

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27<sup>TH</sup> DAY OF MARCH, 2023

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.1976 OF 2023

BETWEEN

SRI. K. MADAL VIRUPAKSHAPPA

... PETITIONER

(BY SRI K. SUMAN, SENIOR ADVOCATE  
FOR SRI SANDEEP S. PATIL, ADVOCATE)

AND

THE STATE OF KARNATAKA  
BY KARNATAKA LOKAYUKTA POLICE,  
BENGALURU DIVISION  
THROUGH ITS SPECIAL PUBLIC PROSECUTOR,  
HIGH COURT OF KARNATAKA  
BENGALURU - 560 001

... RESPONDENT

(BY SRI ASHOK HARANAHALLI, SR. ADVOCATE  
FOR SRI. B.B. PATIL, SPECIAL COUNSEL)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 438 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO ENLARGE THE PETITIONER ON BAIL IN THE EVENT OF HIS ARREST IN CR.NO.13/2023 REGISTERED BY KARNATAKA LOKAYUKTA POLICE, BENGALURU FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 7(a)(b), 7(A), 8, 9 AND 10 OF PREVENTION OF CORRUPTION ACT, PENDING ON THE FILE OF LXXXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND

SPECIAL COURT EXCLUSIVELY TO DEAL WITH CRIMINAL CASES RELATED TO ELECTED MPs/MLAs IN THE STATE OF KARNATAKA, BENGALURU (CCH-82).

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 17.3.2023, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

This petition is filed by the petitioner-accused No.1 under Section 438 of Cr.P.C., for granting anticipatory bail in Crime No.13/2023 of Lokayukta Police, Bengaluru and for the offences punishable under Sections 7(a)(b), 7(A), 8, 9 and 10 of Prevention of Corruption Act.

2. Heard the arguments of learned Senior counsel for the petitioner and learned Senior Counsel appearing for respondent.

3. The case of prosecution is that on the complaint of one Shreyas Kashyap, S/o. B.S. Gururaj, the police have registered FIR against accused No.1-the present petitioner and his son-accused No.2 and others. It is alleged by the *defacto* complainant, in his complaint, that he is the partner of the company called Chemixil

Corporation and his known person T.A.S. Murthy, who is said to be running a partnership firm in the name of M.S. Delicia Chemicals. They participated in the tender proceedings for procurement of chemical oil to be supplied to Karnataka Soaps And Detergent Limited (hereinafter referred to as 'KSDL') and they are the successful bidders. For the smooth supply of chemicals and chemical oils, they received procurement of raw materials. The accused said to have demanded Rs.81.00 lakhs as bribe and the petitioner-accused No.1 said to be informed the complainant to contact his son-accused No.2. The complainant, not willing to pay bribe amount, lodged a complaint to Lokayukta police. In turn, the said Lokayukta police set up trap and sent Rs.40.00 lakhs with the complainant. At the time of accepting the bribe amount, accused No.2 was caught red hand and trapped by the Lokayukta police and they seized the bribe amount and arrested accused No.2 and arrested accused No.2. It is also alleged in the complaint that, at the time of incident, some other persons were also present. The police seized

Rs.45.00 lakhs each from accused Nos.3 and 4 under trap panchanama in the presence of panchas. Accused No.2 and other accused persons were arrested and they were remanded to judicial custody. The name of the petitioner-accused No.1 has been appeared in the FIR. Hence, he had apprehension of arrest in the hands of police. Therefore, he approached this Court for the grant of anticipatory bail and he also filed an interim application under Section 438(1) of Cr.P.C., where this Court granted interim anticipatory bail on 07.03.2023 until disposal of this petition and this Court called for statement objections and documents from the Lokayukta police. Accordingly, they have produced the case diary before the Court in a sealed cover.

