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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF NOVEMBER, 2020

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BEFORE

THE HON'BLE MR.JUSTICE B.A.PATIL

CRIMINAL PETITION NO.5445/2020

BETWEEN :

Mr. Rakesh Shetty
S/o Sri Sanjeev Shetty
Aged about 45 years
Managing Director,
Power TV News Channel
No.7, 11th Main Road
Mathikere, 1st Stage
Gokula Extension
Bengaluru-560 054.

... Petitioner

(By Sri A.S.Ponnanna, Senior Counsel for
Sri Ravikumar B.K., Advocate)

AND :

1. State of Karnataka
by K P Agrahara Police Station
Investigation by CCB,
Represented by State Public Prosecutor
High Court of Karnataka
Bengaluru-560 001.
2. Chandrakanth Ramalingam
S/o Nachimuthu Ramalingam
Aged about 36 years
Director, Ramalingam Construction
Company Pvt. Ltd.,

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R/at No.606, ETA Garden,
Binny Mills Road
Bengaluru-23.

*(Respondent No.2 is impleaded
as per Court order dated 02.11.2020)*

... Respondents

(By Sri V.M.Sheelvanth, SPP-1 for R1;
Sri C.V.Nagesh, Senior Counsel for
Sri P.N.Manmohan, Advocate for R2)

This Criminal Petition is filed under Section 438 of Cr.P.C praying to enlarge the petitioner on bail in the event of his arrest in Crime No.135/2020 registered by Kempapura Agrahara Police Station, Bengaluru, for the offences punishable under Sections 384, 465, 419, 560 and 120B of Indian Penal Code.

This Criminal Petition having been heard and reserved on 06.11.2020 coming on for pronouncement of orders this day, '**through video conference**' the Court made the following:-

ORDER

The present petition is filed by accused No.1 under Section 438 of Cr.P.C. to enlarge him on anticipatory bail in Crime No.135/20 of K.P.Agrahara Police Station, Bengaluru, for the offences punishable under Section 506, 120B, 465, 384, 419 of IPC.

2. I have heard Sri A.S.Ponnanna, learned Senior Counsel for Sri Ravikumar B.K., learned counsel for the petitioner-accused No.1; Sri V.M.Sheelavanth, learned SPP-I for respondent No.1-State; and Sri C.V.Nagesh, learned Senior Counsel for Sri P.N.Manmohan, learned counsel for respondent No.2-complainant.

3. The brief facts of the case are that petitioner-accused No.1 is the Managing Director of Power TV News Channel. Complaint's Company is engaged in construction activities and has obtained tenders from various Departments of the State and Central Governments and BDA. In respect of four different contracts of BDA, an amount of Rs.140 Crores was due to the complainant. It is further alleged that in the month of June, 2020, petitioner-accused No.1 called the complainant and asked him to meet him in his office at Mathikere. Accordingly, the complainant went and met the petitioner-accused No.1 and the complainant informed the petitioner-accused No.1 that he wants to

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put up an advertisement hoarding at Yelahanka at A.P.Border Troll Road which his Company has developed. While discussing, petitioner-accused No.1 also informed the complainant that he is very close to Mr.Amith Shah, the Hon'ble Minister of Home Affairs, Government of India and he is in touch with him on regular basis. He also claimed that he could help him in getting any work done either from State or Central Governments. It is further alleged in the complaint that the complainant was in constant touch with the petitioner-accused No.1 and during 4th week of June, 2020 he was persuaded to discuss with him about a tender floated by New Mangalore Port Trust in respect of construction of break water for fishing harbor at Kulai and the value of the work was around Rs.100 Crores and tender got notified on 24.9.2019. After coming to know the said information, petitioner-accused No.1 called one Mr.Parithosh Bala, Chief Engineer (Civil) New Mangalore Port Trust and spoke to him identifying himself as an Officer working in the office of Mr.Amith Shah, Hon'ble

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Home Minister and further told him that he has been directed by Hon'ble Home Minister to inform him that the tender submitted by M/s. Ramalingam Construction Company must be approved and granted in its favour. Subsequently, complainant after seeing, was astonished and taken aback after receiving the letter dated 29.6.2020 from New Mangalore Port Trust regarding disqualifying him from the tender process on the ground that he tried to influence the tender awarding authority.

