IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JULY, 2021

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.45 OF 2021
CONNECTED WITH
CRIMINAL PETITION NO.43 OF 2021

IN CRL.P.NO.45/2021:

BETWEEN:

SRI NANJUNDAIAH
AGED ABOUT 47 YEARS,
S/O. LATE NARAYANAPPA,
RESIDING AT BRIGADE GATEWAY APARTMENT,
DR. RAJKUMAR ROAD, MALLESHWARAM,
BENGALURU – 560 055.

... PETITIONER

(BY SRI KIRAN JAVALI, ADV., FOR
SRI K. CHANDRASHEKHARA, ADV.)

AND:

UNION OF INDIA
DIRECTORATE OF ENFORCEMENT,
THROUGH DEPUTY DIRECTOR,
REPRESENTED BY THE S.P.P.,
HIGH COURT, BENGALURU,
KARNATAKA – 560 001.

... RESPONDENT

(BY SRI K. NAGESHWARAPPA, H.C.G.P.)

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THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF THE CR.P.C. PRAYING TO ENLARGE THE PETITIONER ON BAIL IN SPL.C.C.NO.846 OF 2020 OF THE DIRECTORATE OF

ENFORCEMENT FOR THE OFFENCE PUNISHABLE UNDER SECTION 4 OF THE P.M.L. ACT, PENDING ON THE FILE OF XXXII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE FOR CBI AND P.M.L.A. CASES, BENGALURU.

IN CRL.P.NO.43/2021:

BETWEEN

SRI NANJUNDAIAH
AGED ABOUT 46 YEARS,
S/O. LATE NARAYANAPPA,
RESIDING AT BRIGADE GATEWAY APARTMENT,
DR. RAJKUMAR ROAD, RAJAJINAGAR,
2ND STAGE, MALLESHWARAM,
BENGALURU – 560 055.

... PETITIONER

(BY SRI KIRAN JAVALI, ADVOCATE FOR
SRI CHANDRASHEKARA K., ADVOCATE)

AND

THE STATE OF KARNATAKA
HOSAKOTE POLICE STATION,
REPRESENTED BY THE S.P.P.,
HIGH COURT, BENGALURU,
KARNATAKA – 560 001.

... RESPONDENT

(BY SRI K. NAGESHWARAPPA, H.C.G.P.)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO ENLARGE THE PETITIONER ON BAIL IN CRIME NO.304 OF 2020 OF HOSAKOTE POLICE STATION, BENGALURU CITY, FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 409 AND 420 OF THE IPC AND SECTION 9 OF THE KARNATAKA PROTECTION OF INTEREST OF DEPOSITORS IN FINANCIAL ESTABLISHMENTS ACT.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 16.07.2021 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Criminal Petition No.45/2021 is filed by the petitioner – accused No.1 under Section 439 of Cr.P.C., for granting bail in Special Criminal Case No.846/2020 registered by the Directorate of Enforcement (for short 'ED') for the offence punishable under Section 4 of the Prevention of Money Laundering Act, 2002 (for short 'PML Act') pending on the file of XXXII Additional City Civil and Sessions Judge and Special Judge for CBI and PMLA cases, Bengaluru (CCH-34).

Criminal Petition No.43/2021 is filed by the same petitioner arraigned as accused No.2 under Section 439 of Cr.P.C., for granting bail in Crime No.304/2020 registered by the Hosakote Police Station, Bengaluru for the offences punishable under Sections 409 and 420 of Indian Penal Code, 1860 (for short 'IPC') and Section 9 of the Karnataka Protection of Interest of Depositors in Financial Establishment Act, 2004 (for short 'KPID Act') pending on the file of Principal Sessions Judge, Bengaluru Rural District, Bengaluru.

2. Heard the arguments of Sri Kiran Javali, learned counsel appearing for Sri K.Chandrashekhara, learned counsel for the petitioner and Sri P.Prasanna Kumar, learned counsel for the Directorate of Enforcement (ED) and also learned High Court Government Pleader appearing for respondent assisted by Sri Madhukar Deshpande, learned counsel for the victim.