4. Learned Senior Counsel for the petitioner has contended that there is no demand and acceptance of bribe by the petitioner-accused No.1 for demanding any bribe from the complainant. There is no allegation against him even for abetment to pay any bribe. None of the

offences are alleged against the petitioner in the FIR and the remand application will attract against the petitioner. The learned Senior Counsel further contended that Lokayukta police have trapped accused No.2 and recovered some amount and there is no connection between the trap of accused No.2 and this petitioner-accused No.1. There is no work entrustment pending with the petitioner and there is no demand prior to accepting the tender or placing the procurement order. The learned Senior Counsel for the petitioner further submitted that there was no date mentioned as to on what date the petitioner-accused No.1 demanded bribe. Even in the trap panchanama, the investigation officer has stated that there is no material evidence against the petitioner. Immediately, after registering the FIR, the petitioner resigned from the post of Chairman of KSDL.

5. The learned Senior Counsel for the petitioner further contended that there is a separate Committee which has floated and accepted the tender and there is no

role played the petitioner-accused No.1 in this regard. The petitioner is a sitting MLA and he is already to co-operated with the investigation officer and absolutely, there is no material to connect the petitioner with this crime. The case is registered politically, motivated by the opposite political parties. If the petitioner is arrested, kept in jail, his reputation will be come down. The arrest of the petitioner is only an empty formality. The incriminating evidence is already collected by the Lokayukta police. The petitioner is ready to abide by any condition. Hence, prayed for granting anticipatory bail.

6. *Per contra*, the respondent-Lokayukta filed statement of objections and the learned Senior counsel appearing for the respondent has contended that the petitioner is the Chairman of the KSDL and the complainant is the successful bidder for supplying the chemical oils to the KSDL. The petitioner-accused No.1 and his son-accused No.2 having indulged in rigging of the tender process, have demanded bribe amount of Rs.81.00

lakhs. The complainant contacted him at the request of accused No.1, then, accused No.2 also had discussion and for sanction of the tender, release of bills and supply of goods, accused No.2 demanded Rs.1.20 crores from both the companies and after negotiation, accused No.2 has agreed to receive Rs.81.00 lakhs. Since, the complainant was not willing to pay the bribe, filed the complaint to the Lokayukta. The learned Senior Counsel for respondent further submitted that, thereafter, the respondent-Lokayukta prepared a pre-trap panchanama and requested the complainant to hand over the bribe and accordingly, on 02.03.2023, when the complainant went to the office of accused No.2 and while paying the amount, accused No.2 was trapped and during the trap panchanama, some other accused persons were also present. The respondent-Lokayukta seized Rs.60.00 lakhs from accused No.2 and Rs.90.00 lakhs (i.e., Rs.45.00 lakhs each) from two persons i.e., Albert Nicholas and Gangadhar. The total amount that were seized under the panchanama is Rs.1,62,00,000/- (i.e., Rs.60.00 lakhs + Rs.12.00 lakhs +

Rs.90.00 lakhs). Subsequently, the Lokayukta also raided the house of accused No.2 and also the office of accused No.1 and seized Rs.6,10,30,000/-. The learned Senior Counsel further contended that, the investigation is under progress. If the accused is released on bail, he will hamper the investigation. Even though this Court has granted interim anticipatory bail, but accused No.1 is not giving proper answer, he is giving evasive answer and not properly co-operating with the Investigating Officer. Therefore, it is contended that the petitioner-accused No.1 is required for custodial interrogation. The police may get better information from accused No.1. There is serious allegation against him. The entire tender process has been followed by accused No.2 who is the son of the petitioner. The Managing Director of KSDL one Mahesh has given his statement under Sections 161 as well as 164 of Cr.P.C. where it clearly reveals the active participation of accused No.2 in the tender process at the instance of accused No.1. Accused No.2 is not connected to the KSDL and he is working in BWSSB, but he has received bribe amount in



respect of the KSDL. Therefore, prayed for dismissing the petition. The learned Senior counsel for the respondent also contended that Rs.6.10 crores has been seized from the bed room of this petitioner-accused No.1 and therefore, prayed for dismissing the petition