4. It is further alleged that the petitioner-accused No.1 forced the complainant to divulge and give him the details of pending bills from various Departments of Government of Karnataka and he kept on pressurizing him to give every work details assuring him that he would personally get them cleared. He also informed the complainant that he is aware of the pending bills of the complainant's Company to the tune of Rs.140 Crores payable from BDA and he would ensure the said payment

be cleared by the BDA and he should be paid 5% on the said amount.

5. It is further alleged that on 26.8.2020 BDA has cleared Rs.7.79 Crores out of pending bill of Rs.140 Crores to the Company of the complainant. Petitioner-accused No.1 contacted the complainant and insisted him by saying that the said amount has been cleared from BDA and he is entitled to get 5% of the amount as his commission. Complainant refused to pay as he was knowing the fact that the said amount was cleared by the BDA in a routine manner. It is further alleged that the petitioner-accused No.1 was in continuous touch with the complainant on regular basis and induced him to speak in a tutored manner by taking the names of several persons in the Government and further assured that if he speaks the way he wants, he would get all his works cleared from the Government and hearing that the complainant got carried away and tutored the line of tutored conversation without being aware as to for what reason

he wanted to take the names and in what manner it would help him. He further alleged that none of the conversation made by him with the petitioner-accused No.1 is true. Later, the complainant started suspicious of the actual intent of the petitioner-accused No.1. It is further alleged that the petitioner-accused No.1 asked 5% of the amount and he also threatened that he will tarnish his reputation by misusing the tutored line and false statement which has been spoken against certain individuals. Because of the threat he paid an amount of Rs.25 lakhs in cash on 22.8.2020. It is further alleged that on 2.9.2020 he was surprised to watch a programme telecasted in the Power TV Channel of the petitioner-accused No.1 wherein he himself was a part of panel discussion and the petitioner-accused No.1 was making several false allegations referring to the work undertaken by his Company. Subsequently, many episodes were also aired/telecasted by the petitioner-accused No.1 through his Channel relating to the work done by the Company of the complainant linked with

some politicians and his family members who had no connection with the work executed by the Company of the complainant. The petitioner-accused No.1 also referred to several conversations held between them. The petitioner has used tutored conversations which were extracted from him falsely implicating others to suit his needs to achieve his oblique motive. It is further alleged that the petitioner-accused No.1 used to extract money from others by falsely implicating them in the conversation. It is further alleged that he has edited the conversation in electronic form to suit his stories and thereby committed the offence. On the basis of the said allegations, a case has been registered.

6. It is the submission of Sri A.S.Ponnanna, learned Senior Counsel appearing for the petitioner-accused No.1 that the offences under Sections 419, 465, 506 of IPC are punishable with two years' imprisonment and are bailable offences. Only Section 384 of IPC is punishable with three years' imprisonment and it is non bailable

offence. It is his further submission that in persuasion of the allegations, the petitioner-accused No.1 has represented himself as an Officer working in the office of Mr.Amith Shah, the Hon'ble Home Minister, Government of India and no complaint has been registered by New Mangalore Port Trust or any other authorities. It is his further submission that the bill of the complainant has been cleared on 26.8.2020 and Rs.25 Lakhs has been paid prior to that date i.e., on 22.8.2020. It is his further submission that nobody can tutor and a false case has been registered as against the petitioner-accused. It is his further submission that he was forced to divulge the information. Petitioner being the part of the media had made a sincere effort to unearth the true fact of correction of few influential persons of the present Government and the present complaint is the act of corrupt practice who has influenced and managed to get the complaint. It is his further submission that whatever the recordings which have been published are out of or part of journalism to expose certain classes of persons

whose information has been divulged to expose them. It is his further submission that there is no impersonation of the complainant and the complainant cannot file a case for impersonation as it is the person who has been affected must file a complaint for impersonation. It is his further submission that the present complaint is politically motivated only with an intention to tarnish the image of the petitioner-accused No.1. It is his further submission that the provision of anticipatory bail enshrined in Section 438 of Cr.P.C. is conceptualized under Article 21 of the Constitution of India. It relates to personal liberty of a particular person and such a provision calls for liberal interpretation of Section 438 of Cr.P.C. in the light of Article 21 of the Constitution of India. In order to substantiate his contention, he relied upon a decision of the Hon'ble Apex Court in the case of ***Bhadresh Bipinbhai Sheth Vs. State of Gujarat & another***, reported in ***(2016)1 SCC 152***. It is his further submission that the petitioner-accused No.1 is ready to abide by the conditions imposed by this Court

and ready to offer sureties. On these grounds, he prayed to allow the petition and to release the petitioner-accused No.1 on anticipatory bail.

