

THE HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO

CRIMINAL PETITION No.7601 OF 2023

ORDER:

1. This Petitioner has filed the present Criminal Petition invoking the provision of Section 438 of the Code of Criminal Procedure (**Cr.P.C.**) seeking pre-arrest bail in the event of his arrest in connection with an unregistered Crime on the file of C.I.D., Police Station, Andhra Pradesh, Amaravati, Mangalagiri, for the offences punishable under Section 120(B), 166, 167, 418, 420, 465, 468, 471, 409, 201, 109 read with Section 34 and 37 of the Indian Penal Code, 1860 (referred to as '**I.P.C.**') and Sections 13(2) read with Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 (referred to as '**P.C. Act**').

2. The case of the Petitioner, in brief, is that:

- i.** The Petitioner herein is arrayed as accused in an unregistered crime on the file of C.I.D., Police Station, Andhra Pradesh, Mangalagiri, for the offences mentioned above in the scam relating to Andhra Pradesh Township and Infrastructure Development Corporation ("**AP TIDCO**").
- ii.** On perusal of the news report, briefing and press conferences and consequent to the fact that an ongoing investigation is registered against the alleged scam, the petitioner/accused and the respondent have issued notices to the other accused for investigation. Still, the respondent has reported that the other accused have absconded; the Petitioner is also avoiding the investigation.

- iii. In Crime No.29 of 2021, the Petitioner was granted anticipatory bail upon being apprehended. In the said Crime, A. 20 was arrested without being himself for investigation as he did not answer the questions that would corroborate the story of fraud built by the State Police department; there exists an imminent threat of arrest upon the petitioner/accused.
- iv. Mr Chandra Babu Naidu was arrested on 09.09.2023 by the respondent Police. After the arrest, a remand report was filed by the respondent Police. A reference was made to an investigation into the AP TIDCO scam, and the name of the Petitioner was also written as a conspirator. The present Government is misusing A huge public fund for personal vendetta and settling previous scores. There is no check and balance as it is the vendetta of the highest executive of the State.
- v. The information unearthed subsequently suggested that the A.P. Township and Infrastructure Development (TIDCO) may have inflated the construction costs. The Petitioner was questioned on the involvement in the Crime with one Manoj Vasudevan, to which the Petitioner denied and also submitted the statement given by the Petitioner to the Income Tax authority where there is no whisper of the present work contract, with this fact, the Petitioner is being arrayed as a conspirator in the alleged Crime. His name is being falsely published in the news report to create an envious environment where the Petitioner is the direct source, and the single-point contract is with the former Chief Minister and his son. In contrast, the Petitioner has never met directly or indirectly with any of them.
- vi. The Petitioner has never done any work relating to the work of AP TIDCO and is not associated with the Shapoorji Pallonji or any transactions related to this work order. There are many individuals doing contract work for big corporations like Shapoorji Pallonji, and it cannot be said

that everyone who is associated or once worked with Shapoorji Pallonji is also a conspirator in the alleged AP TIDCO scam. The case of the Respondent Police is nothing but their figment of imagination, and all the allegations are based on the statement of Manoj Vasudevan given before Income Tax authorities alone and the Police neither placed any corroborative evidence on record nor placed any direct evidence to establish *prima facie* case against the petitioner/accused. The apprehension of the Petitioner of being arrested is more apparent from the remand report of Mr Chandra Babu Naidu in Crime No.29 of 2021 filed by the respondent, wherein it has been stated that the Petitioner is a conspirator in the scam.