7. In support of his arguments, the learned Senior Counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **P.CHIDAMBARAM vs. DIRECTORATE OF ENFORCEMENT** reported in **(2019) 9 SCC 24.**

8. In reply, the learned Senior Counsel for the petitioner has contended that there is no material against the petitioner for having demanded any bribe and the petitioner is not having bed room in the house of accused No.2. The said house belongs to other sons who are running a company and therefore, the petitioner is not required for any custodial interrogation. Hence, prayed for allowing the petition. In support of his arguments, the

learned Senior Counsel has relied upon various judgments of the Supreme Court including the case of **SHRI GURBAKSH SINGH SIBBIA AND OTHERS Vs. STATE OF PUNJAB** reported in **(1980) 2 SCC 565**.

9. Having heard the arguments of learned Senior counsel for parties and on perusal of the records, the allegation against the petitioner is that the petitioner being an MLA and the Chairman of the KSDL, has demanded Rs.1.20 Crores as bribe for accepting the tender and also for smooth payment on the procurement of raw materials for the purpose of the KSDL and after bargain, agreed for Rs.81.00 lakhs. The respondent No.2 is the successful bidder in the tender floated by the KSDL through its Committee constituted for floating the tender and accepting the tender. It is seen from the records that the KSDL placed an order for procurement of chemical oils for the purpose of KSDL. As per the allegation in the FIR, the complainant, for the purpose of smooth delivery of the goods and payment, has approached the present petitioner

and he is said to be demanded Rs.1.20 Crores as bribe and later, the petitioner has instructed the complainant to approach his son Prashanth Madai (accused No.2). Accordingly, one Sri.TVS Murthy and the complainant approached accused No.2 on 12.01.2023 in the private office of accused No.2, who is said to have demanded Rs.60.00 lakhs each as commission from both the companies for smooth procurement and payment. After bargain, accused No.2 agreed to receive Rs.33.00 lakhs from Chemixil Corporation and Rs.48.00 lakhs from M.S. Delicia Chemicals. Totaliy, Rs.81.00 lakhs was demanded for the supply of 29,520 kgs of chemicals and 50 kgs of Abbalide/musk at the rate of Rs.4349/- per kg. Accused No.2 demanded Rs.81.00 lakhs and later, the purchase order has been placed on 28.01.2023 and on 30.01.2023. Subsequently on 08.02.2023, accused No.2 contacted the complainant through whats-app call and asked to come to the office. Though the complainant went to the office and tried to record the conversation, but the date and time was not recorded. Subsequently, on 28.02.2023, accused No.2

called the complainant through phone, but the complainant did not lift the phone. Again on, 01.03.2023, accused No.2 called the complainant through the whatsapp and asked to meet him. Thereafter, the complaint came to be lodged and accordingly, trap was set up and while handing over Rs.40.00 lakhs to accused No.2, he has been trapped.

10. It is also seen from the trap Panchanama that Rs.40.00 lakhs has been seized at the time of trap from accused No.2. The police also arrested accused Nos.3 and 4 and seized Rs.45.00 lakhs each from them who came to office of accused No.2 and the police also seized Rs.12.00 lakhs from accused Nos.5 and 6 under the panchanama.

11. Though as per the trap panchanama, the aforesaid amounts were seized by the police, subsequently, the police also raided the house of the accused No.2, where in the bed room of this petitioner, they found Rs.6,10,30,000/- and they seized the same under the panchanama. In the panchanama, it is stated

that the house belongs to accused No.2 and the daughter-in-law of petitioner-accused No.1 was present and she has stated that the said room belongs to this petitioner. However, the investigation officer, while producing the accused No.2 before the Court, at inner page No.92 of trap panchanama, has stated that there is no evidence found as against accused no.1 and they will collect the documents during the investigation. Considering the said observation made by the investigating officer in the trap panchanama, this Court granted interim anticipatory bail to this petitioner on 07.03.2023.