7. *Per contra*, the learned SPP-I by substantiating the objections in this behalf has submitted that the conduct of the petitioner-accused No.1 is not as a responsible prudent citizen of this country. It is his further submission that during the course of investigation, it was noticed that the petitioner-accused No.1 was tested positive for pandemic Covid-19. Without following the SOP issued by the Government, he was neither in home isolation nor admitted to any hospital. With an intention to escape, he absconded despite knowing the fact that he was tested Covid-19 positive and thereby violated the guidelines and has also committed an offence under Epidemic Diseases Act and the Guidelines issued thereunder regarding Covid-19. It is his further submission that because of the absence of the petitioner-accused No.1 the investigation has been

hampered. It is his further submission that during the course of investigation, accused No.5 who was the car driver of the petitioner-accused No.1 took other accused persons in a car and travelled to various places and facilitated accused Nos.1 to 4 to remain absconded from the arrest. It is accused Nos.3 and 4 who helped accused Nos.1 and 2 to travel from Hyderabad to other places. It is his further submission that accused No.5 has clearly stated in his statement about the said fact. It is his further submission that by virtue of impersonation, petitioner-accused No.1 called over phone the Chief Engineer of New Mangalore Port Trust as an Officer working in the office of Hon'ble Home Minister, Government of India, which is considered to be a serious offence. It is his further submission that he has also tried to influence the tendering authority. It is his further submission that the petitioner-accused No.1 is a habitual offender and as many as five cases have been registered against him. It is his further submission that certain information has to be extracted and some documents are

to be recovered from the possession of petitioner-accused No.1 and in that light his custodial interrogation is very much necessary. It is his further submission that power to grant anticipatory bail being an extraordinary power has to be exercised sparingly more so in cases of economic offences. Such bail may be granted only in exceptional cases after application of mind in relation to nature and gravity of accusation, possibility of applicant fleeing justice and other factors. It is his further submission that power is to be invoked where the case alleged is frivolous or groundless. In order to substantiate the said contention, he relied upon a decision of the Hon'ble Apex Court in the case of ***P.Chidambaram Vs. Directorate of Enforcement***, reported in ***(2019)9 SCC 24***. On these grounds, he prayed to dismiss the petition.

8. On behalf of respondent No.2-complainant learned Senior Counsel has vehemently argued and submitted that the petitioner-accused No.1 has filed

WP.No.11169/2020 and the said writ petition came to be dismissed holding that there are no grounds made out for quashing. It is his further submission that when a finding has been given by a co-ordinate Bench, though it is not binding, it is having persuasive nature. Contrary to the said finding, this Court cannot say that there is no *prima facie* case as against the petitioner-accused No.1. It is his further submission that petitioner-accused No.1 has suffered a finding at the hands of this Court and now he cannot contend contrary to the said finding. It is his further submission that while granting the anticipatory bail, the Court has to look into autobiography of the petitioner-accused No.1, antecedents and backdrop of the commission of the offence and the social effect of the said offence. It is his further submission that accused No.1-petitioner is professional habitual offender extracting money by threatening the people. In case of habitual offenders, this Court cannot exercise the power vested under Section 438 of Cr.P.C. It is his further submission that though the petitioner has been acquitted

in some cases filed against him, he has been acquitted because the prosecution has failed to prove the case and not because there is no case as against him. It is his further submission that the act of the petitioner-accused No.1 has created so many problems and the administration has fed up as he is the Managing Director of Power TV Channel and he has been creating problem. It is his further submission that because of the act of the petitioner-accused No.1, the complainant has lost his tender and he should not be given an authority or a premium to commit such offences. If the petitioner-accused No.1 is granted anticipatory bail as prayed for, it becomes a premium for him for further commission of the offences. There is ample material as against the petitioner-accused No.1 for having been involved in the said crime. On these grounds, he prayed to dismiss the petition.

