

THE HONOURABLE SRI JUSTICE M. LAXMAN

CRIMINAL PETITION No.3798 of 2023

ORDER:

Before I delve into facts of present petition, I felt to place on record certain attempts by selective media to thwart and derail judicial process by making attempts to tarnish my image and attempts to intimidate and threaten to derail independent thought process in arriving just decision in this matter. The individuals of selective media facilitated and abetted by airing views of selective personnel of their choice with conscious knowledge of their antecedents to intimidate, to threaten and to damage my reputation by personal attack. I have greatest regard to press and news media which is fourth estate and which is forerunner in preserving democracy. They have every right to express their opinion touching merits of any decision which is essential in rightful democracy. Day by day, reputation of such important institution is eroding but for some individuals.

2. One of the participant, who is suspended and detained judge made direct attack by saying “money bags went to Judge”. Other participant who seems to be holding respectable office used derogatory language (“Cheyyendra”) and gestures which are aimed to tarnish my comprehension and competency abilities by his mis-interpretation and misunderstanding of deliberations of Court proceedings. I am least

worried about such attempts to tarnish image since image one had is indestructible and if such image is prone to destruction, it is not image at all.

3. All that concerned me is inroads of such actions to damage institutional image. It is high time to protect image by concerted efforts. I am greatly hurt not by individual comment but facilitation and abetment done by selective media. In my view, such actions clearly amount to invocation of proceedings under contempt of Courts Act, but I desist to do leaving open to head of institution to take or not to take action. At one stage, I thought of recusal, but for direction of the Apex Court and remindful of oath of office particularly “**discharge of duties without fear**”, I changed my mind. I direct the Registry to place this order and video clippings of debates of **Mahaa News and ABN News (Telugu)** dated 26/5/2023 by down loading from available source with regard to evening/early night debates over present proceedings along with this order before the Hon’ble the Chief Justice of High Court for the State of Telangana to take appropriate decision.

4. This petition is filed under Section 438 of Cr.P.C seeking anticipatory bail apprehending the arrest of the petitioner in FIR No.RC-04(S)/2020/CBI/SC-III/New Delhi dated 09.07.2020, for the

offence under Section 302 of IPC registered by the Central Bureau of Investigation (for short 'CBI').

5. The background of facts disclose that on the intervening night of 14/15.03.2019 in between 01.30 am to 03.00 am in the house of Y.S.Vivekananda Reddy (hereinafter referred to as 'deceased'), situated at Bhakarapuram, Pulivendula Town, Kadapa District, accused No.1 to 4 hacked the deceased to death. Accused No.1 was close follower of the deceased and he was with the deceased in his house on the date of incident. In pursuance of conspiracy, which was formed on 10.02.2019, accused Nos.1 facilitated accused Nos. 2 to 4 to enter the house of the deceased, and all of them hacked the deceased to death with axe and also traced out valuable documents and took away them. Accused Nos. 2 to 4 went away from the side door and accused No.1 left from the front main door, which was allegedly witnessed by one Ranganna, watchman/gardener. Accused No.1 threatened Ranganna that he would be killed, if he discloses the incident to anyone.

6. The incident came to light when one M.V.Krishna Reddy, who is Personal Assistant of the deceased came to the house and when the deceased did not open the door, he asked Ranganna, cook-Lakshamma and her son to go inside and wake up the deceased.

Upon the same, they found that the bedroom was completely covered by blood and they found the deceased was in pool of blood in the bathroom. Immediately, they came out and informed about the same to M.V.Krishna Reddy who had also seen the scene and in-turn telephoned to son-in-law of the deceased i.e. Rajashekar Reddy (L.W.15) and informed death of deceased. L.W.15, in turn, informed the same to his wife, who is the daughter of the deceased. Information about the death of the deceased was received by the wife of deceased, before her daughter informed her.

7. Subsequently, on knowing the incident, the petitioner herein along with his other followers reached the house of the deceased. Accused Nos.1, 5, 7 and Y.S.Manohar Reddy were also reached and present at the house of the deceased. They allegedly tampered the scene of offence by wiping out the blood in the bedroom with the help of servants and also cleaned the bedroom and changed the bed sheets. They also moved the dead body of the deceased from bathroom to bedroom and applied bandage and propagated the theory of heart attack. When the scene of offence was interfered, Shankaraiah, Circle Inspector of Police, Pulivendula, was also present. Initial case is that the scene of offence was disturbed at the instance of accused No.1. Subsequently, the version is that accused Nos.1 and 4 at the instance of

the petitioner, Y.S.Bhaskar Reddy, Y.S. Manohar Reddy and D. Shivshanker Reddy, scene was disturbed and later shifted the body to the Government Hospital, where the inquest proceedings were commenced at about 09.00 AM and concluded around 03.00 PM. While inquest proceeding were going on, the wife, daughter and son-in-law of the deceased reached Pulivendula and they were present during the inquest proceedings.