12. Subsequently, the learned Senior counsel for respondent, during the course of final argument, has brought to the notice of this court that there was telephonic conversation between the accused No.2 and the complainant prior to the trap. It is also an admitted fact that the petitioner was the Chairman of the KSDL, but accused No.2 nothing to do with the KSDL. In fact, accused No.2 is an accountant working at BWSSB and he

has no business to make any demand and acceptance for himself except on behalf of the petitioner-accused No.1.

13. This Court, while granting interim anticipatory bail, imposed some conditions to the petitioner-accused No.1 to cooperate with the investigating officer. In the FIR, there is no direct evidence against this petitioner, but it was found during the investigation. The materials collected by the investigating officer and the case diary reveals the statement of one Mahesh, who is the Managing Director of KSDL, recorded under Section 164 of Cr.P.C. The said Mahesh, Managing Director of KSDL has categorically stated that there was frequent instructions given by this petitioner-accused No.1 through accused No.2 in tender floating activities and also at the instance of instruction of this petitioner, the tender has been finalized. The accused No.2 has actively given all the instructions to the complainant on behalf of the petitioner-accused No.1. There were whatsapp messages and telephone instructions given by this petitioner to one said Mahesh, the Managing

Director of KSDL, which clearly reveals, that at the instance of this petitioner-accused No.1 and on behalf of the petitioner-accused No.1, accused No.2 almost acted on for tender process, procurement process and demand and acceptance of the alleged bribe amount, pertaining to KSDL.

14. Learned Senior Counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court in the case of **SHRI GURBAKSH SINGH SIBBIA AND OTHERS Vs. STATE OF PUNJAB** reported in **(1980) 2 SCC 565** in respect of granting anticipatory bail and the principles laid down by the Hon'ble Supreme Court. I am aware about the principles laid down by the Hon'ble Supreme Court and based upon the principles laid down in the said judgment, this Court has granted interim anticipatory bail to this petitioner when he rushed to the Court on 07.03.2023.

15. On the other hand, the learned Senior Counsel for the respondent has relied upon the judgment of

Hon'ble Supreme Court in the case of **P.Chidambaram** (supra) and contended that the petitioner is required for custodial interrogation. The Hon'ble Supreme Court, in the case of **P.Chidambaram** (supra), at paragraphs 64, 65, 69, 72 and 74 has held as follows:

*64. Investigation into crimes is the prerogative of the police and excepting in rare cases, the judiciary should keep out all the areas of investigation. In State of Bihar v. P.P. Sharma [State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] , it was held that : (SCC p. 258, para 47) "47. ... The investigating officer is an arm of the law and plays a pivotal role in the dispensation of criminal justice and maintenance of law and order. ... Enough power is therefore given to the police officer in the area of investigating process and granting them the court latitude to exercise its discretionary power to make a successful investigation...."*

**65.** *In Dukhishyam Benupani v. Arun Kumar Bajoria [Dukhishyam Benupani v. Arun Kumar Bajoria, (1998) 1 SCC 52 : 1998 SCC (Cri) 261] , this Court held that :*



*"7. ... It is not the function of the court to monitor investigation processes so long as such investigation does not transgress any provision of law. It must be left to the investigating agency to decide the venue, the timings and the questions and the manner of putting such questions to persons involved in such offences. A blanket order fully insulating a person from arrest would make his interrogation a mere ritual..."*

***Grant of anticipatory bail in exceptional cases***

**69.** *Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 CrPC is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while*

*exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.*

**72.** *We are conscious of the fact that the legislative intent behind the introduction of Section 438 CrPC is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights—safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India.*

**74.** *Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation.*

*Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In State v. Anil Sharma [State v. Anil Sharma, (1997) 7 SCC 187 : 1997 SCC (Cri) 1039] , the Supreme Court held as under : (SCC p. 189, para 6)*

*"6. We find force in the submission of CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well-ensconced with a favourable order under Section 438 of the Code. In a case like this, effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible*

*police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."*

16. Learned Senior Counsel for the respondent has contended that the petitioner is not co-operating with the investigation officer, he is not giving any proper answer to the queries made by the respondent and that, he is giving evasive answers. Since the petitioner is not co-operating with the investigation officer and he is not giving proper answers, he is required for custodial interrogation, otherwise, it would not possible for the Lokayukta police to conduct proper investigation.

