court of India has spelt out the manner in which the power under Section 41 (1) (b) and 41-A of Cr.P.C. are to be exercised. The Hon'ble Supreme Court of India, after considering Section 41 (1) Cr.P.C., noted that in all cases where the arrest of a person is not actually required, the Police Officer should issue a notice directing the accused to appear before him at a specified place and time. This Court concurs with the submission of the learned Government Pleader that the discretion to arrest or not to arrest a person and thereafter to follow Section 41-A of Cr.P.C. is solely vested in the Investigating Officer. This Court cannot compel the police to act based on 41-A Cr.P.C. as a matter of right. In this Court's opinion, the discretion should be left to the officer concerned to arrest or not to arrest*.

19. In light of the preceding discussion and settled case law, simply because the offences prima facie made out against the Petitioner/A.20 are punishable with imprisonment of seven years or less than seven years, it cannot be held that the Petitioner is entitled to the benefit of notice under section 35(3) of BNSS. The discretion should be left to the investigating officer concerned to arrest or not to arrest and, therefore, to follow under section 35(3) of BNSS, is solely vested in the investigating officer.

20. In a case containing severe allegations, the Investigating Officer deserves a free hand to take the investigation to its logical conclusion. The investigation officer who has been prevented from subjecting the Petitioner to custodial interrogation can hardly be fruitful in finding prima facie substance in the extremely serious allegations. The possibility of the investigation being effected once the Petitioner is released on bail is very much foreseen. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail.

21. The Power under section 438 of Cr.P.C., is extraordinary and must be exercised sparingly. The Power of the pre-arrest bail should be granted only in exceptional cases. To some extent, the grant of anticipatory bail interferes in the sphere of investigation of an offence, and the Court must be circumspect while exercising such Power for the grant of anticipatory bail. The grant of anticipatory at the investigation stage may frustrate the investigating agency in interrogating the accused and collecting helpful information and the materials which might have been concealed. Success in such interrogation will elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order when he is interrogated.

22. As previously noted, the Prosecution asserts that the custodial interrogation of the Petitioner is imperative. The Petitioner withdrew the amount of Rs.1.5 crore. Given these circumstances, the contention put forth by the Petitioner's counsel is challenging to endorse. The material on record indicates that the investigation is at the initial stage. The Petitioner has to be interrogated in the custody. The ordering of anticipatory bail to the Petitioner may adversely affect the investigation process.

23. Considering all the attending facts and circumstances of the case as well as the gravity of the offence, as also the settled principle of law that power of grant of bail under Section 438 Cr.P.C., is to be sparingly exercised in extraordinary circumstances and thus, no such circumstances being having been made out in this case, this Court does not find it a proper case for granting the relief of anticipatory bail to the Petitioner/A.20.

24. Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the observations made in the present case, which are only for adjudicating the present bail application.

25. As a result, the Criminal Petition is ***dismissed***.

Miscellaneous applications pending, if any, shall stand closed.

T. MALLIKARJUNA RAO, J

Date: 27.03.2025
SAK

THE HONOURABLE SRI JUSTICE T MALLIKARJUNA RAO

CRIMINAL PETITION NO: 2641/2025

Date: 27.03.2024

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