8. Initially, on the report of M.V.Krishna Reddy, FIR No.84 of 2019 was registered by the Police, Pulivendula Town, under Section 174 of Cr.P.C. Basing on the inquest proceedings, the Section of law was altered from Section 174 Cr.P.C to Sections 302 and 201 of IPC on the same day at about 03.00 PM.

9. Initially, the investigation was conducted by the Police, Pulivendula. Since it was death of a prominent leader of Kadapa District, the then Government of Andhra Pradesh headed by Telugu Desham Party constituted a Special Investigation Team (SIT) on the very next day. At that time, election process was in progress, and after the elections, the Telugu Desham Party lost election and the chief of YSRCP Party took charge as Chief Minister of the State of Andhra Pradesh. The new Government reconstituted the SIT. Subsequently,

as there was inaction by the reconstituted SIT, the High Court in a writ petition filed by the daughter of the deceased, who is intervener in the present petition, transferred the case to CBI. Based on the directions of the High Court, the CBI issued the FIR and that is how the investigation went under the control of the CBI. The CBI after completion of investigation filed initial charge sheet on 26.10.2021, charge sheeting accused Nos.1 to 4 (A.1-T.Gangi Reddy, A.2-T. Sunil Yadav, A.3-G.Uma Shankar Reddy and A.4-Shaik Dastagiri). Subsequently, supplementary charge sheet was filed charge sheeting D.Shivashankr Reddy (A.5) on 31.01.2022. It appears further charge sheet was also filed against Uday Kumar and Y.S.Bhaskar Reddy (who is father of the petitioner herein).

10. During the course of investigation, to unearth the larger conspiracy subsequent to filing of 1st charge sheet on 26.10.2021, the petitioner was issued summoned by CBI to elicit facts with regard to larger conspiracy in between 21.01.2023 to 21.04.2023. The petitioner was examined under Section 161 of Cr.P.C. The present petition was moved after the arrest of accused Nos.6 and 7 apprehending the arrest of the petitioner in connection with the larger conspiracy of murder of deceased.

11. It appears that this Court has granted protection during examination by directing the petitioner to appear and answer the questions to be framed by CBI in written form. The said order was challenged before the Apex Court and the Apex Court set aside the said order and directed to consider anticipatory bail. Further, when there was imminent threat of arrest from CBI, due to non-response of the petitioner to the notice of CBI, an interlocutory application was moved before the Apex Court for considering the present petition, which was posted for orders on 05.06.2023. The Apex Court directed this Court to hear in vacation bench and pass appropriate orders after hearing all the parties. That is how the present case was delisted from the regular bench and was listed before this vacation Court.

12. Heard, the learned counsel for the petitioner, the Special Public Prosecutor of CBI and also the learned counsel for the intervener.

13. Learned counsel for the petitioner has contended that till date, the petitioner was not shown as accused in connection with the alleged larger conspiracy. Pursuant to the summons of the CBI, the petitioner had been attending and co-operating investigation. The petitioner was examined by the CBI on seven occasions from January, 2023 to April,

2023, but at any point of time the CBI did not ventilate the grievance of non-co-operation from the petitioner.

14. It is also contended that the petitioner is being implicated to rope in a larger conspiracy without there being any admissible evidence which has been collected so far in the investigation and attempts are being made to frame petition with ulterior motive to spoil his political career. The allegations which were made against the petitioner are that there was strong motive for the petitioner to eliminate the deceased due to political rivalry, apprehending danger to his political carrier as Member of Parliament by deceased and executed the object of conspiracy and rumours were spread that death of the deceased was due to heart attack which were rumoured at the instance of petitioner and others and also disturbed the evidence of scene of offence. According to him, the investigation done so far does not prove all the above circumstances which were shown as incriminating material against the petitioner.