9. I have carefully and cautiously gone through the submissions made on both sides and perused the records.

10. It is the case of the prosecution that the petitioner-accused No.1 used the complainant to extract money from him and others by falsely implicating them in the conversation. It is the submission of the learned SPP-I that the power under Section 438 of Cr.P.C. being an extraordinary power has to be exercised sparingly more so in case of economic offences and bail must be granted only in exceptional cases after application of mind in relation to nature and gravity of accusation, possibility of applicant fleeing justice and other factors. In that light, he has relied upon the decision in the case of ***P.Chidambaram Vs. Directorate of Enforcement*** (cited *supra*), wherein at paragraphs-69, 72, 78 and 84, it has been observed as under:-

"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.”

“Economic offences

78. *Power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain [Directorate of Enforcement v. Ashok Kumar Jain, (1998) 2 SCC 105 : 1998 SCC (Cri) 510] , it was held*

that in economic offences, the accused is not entitled to anticipatory bail."

"84. *In a case of money-laundering where it involves many stages of "placement", "layering i.e. funds moved to other institutions to conceal origin" and "interrogation i.e. funds used to acquire various assets", it requires systematic and analysed investigation which would be of great advantage. As held in Anil Sharma [State v. Anil Sharma, (1997) 7 SCC 187 : 1997 SCC (Cri) 1039] , success in such interrogation would elude if the accused knows that he is protected by a pre-arrest bail order. Section 438 CrPC is to be invoked only in exceptional cases where the case alleged is frivolous or groundless. In the case in hand, there are allegations of laundering the proceeds of the crime. The Enforcement Directorate claims to have certain specific inputs from various sources, including overseas banks. Letter rogatory is also said to have been issued and some response have been received by the Department. Having regard to the nature of allegations and the stage of the investigation, in our view, the investigating agency has to be*

given sufficient freedom in the process of investigation. Though we do not endorse the approach of the learned Single Judge in extracting the note produced by the Enforcement Directorate, we do not find any ground warranting interference with the impugned order [P. Chidambaram v. CBI, 2019 SCC OnLine Del 9703] . Considering the facts and circumstances of the case, in our view, grant of anticipatory bail to the appellant will hamper the investigation and this is not a fit case for exercise of discretion to grant anticipatory bail to the appellant.”

11. It is the submission of the learned Senior Counsel for the complainant that the autobiography of the petitioner-accused No.1, his antecedents and backdrop of the commission of the offence have to be seen while considering the bail application. It is well settled proposition of law that presumption of innocence is a human right. The said proposition of law has been laid down by the Hon'ble Apex Court in the case of ***Dr.Subhash Kashinath Mahajan Vs. The State of***

Maharashtra & another, reported in **AIR 2018 SC 1498**. It has been observed that there cannot be presumption of guilt so as to deprive a person of his liberty without any opportunity before an independent forum or Court. At paragraph-65 of the said decision, the Hon'ble Apex Court has observed as under:-

"65. Presumption of innocence is a human right. No doubt, placing of burden of proof on accused in certain circumstances may be permissible but there cannot be presumption of guilt so as to deprive a person of his liberty without an opportunity before an independent forum or court. In Noor Aga v. State of Punjab, it was observed:

"33. Presumption of innocence is a human right as envisaged under Article 14(2) of the International Covenant on Civil and Political Rights. It, however, cannot per se be equated with the fundamental right and liberty adumbrated in Article 21 of the Constitution of India. It, having regard to the extent thereof,

would not militate against other statutory provisions (which, of course, must be read in the light of the constitutional guarantees as adumbrated in Articles 20 and 21 of the Constitution of India).

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35. A right to be presumed innocent, subject to the establishment of certain foundational facts and burden of proof, to a certain extent, can be placed on an accused. It must be construed having regard to the other international conventions and having regard to the fact that it has been held to be constitutional. Thus, a statute may be constitutional but a prosecution thereunder may not be held to be one. Indisputably, civil liberties and rights of citizens must be upheld.