3. The case of the prosecution is that in Crl.P.No.45/2021, the Directorate of Enforcement filed a complaint in ECIR No.BGZO/20/2020 registering the case on 09.03.2020 by taking investigation in respect of the case registered by the Basaveshwaranagar Police Station, Vijayanagar Sub-Division for the offence punishable under Section 420 of IPC which came to be transferred to the CCB, F & M, Bengaluru on 19.12.2019. It is alleged that petitioner-Nanjundaiah is the Founder/Director of Kanva Souhardha Co-operative Credit Limited (hereinafter

referred to as 'Society') situated at No.861, Kanva Sri, Modi Hospital Road, West of Chord Road, Bengaluru. The case came to be registered on the report received from the office of Registrar of Co-operative Societies, Ali Askar Road, Bengaluru in letter No.RCS:RSR/SCU/142/2019-20,dated 20.02.2020 along with a copy of the FIR No.341/2019, dated 31.10.2019 registered by the Basaveshwaranagar Police Station, Vijayanagar Sub-Division, Bengaluru and along with the Observation Report, which was conducted based on the public complaint and observed the major lapses and serious irregularities. It is alleged that the petitioner being the Founder/Director of the Kanva Souhardha Co-operative Credit Limited has collected Rs.650.00 crores deposits from the members and the public by assuring high rate of interest through commission agents, without maintaining required liquidity, Prepaid instruments, issued to deposit holders without prior permission from the RBI and it is not able to re-pay the matured amounts. It is further alleged that the Society has advanced Rs.702.00 crores of loan out of deposits, working capitals, shares, reserves etc., Out of which Rs.442.00 crores is advanced to its associated 13 companies without getting any security. It is further alleged that out of 15 Directors, 10 Directors have taken loan amounting to Rs.15.58 crores and all are defaulters. 90% of the loanees are defaulters. No efforts were made to recover the loan. It is further alleged that the Society has not maintained proper accounts for paying Income Tax, GST etc., and the RBI has not authorised to issue prepaid instruments. It is further alleged that crime Nos.340/2019, 341/2019 and 342/2019 were registered by the Basaveshwaranagar Police Station on 31.10.2019 against this petitioner for the offence punishable under Section 420 of IPC. The assessment of proceeds of the crime reveals that the petitioner registered the Society under the provisions of the Karnataka Souharda Sahakari Act, 1997 and collected multiple crores of deposits from the members and public by assuring high rate of interest. The petitioner-Nanjundaiah, the founder of Kanva Souhardha Co-operative Credit Limited allegedly diverted the deposits from the Financial Institutions to his other businesses. Multiple FIRs have been registered against this petitioner and the offence under Section 420 of IPC is a scheduled offence under PML Act and he has committed the offence under Sections 3 and 4 of the PML Act. Accordingly, the petitioner has been arrested and he was remanded to the judicial custody.

4. In criminal petition No.43/2021 registered against this petitioner in crime No.304/2020 by the Hosakote Police Station on the complaint by one Nagesh B.A alleging that they have also invested deposits in the Society for an amount of Rs.1,18,000/- on 3.11.2018 and purchased 80 shares bearing certificate No.23766 and 20 shares bearing certificate No.24134 having face value of Rs.1,000/- and he has invested Rs.1,80,000/- in the name of his younger brother-Suresh and also deposited Rs.3,75,000/- in the name of his younger sister B.A.Pushpa by obtaining share certificates and the Society assured double the amount. But they closed their office

and cheated them. On the complaint filed by one Nagesh, the Police registered a case and during the investigation, it was revealed that so many cases were registered against this petitioner in various Police Station limits and the petitioner-Society has cheated more than 600 people about Rs.39,08,76,232/- and 111 properties worth Rs.426 crores have been seized etc. The petitioner was arrested and remanded to the judicial custody. Therefore, he approached the Sessions Court for granting bail, which came to be rejected in both the cases. Hence, the petitioner is before this Court.

5. Sri Kiran Javali, learned counsel appearing for the petitioner has contended that the petitioner is innocent of the alleged offence. He has not at all committed any offence except he is a Founder/Director of the Society. He admits that he collected funds and investments from the Society members, but not from the public. Out of the amount collected from the persons, the Society was lending money to others and getting interest and then