15. Learned counsel for the petitioner has further contended that no custodial interrogation is required since the CBI has already collected ample evidence, including the evidence of father of the petitioner, which would not throw any light on the involvement of the petitioner in the

larger conspiracy. The present case falls under 10 principles propounded by the Apex Court for consideration of anticipatory bail of the petitioner and seeks enlargement of the petitioner on anticipatory bail.

16. Learned Special Public Prosecutor appearing for the CBI has opposed the present petition contending that ample evidence was collected from various witnesses examined by the CBI, which clearly demonstrates that the petitioner and his followers were responsible for defeat of the deceased in MLC elections held in the year 2017 and the deceased threatened accused No.5, the petitioner, his father and Y.S. Manohar Reddy, blaming for his defeat. There were active efforts from the deceased to spoil the chances of nomination of the petitioner for the elections in the year 2019 as the deceased was claiming ticket for himself or sister or mother of the President of YSRCP Party. To avoid such situation, the petitioner conspired with other accused to kill the deceased.

17. It is also his contention that the petitioner, his father, Manohar Reddy and accused Nos.1 and 6 have tampered the scene of offence to screen the evidence from being detected and projected the theory of heart attack and vomiting by cleaning the pool of blood in bedroom

and bathroom and also moved the dead body from the bathroom to bedroom and also applied bandages. These facts suggest proof of involvement of the petitioner in the larger conspiracy. It is also his contention that accused Nos.1 to 4 were actively in touch with D.Shiv Shankar Reddy, Y.S. Bhaskar Reddy and the petitioner prior to commission of offence.

18. It is further contended that accused No.2 was inside the house of the petitioner on the odd hours of intervening night of the incident and the petitioner was conscious of execution of offence, but he pretended the ignorance and waited for the news to leak and thereafter, he reached the scene of offence. All these circumstances suggest the involvement of the petitioner in the larger conspiracy.

19. It is further contended that subsequent to the incident, the petitioner and accused No.5 were trying to influence valid registration of FIR and the investigation and hence, the custody of the petitioner for interrogation is required to elicit the information as to destruction of evidence of scene of offence, the information with regard to larger conspiracy and circulating the theory of heart attack, and discovery of weapon of crime i.e., the axe of accused No.2 and information relating to approach of accused No.5 to K. Gangadhar Reddy to take

responsibility of murder committed by the petitioner and his father for consideration of Rs.10 crores and close acquaintances of the petitioner approached accused No.4 regularly not to disclose information to CBI.

20. It is his last submission that the google location indicates the presence of accused No.2 in the odd hours in the house of the petitioner. Further, the petitioner has criminal antecedents and involved four FIRs, which were registered against him and sought to dismiss the present petition.

21. Learned senior counsel appearing for intervener has contended that the involvement of the petitioner in the larger conspiracy is made out from various evidence collected but he pretends to be innocent. The petitioner is politically strong and influential person and there is threat to the witnesses and there is further requirement of custodial interrogation as claimed by the CBI as the petitioner is not cooperating with CBI to give information sought by them. Therefore, he prayed to dismiss the present petition.

22. This Court is conscious of the fact that roving enquiry of evidence is unnecessary while considering the anticipatory bail application, but keeping in view of the importance of the incident and

media debates, this Court is forced to consider the necessary evidence to have *prima facie* reasons for my conclusion.

23. In the above backdrop, the investigation reveals that accused Nos.1 to 4 allegedly executed the offence, which is clear from 1st charge sheet. Each one of them had different grievances against the deceased. As per the investigation, the grievance of accused No.1 was that there was public scolding by deceased his defeat in MLC elections and also scolding on various occasions and also refused to share the proceeds of land settlement in Banglore, in which the deceased received Rs.8 crores. Accused No.2 also had grievance of non-receipt of share in the amount received out of settlement of land dispute as he was also participant in the settlement along with deceased and accused No.1. Apart from that, he had his own personal grievance with regard to business relating to diamonds, colour stones and he also suspected that the deceased was having immoral evil eye on his mother. Accused No.3 was also having grievance that the deceased purchased land to an extent of admeasuring Ac.16-00 in the name of brother of A-3 and he did not give space to him in Sarpanch election of his village and further, the deceased had evil eye on his wife. Accused No.4 was having grievance of his removal from service as driver and further, the deceased interfered in his illegal relationship with other lady.

24. Initially, the conspiracy amongst A-1 to 4 was initiated on 10.02.2019. The said conspiracy was made in the house of accused No.1. Accused Nos.1 to 3 went to the house of accused No.1, and where they found one Black Bolero and observed three persons coming out from the house of accused No.1, and thereafter accused No.2 to 4 entered the house of accused No.1.