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43. The issue of reverse burden vis-a-vis the human rights regime must also be noticed. The approach of the common law is that it is the duty of the prosecution to prove a person guilty. Indisputably, this

common law principle was subject to parliamentary legislation to the contrary. The concern now shown worldwide is that Parliaments had frequently been making inroads on the basic presumption of innocence. Unfortunately, unlike other countries no systematic study has been made in India as to how many offences are triable in the court where the legal burden is on the accused. In the United Kingdom it is stated that about 40% of the offences triable in the Crown Court appear to violate the presumption. (See "The Presumption of Innocence in English Criminal Law", 1996, CRIM.L.REV.306, at p.309.)

44. In Article 11(1) of the Universal Declaration of Human Rights (1948) it is stated:

"Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law..."

Similar provisions have been made in Article 6.2 of the European Convention for the Protection of Human Rights and

Fundamental Freedoms (1950) and Article 14.2 of the International Covenant on Civil and Political Rights (1966).

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47. We may notice that Sachs, J. in *State v. Coetzee* [1997(2)LRC 593] explained the significance of the presumption of innocence in the following terms:

"There is a paradox at the heart of all criminal procedure in that the more serious the crime and the greater the public interest in securing convictions of the guilty, the more important do constitutional protections of the accused become. The starting point of any balancing enquiry where constitutional rights are concerned must be that the public interest in ensuring that innocent people are not convicted and subjected to ignominy and heavy sentences massively outweighs the public interest in ensuring that a particular criminal is brought to book... Hence the presumption of innocence, which serves not only to

protect a particular individual on trial, but to maintain public confidence in the enduring integrity and security of the legal system. Reference to the prevalence and severity of a certain crime therefore does not add anything new or special to the balancing exercise. The perniciousness of the offence is one of the givens, against which the presumption of innocence is pitted from the beginning, not a new element to be put into the scales as part of a justificatory balancing exercise. If this were not so, the ubiquity and ugliness argument could be used in relation to murder, rape, car-jacking, housebreaking, drug-smuggling, corruption... the list is unfortunately almost endless, and nothing would be left of the presumption of innocence, save, perhaps, for its relic status as a doughty defender of rights in the most trivial of cases."

In view of the above, an accused is certainly entitled to show to the Court, if he apprehends arrest, that case of the complainant was motivated. If it can be so

shown there is no reason that the Court is not able to protect liberty of such a person. There cannot be any mandate under the law for arrest of an innocent. The law has to be interpreted accordingly."

12. On going through the above said decision, it indicates that there cannot be presumption of guilt so as to deprive a person of his liberty without an opportunity before an independent forum or Court.

13. In the case of ***Sanjay Chandra Vs. Central Bureau of Investigation*** reported in ***(2012) 1 SCC 40***, it has been observed by the Hon'ble Apex Court that right to bail is not to be denied merely because of the sentiments of the community against the accused. At paragraph-40 it has been observed as under:-

"40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely

because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required."

14. The power under Section 438 of Cr.P.C. is an extraordinary power which was incorporated before other provisions for granting of bail under Section 437 and 439 of Cr.P.C. and judicial discretion is a matter regard and required to be exercised with due care and caution. Grant or refusal of bail is entirely discretionary and discretion should depend upon the facts and circumstances of each case. Certain parameters have to be kept in mind while considering or dealing with the application for anticipatory bail. Those guidelines have been laid down by the Hon'ble Apex Court in the case of

Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others, reported in **(2011)1 SCC 694**, wherein at paragraph- 112, it has been observed as under:-

"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 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 the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication 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."*

15. Keeping in view the aforesaid decision and the ratio laid down so also on going through the decision of the Hon'ble Apex Court in the case of ***P.Chidambaram Vs. Directorate of Enforcement*** (cited *supra*), I am of the considered opinion that I am not having any difference of opinion with regard to the ratio laid down in the said decision. In case of economic offences, which is having an impact on the society, the Court must be very slow in exercising the discretion under Section 438 of Cr.P.C. But on perusal of the factual matrix of the case

on hand, the act of the petitioner-accused No.1 is not having any impact on the financial status of the country as a whole and in that light the ratio laid down in the aforesaid decision is not applicable to the facts of the present case.