3. In its counter, the Respondent-State refutes all the allegations in the petition. It contends that:

- i.** The present petition is not maintainable in law or on facts and is liable to be dismissed. So far, no case, as described by the Petitioner, has been registered against him, alleging misappropriation in TIDCO houses. The Petitioner was arrayed as A.22 in Crime No.29 of 2021, who acted as a mediator and provided bogus invoices from the defunct/shell companies, for which the Petitioner received a commission for providing accommodation entries.
- ii.** The Petitioner, A.22 in Crime No.29 of 2021, got anticipatory bail from the High Court *vide* Crl.P.No.1316 of 2022 dated 10.03.2022 by imposing conditions. After the arrest of A.37, the Investigation Officer served notices on the Petitioner for examining him and asked him to attend on 11.09.2023, for which the Petitioner replied over WhatsApp to the Investigation Officer that he was suffering from fever and loose motions and requested for ten days. Another notice was given to him on 21.09.2023, to which he replied that his son was suffering from a fever

and asked for a date after 06.10.2023. It is a clear and deliberate case of violation of the conditions mentioned in the bail order; the respondent state filed a bail cancellation petition in Crl.P.No.1316 of 2023 dated 29.09.2023, which is pending.

- iii. The reliance placed on the **Gurbaksh Singh Sibia** case is misplaced and misconceived, and there is not even a complaint concerning the Crime pleaded to have been allegedly committed, and there is no case registered for the offence in the alleged scam relating to AP TIDCO. The Petitioner, A.22 in Crime No.29 of 2021, also acted as a mediator in facilitating fake invoices and knowingly participated in the commission of serious offences, which are punishable by ten years imprisonment.
- iv. The Petitioner filed this anticipatory bail in the TIDCO scam unearthed by the I.T. department and was not cooperating with the investigation in Crime No.29 of 2021 by not complying with the conditions imposed on the Petitioner in the said Crime. The Petitioner is merely procrastinating by citing the News published in the Newspapers/media and claiming that he had not done anything in the TIDCO scam. The TIDCO Scam and Skill Development cases have similar modus operandi and a set of persons acting as the common mediators in generating cash. The Petitioner is hypothetically anticipating the various outcomes in the TIDCO scam unearthed by the Income Tax Department, Hyderabad, without any rationale. To avoid attendance before the Investigation Officer in Crime No.29 of 2021, the Petitioner is playing diversion tactics and filing petitions with false allegations against the Investigating Agency.

4. Heard Sri Manish Pratap Singh, learned Counsel, representing the petitioner/accused, and Sri Y.N. Vivekananda, learned Special Public Prosecutor, representing the Respondent-State. Both sides reiterated their submissions on

par with the contentions presented in the petition and counter. Consequently, the arguments raised by learned Counsel need not be reproduced.

5. Learned Counsel for the Petitioner placed reliance on a decision reported in ***Gurbaksh Singh Sibbia and Others vs. State of Punjab***¹, wherein the Hon'ble Apex Court held that:

35. *Section 438(1) of the Code lays down a condition that must be satisfied before anticipatory bail can be granted. The applicant must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief', for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that someone is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence must be capable of being examined by the Court objectively because it is then alone that the Court can determine whether the applicant has reason to believe that he may be so arrested. Therefore, section 438(1) cannot be invoked based on vague and general allegations as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications for anticipatory bail will be as large as, at any rate, the adult populace. Anticipatory bail is a device to secure an individual's liberty; it is neither a passport to the commission of crimes nor a shield against any kind of accusations, likely or unlikely.*

37. *Thirdly, filing a first information report is not a condition precedent to exercising the power under Section 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an F.I.R. is not yet filed.*

40. *We have said that there is one proposition formulated by the High Court with which we are inclined to agree. That is a proposition (2). We agree that a 'blanket order' of anticipatory bail should not generally be passed. This flows from the very language of the section, which, as discussed above, requires the applicant to show that he has "reason to believe" that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by, based on which it can be said that the applicant's apprehension that he may be arrested is genuine. That is why, normally, a direction should not be*

¹ (1980) 2 SCC 565

issued under Section 438(1) to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever". That is what is meant by a 'blanket order' of anticipatory bail. This order serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact, any eventuality, likely or unlikely, regarding which no concrete information can be had. The rationale of a direction under Section 438(1) is the belief of the applicant founded on reasonable grounds that he may be arrested for a non-bailable offence. It is unrealistic to expect the applicant to draw up his application with the meticulousness of a pleading in a civil case, and such is not a requirement of the section. But specific events and facts must be disclosed by the applicant to enable the Court to judge the reasonableness of his belief, the existence of which is the sine qua non of the exercise of the power conferred by the section.