25. The investigation also reveals that initially, accused No.4 (approver) refused to accept request of accused No.1 and other with them were expressing their own grievances with deceased and A-1 claimed that they were having support of D. Shiva Shankar Reddy. Subsequently, it was brought that the petitioner and his father were also assured to support, if anything happens to them. In the said circumstances, he accepted to take part. It is brought that the entire deal was struck for Rs.40 crores to be handed over by accused No.5. The promise was made to Accused No.4 to pay Rs.5 crores. In advance, A-2 paid Rs.1 crore to A-4 out of which Rs.25 lakhs were retained by accused No.2 and the rest of amount was given to A-4. According to investigation, A-4 kept the amount with one Munna for safe custody. The CBI recovered Rs.46 lakhs and odd from the locker of Munna but it is not clear how CBI know such information.

26. Initially, the involvement of multiple persons was suspected in the murder of the deceased. At one stage, a doubt was entertained on Adinarayana Reddy and other TDP leaders and there were also doubts on Rehmatullah as spoken by Rajashekar Reddy (L.W.15) son-in-law of deceased. The material also discloses that the then Chief Minister of TDP Party has made statements that the family members of the deceased only killed him. In this regard, the intervener herein complained to the Chief Election Commissioner for making such allegation. The chief of YSRCP Party has also made counter allegation against persons of TDP Party for cause of death of the deceased.

27. The evidence collected also reflects that scene of offence was tampered and important evidence was destroyed. Unfortunately, son-in-law of the deceased (Lw-15) was also responsible for destruction of some evidence by asking M.V.Krishna Reddy to keep letter written by the deceased blaming driver Prasad from scene. The different versions have been coming forward from the prosecution witnesses, but there is no direct evidence to show that the petitioner has instructed to disturb the scene of offence. However, some of the witnesses spoke that the petitioner was there when the scene of offence was disturbed. This part of the evidence requires to be considered on the touch stone principle of beneficiary out of destruction of scene of offence. The

petitioner was not suspected to be involved at that stage. The destruction of scene of offence would only help the actual executors of the offence i.e., accused Nos.1 to 4. The evidence also clearly demonstrates that the accused No.1 actively participated in disturbing scene of offence so as to wipe out valuable part of biological and forensic evidence.

28. Further, the evidence particularly from the approver also discloses that when the offence was being executed, there was attempt by accused Nos.1 and 2 for search of documents in the house of the deceased and relevant documents they were searching were found and they have taken the same. The evidence of the approver also discloses that before they left from the scene, there was re-verification from accused No.1 to check the proper custody of documents recovered from the house of the deceased. This conduct of accused Nos.1 and 2 suggest that the predominant motive appears to be the documents in possession of the deceased.

29. However, the CBI so far unable to recover such documents, which would show the predominant motive for the offence. Taking of documents from the house of the deceased suggests the probability of searching for document of settlement of land in Bangalore. since

accused Nos.1 and 2 were participated in the settlement, in which the deceased allegedly got Rs.8 crores and worth of property was Rs.150 crores. The CBI also failed to go into the details of presence of black Bolero at the house of accused No.1 and presence of three persons with accused No.1 just before the conspiracy was planned in his house on 10.02.2019.

30. The evidence also demonstrates that loss of MLC election primarily attributable to switch over of loyalty of voters in favour of TDP for money. The evidence also shows that it is was accused No.5, who had collected money from the MLC candidate of TDP. There is no evidence that collection of amount by accused No.5 was known to the petitioner herein. The evidence also demonstrates that from the year 2009, there were political differences between the deceased and accused No.5.

31. The evidence also shows that accused No.5 was expecting nomination for MLC in place of the deceased in the year 2017 and he was dissatisfied with allocation of ticket to the deceased. There is also evidence to show that the deceased also suspected his own follower accused No.1 for his defeat. He threatened accused Nos.4, 5, petitioner and his father stating that they were responsible for his defeat. There

is no direct evidence that the petitioner had any role for the defeat of the deceased except assumptions by everyone about his role.