16. In so far as the contention of the learned SPP-I is that the petitioner-accused No.1 was tested Covid-19 positive and he is moving without isolating himself at home without following SOP and the conduct of the petitioner is seen in this behalf for the purpose of considering the bail application is concerned, if the petitioner-accused No.1 has violated any guidelines or the law, with reference to Epidemic Diseases Act and directions thereunder, then under such circumstances, a separate case can be registered in this behalf and he can be dealt with properly under the said provision and the conduct of the petitioner-accused No.1 will not have any impact with regard to the facts of the case on hand. It is like "*branding the she buffalo for the fever to the ox*".

Law does not recognize such situation. The accused be punished for the offence which he has committed and not for other's. In that light, the contention of the learned SPP-I is not having any force. Further, though it is contended by the learned Senior Counsel for the respondent-complainant that many more cases have been registered as against the petitioner-accused No.1 and he is a habitual offender, it is the specific contention of the learned Senior Counsel for the petitioner-accused No.1 that in two cases the petitioner-accused No.1 has been acquitted and other cases have been got registered only to humiliate the petitioner-accused No.1 and in one case, the police have submitted B-report. In so far as another case is concerned, the same has been registered after registering of the present case. Until and unless the petitioner-accused No.1 has been tried and convicted for the alleged offence, he cannot be held as a habitual offender and till he is proved guilty, no presumption can be drawn about his guilt as observed in the case of

Dr.Subhash Kashinath Mahajan Vs. The State of Maharashtra & another (cited *supra*).

17. While considering the bail application, the parameters which have to be considered has been stated in the case of **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others** (cited *supra*) have to be kept in view. Keeping in view the said ratio laid down, on perusal of the factual matrix on hand, it indicates that while commission of the offences which have been alleged, the complainant has also joined his hands and subsequently he came up with a complaint, that is a matter which has to be considered and appreciated during the course of trial. The only consideration which has to be looked into for the purpose of granting or refusing bail is whether the accused would be readily available for trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. If there is no *prima facie* case, there is no question of considering other circumstances. Even where

a *prima facie* case is established, the approach of the Court in the matter of bail is not that the accused should be detained by way of punishment, but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour. This proposition of law has been laid down by the Hon'ble Apex Court in the case of ***Bhagirathsinh Judeja Vs. State of Gujarat***, reported in **1984 AIR(SC) 372**, wherein it has been observed as under:-

"It is now well-settled by a catena of decision of the Supreme Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. If there is no prima facie there is no question of considering other circumstances. But even where a prima facie case is established, the approach of the Court in the matter of bail is not that the accused

should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence."

18. In *catena* of decisions, even in Constitutional Bench law relating to grant of anticipatory bail has been discussed and emphasized that the provisions of anticipatory bail enshrined in Section 438 of Cr.P.C. is conceptualized under Article 21 of the Constitution of India which relates to personal liberty and it shall be given a liberal interpretation. This aspect has also been upheld by the Hon'ble Apex Court in the case of ***Bhadresh Bipinbhai Sheth Vs. State of Gujarat & another*** (cited *supra*), wherein at paragraph-21 it has been observed as under:-

"21. *Before we proceed further, we would like to discuss the law relating to grant of anticipatory bail as has been developed through judicial interpretative process. A judgment which needs to be pointed out is a Constitution Bench judgment of this Court in Gurbaksh*

Singh Sibbiav. State of Punjab [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] . The Constitution Bench in this case emphasised that provision of anticipatory bail enshrined in Section 438 of the Code is conceptualised under Article 21 of the Constitution which relates to personal liberty. Therefore, such a provision calls for liberal interpretation of Section 438 of the Code in light of Article 21 of the Constitution. The Code explains that an anticipatory bail is a pre-arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore, effective at the very moment of arrest. A direction under Section 438 is therefore intended to confer conditional immunity from the "touch" or confinement contemplated by Section 46 of the Code. The essence of this provision is brought out in the following manner: (Gurbaksh Singh

case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465]
, SCC p. 586, para 26)

"26. We find a great deal of substance in Mr Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An overgenerous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. No doubt can linger after the decision in *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248] ,

that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein."