used to repay the same to the members of the Society. He himself borrowed loan by pledging the documents, which is nothing but a mortgage and out of that amount, he has reinvested some amount in some other businesses like health care, fashion garments, resorts and land development and other business. He is also involved in the development of the properties and selling the same to the purchaser. Out of the profit, he has to pay the interest to the Society and in turn the Society used to repay the same. Due to some loss in the business by that time, the complaint came to be lodged by some investors. But there is no intention of the petitioner to cheat any of the investors. He has invested the money for the purpose of business of the properties which were attached by the State under the KPID Act and also by the ED. The accounts were also freezed. Absolutely, there is no intention of cheating any of the investors. He is ready to repay the amount to the investors by selling the properties. Therefore, his presence is necessary by coming out of the jail. Learned counsel also submits that he has no objection for conducting forensic audit. If that is done, it is easy for the petitioner to show he is innocent of the offence. He is in custody from 25.08.2020. Previously, he was arrested in Crime No.340/2019 registered by the Basaveshwaranagar Police and in other crime Nos.340/2019, 341/2019, 342/2019 and he was granted bail by the learned Sessions Judge and this Court also granted bail to the petitioner in another case. The Co-ordinate bench of this Court has granted bail in Crl.P.No.3045/2020 in respect of the crime No.19/2020 registered by the Banaswadi Police. Though this petitioner filed criminal petition under Section 482 of Cr.P.C., but later it was withdrawn. He is ready to abide by the conditions that may be imposed by this Court for the purpose of assisting the Administrator appointed by the High Court and also the Competent Authority appointed under the KPID Act. Hence, prayed for granting bail.

6. Learned counsel further contended that the petitioner is suffering from the first stage of cancer apart

from Diabetes and Hyper tension. He is also in depression and taking treatment for the last two years. The petitioner is also suffering from Urinary Track Infection and prostate cancer. He requires proper treatment in a good hospital. Therefore, on the medical grounds, learned counsel prays for granting bail and he has produced various medical records in this behalf.

7. Learned counsel also relied upon the judgments of the Hon'ble Supreme Court and also different High Courts apart from this Court which are as under:

1) (1978) 4 SCC 47
2) (1984) 1 SCC 284
3) (1994) 4 SCC 260
4) (2003) 7 SCC 399
5) 2012(1) SCC 40
6) (2014) 16 SCC 623
7) 2012(8) SCC 273
8) (2018) 3 SCC 22
9) 2019 SCC 1549

10) 2020 SCC 75

11) Criminal Petition No.4598/2020 of this Court dated 5.11.2020.

12) Criminal Petition No.5445/2020 of this Court dated 18.11.2020.

13) 2020 SCC 964

8. *Per contra*, Sri P.Prasanna Kumar, learned counsel appearing for ED, objected the bail petition and contended that the petitioner is involved in cheating more than 13,000 investors who are the members of the Society. He has not repaid the amount. He has borrowed the loan out of the invested amount and re-invested in his other businesses. He has pledged the immovable properties and raised loan for more than Rs.250 crores. He has mis-used the funds of the public and re-invested the money in other business like Club, Garments, Resorts, Health Care etc. A public Interest Litigation petition is also pending before the Division Bench. The Administrator is appointed by the High Court. The Government has also appointed a competent Authority namely, Sri Harsha

Guptha, who is presently working as the Regional Commissioner in Urban Development Department. When the petitioner was released on bail in Basaveshwaranagar Police, he has sold six properties which were in the name of his wife and son. If he is released on bail, he may involve in selling the properties in his company's name and it is very difficult for ED to recover the same in order to repay the money to the investors under the KPID Act. The petitioner presently filed writ petition for quashing the FIRs which was withdrawn later. In a similar case, the Sessions Court has cancelled the bail to accused. Learned counsel also contended that there are various complaints made to the ED in respect of the amount mis-appropriated by the accused and re-investing the same in some other business which attracts the schedule offence under Sections 4 and 5 PML Act. If he released on bail, he will not co-operate with the Administrators appointed by the High Court. Therefore, prayed for dismissing the petition. In support of his contention, learned counsel has relied upon the following judgments of Hon'ble Supreme Court:

1) ***Y.S.Jagan Mohan Reddy vs. CBI*** reported in ***(2013) 7 SCC 439***

2) ***Rohit Tandon vs. Enforcement Directorate AIR*** reported in ***2017 SC 5309***

3) ***Ram Narayan Popli vs. CBI*** reported in ***(2003) 3 SCC 641***

4) ***Nimmagadda Prasad vs. CBI*** reported in ***(2013) 7 SCC 466.***

5) ***State of Gujarat vs. Mohanlal Jitamalji Porwal and Another*** reported in ***(1987) 2 SCC 364***

9. Learned High Court Government Pleader objected the bail petition in Crl.P.No.43/2021 and contended that the investigation is completed and charge-sheet has been filed. Still the Investigating Officer is recording the statement to show many witnesses, who are the investors who were cheated by the petitioner. If he is released on bail, he may tamper with the prosecution witnesses and selling the properties of the company is not ruled out. Hence, prayed for dismissing the petition.