32. The other strong motive attributed was that the deceased was trying to see that the petitioner do not get MP ticket from YSRCP and he was proposing ticket for himself or his sister or mother of party President of YSRCP. This attempt of the deceased was spoken by close family members of the deceased whose statement was circulated in a sealed cover. However, such evidence also discloses that the Chief of the party may not accept such proposal. The own evidence of prosecution also shows that the deceased was not inclined to contest for MP ticket. The deceased's son-in-law's testimony demonstrates that even though the party had not officially proclaimed its nomination, the petitioner would have been a declared candidate for MP in actuality. This suggests that the party President was in favour of the petitioner to give ticket. When such is the scenario, while considering strong motive attributed to the petitioner such circumstances be weighed in balance. Another important evidence, which is found on record, is that the own daughter of the deceased after the death of the deceased had made it clear that her father had been seriously making efforts for winning of petitioner. The CBI has also examined party Convener and he also said that on 14-3-2019, the deceased canvassed

for candidature of the petitioner. This evidence corroborates initial claim of the intervener herein. The evidence also shows that when the intervener went to Delhi to make complaint against the then Chief Minister of Andhra Pradesh from TDP, she took shelter in official quarter of the petitioner. At no point of time, the intervener or any family member of the deceased spoke about the strong enmity between the deceased and the petitioner herein. These things are relevant while considering motive for offence.

33. The CBI recovered Rs.46 lakhs and odd under seizure panchanama on 22.09.2020 from Andhra Pragathi Grameena Bank, Ambakapalli Road, Pulivendula from the locker of Syed Munna. However, it is not known how this information had been received by the CBI and from whom such information was elicited. It is accused No.4/approver, who alone knows where he kept the amount and his statement under Section 161 of Cr.P.C., was first recorded on 25.08.2021 nearly one year thereafter. On the said date, he gave all the details, as to how the crime was executed and where the money was kept. In spite of such clear evidence, the CBI has not explained why he was not arrested.

34. Further, judicial confession was also recorded subsequent to the recording of statement under Section 161 of Cr.P.C. Still CBI had not arrested accused No.4, when charge sheet was filed. Recovery of amount made nearly one year prior to recording of 1st statement. Accused No.4 demonstrates that there was prior statement of accused No.4 and also suggest he was already won over by the CBI before assurance of pardon was granted. In the initial statement, he did not refer the name of the petitioner with regard to assurance from the person spoken by accused No.1. In post conclusion of object of conspiracy, name of the petitioner was taken along with accused No.5 by accused No.1. In subsequent judicial confessions and statement after grant of pardon, accused No.4 referred name of the petitioner amongst the person they have support on the first conspiracy meeting held on 10-2-2019.

35. In this regard, the learned Public Prosecutor has contended that such a statement falls under Section 10 of the Indian Evidence Act, 1872. *Prima facie*, this Court feels that such a statement is subsequent to the achievement of object of conspiracy. Further, in the confessional statement and the statement recorded after pardon was granted by the Court, there is a reference of assurance from the petitioner, his father

and D. Shiva Shanker Reddy during continuance of conspiracy which is improved version.

36. The CBI also relies upon the conversation among participants of the crime and their presence at the house of accused No.1 on the previous day and on the intervening night of the incident. The only incriminating evidence this Court finds against this petitioner is that the claim of the CBI that accused No.2 was present at the odd hours i.e., 01.58 am., on the intervening night of 14/15.03.2019 at the house of the deceased. However, the Programmer of CBI i.e., P.W.6 does not support such a claim of CBI, but claims that the presence of accused No.2 is traced at 2.42 am. This is contrary to the theory propounded by the approver and the video clipping with regard to running away by accused No.3 at the odd hours of 3.15 am., after the incident, which is at the distance of 100 meters. This suggests that the offence must have been concluded just before presence of accused No.3 in video clipping. According to accused No.4, accused Nos.2 to 4 moved out from the house of the deceased at a time. Both the claims are not reconciling each other.

37. The evidence collected by the prosecution also demonstrates that the petitioner had cooperated for the summons issued by the CBI and

he had responded seven times. The information which is gathered by the date of filing of first charge sheet had reasons to entertain suspicion against his role in the larger conspiracy. At no point of time, for nearly more than two years, the CBI has not insisted for the arrest of the petitioner to have custodial interrogation. Even when previous summons were served for appearance, the CBI did not want to arrest the petitioner. If the CBI wanted to arrest the petitioner, it could have done it much earlier and no valid reason has been put forth.