19. Keeping in view the ratio laid down in the aforesaid decision and on perusal of the submissions made on behalf of the parties, it indicates that the petitioner-accused No.1 is not available for the purpose of investigation. Merely because he is absconding, no inference can be drawn about his guilt. Sometimes because of fear, ill-treatment and harassment at the hands of the police, the petitioner-accused No.1 might have kept himself behind the curtain so as to avoid the said ill-treatment and harassment. The contents of the complaint clearly go to show that the complainant came in contact with the petitioner-accused No.1 and some

amount is due to the complainant. Whether the petitioner-accused No.1 has claimed that he is very close to Mr.Amith Shah, Hon'ble Minister of Home Affairs, Government of India and got reposed confidence of the complainant and subsequently whether he called the Chief Engineer (Civil) of New Mangalore Port Trust and spoke to him with his mobile identifying himself as an Officer working in the office of the Hon'ble Minister of Home Affairs, Government of India, are all the matters which have to be considered and appreciated during the course of trial and it is in the form of document and evidence. If any further information is required, one of the conditions will be that the petitioner-accused No.1 has to co-operate with the investigation and the Investigating Officer can investigate by questioning the petitioner-accused No.1 in this behalf to extract whatever material which is required for the purpose of investigation.

20. It is the duty of the Court to exercise its jurisdiction in proper way to protect the personal liberty of a citizen. If the Courts do not interfere, we are troubling the path on destruction. This proposition of law has been laid down by the Hon'ble Apex Court in its recent decision in the case of **Arnab Manoranjan Goswami Vs. The State of Maharashtra & Others**, decided on 11.11.2020.

21. It is well settled proposition of law that while considering the bail application, the Court cannot hold a mini trial. If at all because of the intervention of the petitioner-accused No.1, the tendering authority has disqualified the complainant from the tender process, then under such circumstances, some civil remedy is also available for the complainant to proceed in accordance with law, if he is advised to do so. These are all serious issues which are to be considered and appreciated during the course of trial. If the conduct of the petitioner and complainant is seen, complainant met the petitioner-

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accused No.1 after coming to know about tender application filed by the complainant to New Mangalore Port Trust by calling him over phone. The petitioner-accused No.1 called the Chief Engineer of New Mangalore Port Trust identifying himself as an Officer working in the office of Hon'ble Home Minister, Government of India for approval. At that time, the complainant neither resisted the petitioner-accused No.1 nor he immediately filed the complaint against him for impersonation. Be that as it may, when petitioner-accused No.1 induced the complainant to speak in a tutored manner taking the names of several persons in the Government to get his work done from the Government which he wants to carry and spoke in a tutored manner, creates a doubt. Complainant being a responsible person and Director of a big construction company cannot be expected to speak in a tutored manner. It is true that autobiography and antecedents of the accused must be seen while considering the bail application, but at the same time autobiography and antecedents of the complainant must

also be seen. Court has to put the facts of the case of the complainant and accused into a scale and weigh it to ascertain the truth. Complainant who is before the Court has also not come up with clean hands and it appears that all is not well. In that light, I am of the considered opinion that in order to ascertain the truth, a fair and unbiased investigation is necessary. In that light, by imposing some stringent conditions, if the petitioner-accused No.1 is ordered to be released on anticipatory bail, it would serve both the ends.

Accordingly, the petition is **allowed** and the petitioner-accused No.1 is granted anticipatory bail. In the event of his arrest in Crime No.135/20 of K.P.Agrahara Police Station, Bengaluru, for the offences punishable under Section 506, 120B, 465, 384, 419 of IPC, subject to the following conditions:-

- i) *Petitioner-accused No.1, namely Rakesh Shetty, shall execute a personal bond for Rs.2,00,000/- (Rupees two lakhs only) with*

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two sureties for the like sum to the satisfaction of the Investigating Officer.

- ii) He shall surrender before the Investigating Officer within twenty days from today, failing with this order shall automatically stand cancelled.*
- iii) He shall co-operate with the Investigation as and when required.*
- iv) He shall not tamper with the prosecution evidence in any manner.*
- v) He shall mark his attendance once in fifteen days between 10.00 a.m. and 5.00 p.m. before the jurisdictional police, till the charge sheet is filed.*
- vi) He shall not leave the jurisdiction of the trial Court without prior permission.*
- vii) He shall not indulge in similar type of criminal activities in future.*
- viii) If he violates any one of the conditions, the bail is liable to be cancelled.*

Sd/-
JUDGE

*ck/-