10. Sri Madhukar Deshpande, learned counsel assisting the prosecution also objected the bail petition stating that the complainant himself has filed the writ petition before the Division Bench and the Hon'ble Division Bench is monitoring the property of the accused. He has cheated more number of people. A request is made by the complainant for Forensic Audit to verify the books of accounts maintained by the petitioner-company. Hence, prayed for dismissing the petition.

11. Upon hearing the arguments of learned counsel for the petitioner, learned counsel for the respondent and learned High Court Government Pleader and on perusal of the record, admittedly, the petitioner is the Founder/Director of the Society and the said Society is having 13,000 members and they received huge deposits to the tune of Rs.650 crores and it is further alleged that some of the investors approached the petitioner for refund of their funds after maturity, but the office was found closed. Therefore, three persons filed a complaints to the

Basaveshwaranagar Police which were registered in Crime Nos.340/2019, 341/2019, 342/2019 and subsequently, some other cases were also registered against the Society in Crime No.321/2019 of Varthur Police Station, Crime No.19/2020 of Banaswadi Police Station, Crime No.460/2019 of Hosakote Police Station and subsequently, the petitioner came to be arrested and released on bail in those criminal cases registered by the Banaswadi Police Station as well as Basaveshwaranagar Police Station. Subsequently, the offence under Section 420 of IPC being a schedule offence under the PML Act, the ED took over the investigation and registered a case against the petitioner and thereafter, he was arrested and taken into custody. During the investigation, it was revealed that out of the amount deposited by the members, the petitioner borrowed loan and he has reinvested into his other own businesses and he has not repaid the money to the Society thereby, cheated the investors of almost 13,000 members. In this aspect, the ED produced the documents and also the petitioner counsel has produced an Observation

Report, which reveals that the petitioner is one of the Directors; one Harish was the President; Siddegowda was the Vice President and there were other 13 Directors. All other Directors and President were not arrested by the ED except this petitioner. The observation report reveals that the total investment was Rs.650,41,68,190/-. The reserved amount is Rs.12,93,42,844/-; the share investment is Rs.24,74,89,000/-; the loan obtained for an amount of Rs.6,09,73,928/-. The investment is Rs.6,35,12,658/-. The Property is 7,68,69,008 and the loan lent is Rs.702,28,44,385/-. As per the report of the petitioner, the Society was running under profit, but not under loss. But the contention of the respondent is that the accused himself has borrowed huge loan without security and has reinvested in various businesses like Kanva Fashion, Kanva Developers, Kanva Health Care, Kanva Resorts and other businesses. It is also not disputed by the petitioner. It is also not in dispute that the Hon'ble Division Bench of this Court headed by Hon'ble the Chief Justice in a Public Interest Litigation Petition in WP

No.8746/2020 dated 14.07.2020 is monitoring the progress of the work done by the Administrative Officers appointed by the Division Bench to look after the interest of the depositors. The Board of Administrators also directed to take assistance from the Department of Co-operative Society as well as the Competent Authority under KPID Act. The same is also available on record. The Government has also appointed Competent Authority under Section 5(1) of the KPID Act. Sri Harsha Guptha is required to prepare the report and submit the same to the Government. Looking to the entire facts reveals that the petitioner was involved in reinvesting the money by borrowing it from the Society out of the deposits which is nothing but proceeds of the crime is nothing but Money Laundering which attracts the offence under the PML Act. On merits, absolutely there is no case for the petitioner.

12. However, other grounds urged by the petitioner counsel is that the petitioner is suffering from Diabetes, Hyper Tension, first stage of cancer and prostate