38. It appears from the claim of the petitioner that in respect of last summons, due to medical emergency of his mother, the petitioner could not appeared before the CBI. According to the prosecution and the intervener, the medical emergency is an invented story. However, the medical records were filed by the petitioner along with short notes shows that the mother of the petitioner was shifted from Kurnool to Hyderabad on account of medical condition and some medical procedure was done over her. The CBI, by way of counter and additional material, tried to demonstrate that when an attempt was made to reach the petitioner while he was at the hospital with his mother in Kurnool, there was huge protest from his followers, which suggests that there is potential threat to the witnesses if he is granted bail.

39. In this regard, the learned Special Public Prosecutor for CBI relied upon the decision of Apex Court in **Nathu Singh v. The State of Uttar Pradesh**¹ whereunder the only question involved in the said case was whether protection can be granted to the accused when Court finds no ground to allow the petition. The facts of the said case are not applicable to the facts of the present case and hence, the said decision does not help the CBI.

40. The learned Special Public Prosecutor for CBI has also relied upon the decision of Apex Court in **State Rep. by the CBI v. Anil Sharma**². That is a case where there is a clear-cut evidence of transferring of assets so as to attract the charge under Section 13(2) of the Prevention of Corruption Act. In the said background, the Apex Court held that the custodial interrogation of the suspect was required. While considering the said aspect, the Apex Court held that *'success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual.'* In the said circumstances, the Apex Court interfered in granting of anticipatory bail. The said decision is also not relevant to the facts of

¹ 2021 (6) SCC 64

² 2021 (6) SCC 64U

the present case. In the present case, CBI for last 2 1/2 year could not collect any convincing evidence with regard to participation of petitioner in larger conspiracy.

41. A close scrutiny of grounds for custodial interrogation, the CBI wants to recover Axe from petitioner when there is clear claim from accused No.2 who allegedly carried Axe with him after execution offence that he had thrown Axe in Nala and search efforts were made but failed recover. They also want to elicit information with regard to trail of money of Rs. 4 crore which allegedly distributed amongst the accused. It is most unfortunate that the CBI failed to recover such amount from accused Nos.1 to 3 and amount recovered from Munna is also under doubtful circumstance. The CBI has not examined Munna and recovery was not under Section 27 of the Indian Evidence Act.

42. The CBI claims that even after the scene of offence is disturbed, the petitioner and accused No.5 had been constantly supervising the registration of the case and other formalities and there were attempts to control registration of FIR. However, as seen from the contents of FIR, which clearly disclose the presence of multiple injuries over the body of the deceased, but the Investigating Officer did not register the FIR under Section 302 of IPC against unknown persons, but registered

under Section 174 of Cr.P.C. The same is the fault of Investigating Officer. The same cannot be attributed to the influence. Further, at 3.00 pm., section of law was altered after inquest was completed.

43. The learned Special Public Prosecutor for CBI has also relied upon the decision of Apex Court in **Jai Prakash Singh v. State of Bihar**³. In the said case, charge of accusation under Section 302 read with 34 of IPC was made. In the said case, the FIR itself discloses that the beneficiaries of the bail previously threatened the complainant and the deceased to kill, and when the deceased was reaching to his home, the accused herein chased the deceased on motorcycle and killed him with fire arms. In the said circumstances, the Apex Court held that extension of anticipatory bail is improper. It is observed in the said case that there is no substantial difference between Sections 438 and 439 of Cr.P.C., so far as appreciation of the case as to whether or not a bail is to be granted is concerned but the anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. In the present case, the name of the petitioner is not referred in the FIR till today and it is only suspicion. There is inordinate delay in asking custodial interrogation with regard to involvement of the petitioner in larger conspiracy. The information which CBI is expecting has already

³ 2021 (6) SCC 64

elicited from his previous interrogation without custody and also from accused Nos.6 and 7. Therefore, the facts in the said case cannot be equated with the facts of the present case.

44. The learned Special Public Prosecutor for CBI has also relied upon the decision of Apex Court in **Prashant Singh Rajput V. State of Madhya Pradesh**⁴ and **Dr. Naresh Kumar Mangla V. Anita Agarwal**⁵ which are relating to criminal appeals and they are not much relevant to the facts of the present case.

45. In case of **Anil Kumar Singh V. High Court of Judicature at Patna**⁶, which is relied upon by the learned Public Prosecutor for CBI, it has been held by the Apex Court that merely because the petitioner holds high office, he is entitled for anticipator bail. There is no dispute on above proposition. The stature of accused is immaterial and it is the accusation which is relevant. A distinction has to be kept in mind in between serious case and serious accusations in a serious case. There may be serious accusations against some persons and there may not be serious accusations against another but charge he faces was serious and both cannot be equated.