41. *Apart from the fact that the very language of the statute compels this construction, there is an important principle involved in the insistence that facts, based on which a direction under Section 438(1) is sought, must be clear and specific, not vague and general. It is only by the observance of that principle that a possible conflict between the right of an individual to his liberty and the right of the Police to investigate crimes reported to them can be avoided. A blanket order of anticipatory bail is bound to cause serious interference with both the right and the duty of the Police in the matter of investigation because, regardless of what kind of offence is alleged to have been committed by the applicant and when, an order of bail which comprehends allegedly unlawful activity of any description whatsoever, will prevent the Police from arresting the applicant even if he commits, say, a murder in the presence of the public. Such an order can then become a charter of lawlessness and a weapon to stifle prompt investigation into offences which could not possibly be predicated when the order was passed. Therefore, the Court that grants anticipatory bail must take care to specify the offence or offences for which the order will be effective. The power should not be exercised in a vacuum.*

6. Before granting anticipatory bail, the Court has to see the nature and seriousness of the proposed charges and the context of the events likely to lead to the making of charges. The application seeking anticipatory bail must contain bare essential facts relating to the offence as to why the Petitioner reasonably apprehends arrest, as well as his version. These are essential for the Court, which should consider his application, to evaluate the threat or apprehension

and its gravity or seriousness. While considering whether to grant anticipatory bail or refuse it, the Court should be guided by the considerations as to the nature and gravity of the offences, the role attributed to the Petitioner, and the facts of the case.

7. The Petitioner has submitted news reports from Deccan Chronicle on 05.09.2023, Times of India on 06.09.2023, and Sakshi Telugu Daily on 23.09.2023, leading him to believe that an investigation is underway into the AP TIDCO scam, implicating him as a conspirator. This anticipation has prompted the present application for anticipatory bail relied on the News Reports published in Deccan Chronicle (05.09.2023), Times of India (06.09.2023) and Sakshi Telugu (23.09.2023), which are as follows:

- i.** A News Report published in the Deccan Chronicle would show the allegations that the Andhra Pradesh Government would launch a comprehensive investigation to ascertain where there were potential commonalities or connections between the I.T. scam and the A.P. Skill Development Corporation scam. APCID officials were tight-lipped over issuing notices to two key persons, but official sources confirmed that the notices were issued.
- ii.** The sources said the C.I.D. had issued notices to key figures associated with the I.T. scam. Manoj Vasudev Pardasanny and Yogesh Gupta, petitioner herein, with links to the Skill Development Corporation Scam. Gupta allegedly played an essential role in the earlier scam in re-routing 371 crores in five phases over three months. He is also suspected to have had a hand in this alleged loot of public money concerning the Amaravati matter.

- iii.** As per the Times of India news report, the APCID has issued notices to Manoj Vasudevan Pardhasani, referred to as M.V.P. in the I.T. Notice issued to the former Chief Minister, and Yogesh Gupta, whose name figured in the alleged APSSDC Scam. The APSSDC had inked a pact with Siemens Industry Software India Ltd and Design Tech Systems to set up six skill Development centres with 3300 crore. The then T.D.P. government released 371 crore as 10% of project cost even before the project had started and without inviting tenders, violating the AP Civil Works and A.P. Financial Code. The C.I.D. had said Yogesh Gupta played a crucial role in re-routing the 371 crore in five phases over three months.
 - iv.** In A.P. Sakshi Daily news report shows that one Ganta Subbarao K. Lakshminarayana as the main actor, Chandra Babu Naidu Personal Secretary, Pendyala Srinivas, Shapoorji-Pallonji Company representative Manoj Parthasani, and Yogesh Gupta, the Petitioner herein, creator of Shell companies, were key in moving the skill project funds stolen by Chandra Babu Naidu. Chandra Babu Naidu was careful not to give any opportunity to question these three people during the S.I.T. investigation.
- 8.** It is acknowledged that the Petitioner was previously granted anticipatory bail in Cr.No.29 of 2021, where former Chief Minister Sri N. Chandra Babu Naidu was arrested on 09.09.2023 by the Respondent/State in connection to Cr. No.29 of 2021. The Petitioner asserts that a mention of the AP TIDCO scam was made in the remand report of Sri N. Chandra Babu Naidu. The Special Public Prosecutor, Sri Y.N. Vivekananda, disputes this claim, asserting that the remand report only pertains to the A.P. Skill Development Corporation Scam and not the AP TIDCO scam, as argued by the Petitioner.