enlargement and other related diseases. In this aspect, the petitioner counsel has produced various medical records obtained from the hospital which was reported by the Chief Medical Officer, Parappana Agrahara, Central Prison, Bengaluru. The report of the Chief Superintendent, Central Prison, Bengaluru dated 26.05.2021 reveals that the petitioner is a found known case of Hypothyroidism and since 10 years, he is on Tablet Thyroxin. He also has the past medical history of very high Triglyceride level for which, he is under treatment. He also has a past history of having undergone surgery (Laparoscopic Gastro-Bypass) at Vikram Hospital. He is also a known case for Depression and since few years, he is on Tablet Nexitoplus. He is reviewed by a Psychiatrist for his depressive disorder. He is also under Pre-Diabetic on diet restrictions, Depressive disorder on regular treatment, S/P Bariatric surgery – RY Gastric Bypass, Stricture Urethra and Prostatomegaly – Symptomatic and under evaluation which may need surgery. He was taken to various hospitals including Nephrology Department at Victoria hospital. The report of the doctor also reveals that he was referred to the Nephro Urology Department of Urology on 10.03.2021. He has undergone various tests including Ultrasound Abdominal scanning which showed Prostatomegaly (Enlarged Prostate) and he was referred to the Victoria Hospital and he returned back without undergoing the above investigation for the reasons that the X-Ray machine was not functioning properly and also not able to conduct RGU / MCU tests. The report also reveals that he is suffering from various ailments apart from the prostate cancer. Learned counsel also submits that he is suffering from the first stage of cancer. If he is not given proper treatment, it is very difficult for his survival and he is in need of immediate and proper treatments.

13. Looking to the entire medical documents, it reveal that the petitioner is in danger due to various ailments and therefore, he require proper treatment in the good multi-Specialty Hospital at Bengaluru. It is not possible to provide proper treatment by the Jail Authorities

which requires more expenses, which cannot be borne by the Government. The Government cannot spend tax payers money. In a similar situation, a co-ordinate Bench of this Court has also considered bail petition of the accused in I Monetary Advisory (IMA) case in the case of ***Mohammad Mansoor Khan vs. The Directorate of Enforcement*** in Crl.P.No.4580/2020 dated 19.10.2020. The Co-ordinate Bench of this Court by relying upon the judgments in the case of ***Sanjay Chandra vs. CBI*** reported in ***(2012) 1 SCC 40 and Syed Abdul Ala vs. NCB ILR 2003 KAR 474*** for granting bail on the health condition and medical ground wherein, the allegation of more than four crores involved in the said case.

14. Though the learned counsel for the respondent and the learned counsel for the petitioner have relied upon the various judgments which is for and against the petitioner and normally, the Court will not grant bail to the accused where economic offences are involved and huge public money is involved. But only on the ground for the

purpose of providing medical treatment this Court is required to consider medical ground but not on merits of the case. Therefore, by looking to the facts and circumstances of the case, in order to provide proper medical care and protection to the petitioner, if bail is granted to the petitioner, no prejudice would be caused to the prosecution case. Apart from that, the Division Bench of the High Court is monitoring the case and the Administrators are appointed apart from the Competent Authority by the State under KPID Act. All the properties were seized by the ED as well as the State Government. The investigation is completed and the final report has been filed by way of complaint. Therefore, I am of the view that the petitioner is required to be released on bail on medical ground. Hence, I pass the following

ORDER

Accordingly, both the criminal petitions are ***allowed***.

The Trial Court is directed to release the petitioner-accused No.1-Nanjundaiah on bail in Special Criminal Case No.846/2020 registered by the Directorate of Enforcement for the offence punishable under Section 4 of PML Act, pending on the file of Special Court (CCH-34) at Bengaluru and in Crime No.304/2020 registered by the Hosakote Police Station for the offences punishable under Sections 409 and 420 of IPC and Section 9 of the KPID Act, pending on the file of Principal Sessions Judge, Bengaluru Rural District subject to the following conditions:

(i) *Petitioner-accused No.1 shall execute a personal bond for a sum of Rs.10,00,000/-(Rupees Ten Lakhs only) each with two sureties for the likesum to the satisfaction of the trial Courts (both cases separately). The trial Court shall ascertain the whereabouts of the sureties before accepting the surety bonds;*

(ii) *Petitioner shall regularly appear before the trial Court till conclusion of the trial;*

(iii) *Petitioner shall not tamper with the evidence and threaten the witnesses;*

(iv) *Petitioner shall surrender the passport, if any;*

(v) *Petitioner shall not leave the jurisdiction without prior permission of the Court;*

(vi) *Petitioner shall not alienate any of the properties either in his name or in the name of his family without permission of the Court;*

(vii) *Petitioner shall co-operate with the Administrator appointed by the Division Bench / and also Competent Authority appointed under the KPID Act.*

In view of disposal of the main petitions, pending I.A.No.2/2021 in both the petitions do not survive for consideration. Hence, the same are disposed of.

Sd/-
JUDGE

GBB