17. As held by the Hon'ble Supreme Court in **Chidambaram's** case, (supra), the Hon'ble Supreme Court has held that the police is required to investigate the matter for custodial interrogation in economic offences. Though the alleged offence is not directly on the economic offence against the State, but the KSDL is a public limited

company belongs to the State Government, it has floated the tender process for purchasing the chemicals or raw materials for production of Mysore Sandal Soaps. If the company pays more than crores of rupees as commission or bribe, one cannot expect the good quality of raw materials will be supplied by the said company and the very tender process followed by the tender accepting Committee and accepting the lowest price and good quality of raw materials will be frustrated. The public auction process through online would remain as an empty formality and eye wash to the public as they are following the KTPP Act and they are giving the tender to a person who is bribing the Committee or the head of the Committee who is holding the higher position in the tender procuring process. If at all respondent No.2 and his company has legally participated in the tender process activities, the question of paying the bribe does not arise. However, it is the matter of investigation by the police and further action will be taken by the KSDL for reconsidering

the tender process and accepting the tender from respondent No.2 is doubtful about following the KTPP Act.

18. The fact remains that the complainant himself says that, for the purpose of tender, procurement and smooth payment, he approached the petitioner-accused No.1 and therefore, without the instruction of the petitioner-accused No.1, the question of accused No.2 consulting the complainant, demanding bribe and accepting the bribe does not arise. The police are yet to collect the statement of so many witnesses from the KSDL and the other officials without any hindrance. The statement of the family members of petitioner-accused No.1 has been recorded by the investigation officer and the amount has been seized from the bedroom of this petitioner. The investigation officer was not able to collect the call records, whatsapp messages from the mobile of the petitioner. Therefore, the matter requires detailed investigation and without the custodial interrogation, it is not possible for the police to collect the proper evidence

against the petitioner. If the petitioner is on bail, there is every possibility of apprehension by the witnesses and they may not come forward to give evidence or statement against him without fear.

19. Therefore, I am of the view that the custodial interrogation of the petitioner-accused No.1 is very much necessary for the Lokayukta police. Though this Court granted the interim anticipatory bail until disposal of the case, because there was no material found in FIR at that time, but now, there is sufficient evidence to show the involvement of the petitioner in the commission of offence as per the case diary of the police and statement of Mohan under Section 164 of Cr.P.C. Therefore, the custody of the petitioner is imminent for the Lokayukta police to interrogate him in the matter. Therefore, at this stage, this Court feels that the interim anticipatory bail, requires to be cancelled as the petitioner-accused No.1 has not properly co-operated with the investigation officer. The Hon'ble Supreme Court in the case of **SUNITA DEVI AND ANOTHER Vs STATE OF HARYANA** reported in (2023) 1

**SCC 178** has held that if the accused refused to cooperate with the investigation agency, the State can file an application for cancellation of bail. Therefore, considering the facts and circumstances of the case, I am of the view that the petitioner-accused No.1 is not entitled for anticipatory bail as he is required for custodial interrogation.

20. The interim anticipatory bail granted by this Court on 07.03.2023 is hereby cancelled.

Accordingly, this petition for anticipatory bail filed under Section 438 of Cr.P.C., by the petitioner-accused No.1 is hereby dismissed.

Pending I.As., if any, do not survive for consideration. They are accordingly disposed of.

**Sd/-  
JUDGE**

CS/AKV/GBB