9. Upon reviewing the contents of the remand report, it is evident that the allegations therein are linked to the A.P. Skill Development Corporation Scam. The News reports cited by the Petitioner predominantly focus on the A.P. Skill Development Corporation Scam. While these reports refer to the C.I.D. issuing notices to the Petitioner regarding his connections to the A.P. Skill Development Corporation scam, the Petitioner denies having received any such notices.

10. The Petitioner expresses concern about being implicated as an Accused in an unregistered Crime with the C.I.D. Police Station, related to the A.P. TIDCO scam. He maintains that he has no association with AP TIDCO, Shapporji Pallonji, or any transaction linked to the work order. The Respondent/State disputes these claims, asserting that there is no case against the Petitioner concerning alleged misappropriation in AP TIDCO houses.

11. The Respondent/State contends that following the arrest of A.37/Sri N. Chandra Babu Naidu, the former Chief Minister of A.P., the investigating officer served notices on the Petitioner, directing him to attend for examination on 11.09.2023. The Petitioner, citing health issues, requested a ten-day extension over WhatsApp. The Respondent/State has moved an application to cancel the anticipatory bail order, but the Court refrains from expressing an opinion. This Court finds force in the contention of the Respondent/State that the Petitioner relies mainly on the News reports and anticipates various outcomes in the AP TIDCO scam unearthed by the Income Tax Department, which is not a party to

this petition. No material is placed regarding the developments of the AP TIDCO scam unearthed by the Income Tax Department.

12. Considering the contentions raised in the counter by the Respondent/State, this Court is of the view that the petition lacks reasonable grounds for the apprehension of arrest in a non-bailable offence. The Petitioner approached this Court relying on vague and unclear News reports. This Court is not supposed to pass a blanket order of anticipatory bail simply because A.22 in Cr.No.29 of 2021 was arrested without calling him for investigation; it cannot be a reason to file this petition that he may also be arrested in the AP TIDCO scam, even without an investigation. The Respondent/State contends that there is no case as described by the Petitioner regarding alleged misappropriation in the AP TIDCO scam; this Court is not supposed to grant anticipatory bail to the Petitioner, as it is settled law that the apprehension of the applicant, who seeks anticipatory bail should be based on reasonable grounds. The anticipatory bail is not to be granted as a matter of routine, and it has to be granted when the Court is convinced that exceptional circumstances exist to resort to that extraordinary remedy. To consider an anticipatory bail application, the exact role of the Accused must be adequately apprehended. The Petitioner's fears are not rooted in objective facts. No material capable of examination and evaluation by the Court is placed regarding the alleged AP TIDCO scam. The Court cannot grant anticipatory bail without proper material and an understanding of the

Petitioner's role. There is no material available before the Court regarding the AP TIDCO scam.

13. Given the above facts and circumstances, so far, there is no material available related to misappropriation in AP TIDCO houses; this Court is not inclined to grant anticipatory bail to the Petitioner.

14. As a result, the Criminal Petition is ***dismissed*** accordingly.

Miscellaneous applications, pending if any, in this petition shall stand closed.

JUSTICE T. MALLIKARJUNA RAO

Date:15.12.2023

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THE HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO

CRIMINAL PETITION No.7601 OF 2023

Date: 15.12.2023

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