⁴ 2021 SCC Online 919

⁵ 2020 SCC Online 1031

⁶ (2020) 19 SCC 364

46. Learned counsel for the petitioner relied upon judgment of the Constitutional Bench of the Apex Court in **Shri Gurbaksh Singh Sibbia V. State of Punjab**⁷. In the said case, the Apex Court had exclusively dealt with the parameters of granting bail. Ultimately, it was held that grant of anticipatory bail does not in any way directly or indirectly takes away from the police their right to investigate for the charges made or to be made against a person released on bail and it is always open to them to take custody for the purpose of discovery under Section 27 of the Indian Evidence Act, 1872, when the situation arises.

47. Learned counsel for the petitioner has also relied upon the decision of the Apex Court in **Siddharam Satlingappa Mhetre V. State of Maharashtra**⁸. Para Nos.109, 112 and 113 are relevant and they read as follows:

“109. A good deal of misunderstanding with regard to the ambit and scope of Section 438 Cr.P.C. could have been avoided in case the Constitution Bench decision of this court in Sibbia's case (supra) was correctly understood, appreciated and applied. This Court in the Sibbia's case (supra) laid down the following principles with regard to anticipatory bail:

- a) Section 438(1) is to be interpreted in light of Article 21 of the Constitution of India.
- b) Filing of FIR is not a condition precedent to exercise of power under section 438.

⁷ (1980) 2 SCC 565

⁸ 2011 (1) SCC 694

- c) Order under section 438 would not affect the right of police to conduct investigation.
- d) Conditions mentioned in section 437 cannot be read into Section 438.
- e) Although the power to release on anticipatory bail can be described as of an "extraordinary" character **this would "not justify the conclusion that the power must be exercised in exceptional cases only."** **Powers are discretionary to be exercised in light of the circumstances of each case.**
- f) Initial order can be passed without notice to the Public Prosecutor. Thereafter, notice must be issued forthwith and question ought to be re-examined after hearing. Such ad interim order must conform to requirements of the section and suitable conditions should be imposed on the applicant.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice; iv. The possibility of the accused's likelihood to repeat similar or the other offences.
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;**

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.”

48. Seeing from the above parameters laid down by the Apex Court, the case of the petitioner fits in such guidelines. Particularly, when a accused is implicated with the help of Sections 34 and 149 of the IPC, the Court should consider with even greater care and caution because over implication in the cases is matter of concern. Section 120-B of IPC is somewhat similar to the consequences under Sections 34 and 149 of IPC.

49. From the investigation done so far, there is no allegation at any point of time CBI claimed about interference of the petitioner in the investigation and involved in tampering of evidence and threatening

the witnesses and the complainant, except the allegation touching the destruction of scene of offence. The gravity of accusation is not yet clearly brought on record by the CBI so far. The entire case rests upon hear-say evidence and assumptive evidence. No direct evidence is available against the petitioner to prove his participation in larger conspiracy. They tried to rely upon the improved case of the witnesses and the approver. In the said background, this Court does not find any justification for a custodial interrogation of the petitioner by the CBI authorities and hence, this Court inclines to extend the anticipatory bail to the petitioner with certain conditions.

50. In the result, the Criminal Petition is allowed, granting anticipatory bail to the petitioner with the following conditions.

- (i) The petitioner shall be released on bail, in the event of his arrest by the CBI in connection with FIR No.RC-04(S)/2020/CBI/SC-III/New Delhi, on his executing a personal bond for Rs.5,00,000/- (Rupees five lakhs only) with two sureties for a like sum each to the satisfaction of the CBI.
- (ii) The petitioner shall not leave the country without the prior permission from the CBI, till the investigation is completed.
- (iii) The petitioner shall not tamper with the prosecution witnesses or alter any evidence.
- (iv) The petitioner shall cooperate with the investigation and shall appear before the C.B.I Police on every Saturday from 10.00 am to 5.00 pm., till the end of June, 2023 and shall regularly appear as and when he is required for investigation. He shall

not act in any manner which will be prejudicial to fair and expeditious investigation.

- (v) In the event of the petitioner committing any default, it is open to the CBI to seek cancellation of anticipatory bail.

Miscellaneous petitions pending, if any, shall stand closed.

M.LAXMAN, J

Date: 31.05.2023
TJMR