

THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI

Criminal Petition No.259 of 2023

ORDER:

This Criminal Petition is filed under Section 438 Cr.P.C. seeking anticipatory bail to the petitioners/A-2 to A-3 in Crime No.291 of 2020 dated 20.09.2020 of I town Police Station, Bhimavaram, West Godavari District registered for the offences punishable under Sections 420, 406, r/w 34 IPC and Section 5 of A.P. Protection of Depositors of Financial Establishments Act, 1999.

2. Heard the learned counsel for the petitioners and the learned Assistant Public Prosecutor representing the respondent/State.

3. The prosecution case against the accused No.1 to 3, as per the complaint dated 26-09-2020 signed by five persons is that the accused started a chit fund business as though a registered company and collected money and deposited in the account of A2 bearing No.3030357204 in State Bank of India and collected an amount of Rs.43,73,248/- from the subscribers by recording in the small pocket note books of the subscribers and defrauded the subscribers.

4. The contention of the petitioners who are A-2 and A-3 is that a false case has been foisted against them and that the 1st petitioner is working as an employee in Airlines and the case is foisted at the instance of a tenant at Bhimavaram. The said tenant originally belongs to Vizianagaram district and

he was unauthorizedly running a chit business and when he suddenly disappeared from the house of the petitioners, the petitioners were implicated with all false allegations and that the allegations in the complaint do not attract the offence under Section 5 of the APPDFE Act and Section 41-A Cr.P.C is applicable for offences under Sections 420, 406 I.P.C.

5. The learned Assistant Public Prosecutor submitted that the charge sheet was filed on 27.12.2022 and A1 was granted bail.

6. The decision dated 19.01.2023 of this High Court in **V.Sreenivasa Reddy and others v. State of Andhra Pradesh and others** in Crl.P.No.9573 of 2022 in a petition filed to quash a complaint in relation to offences under Section 420 R/w 34 IPC and Section 5 of the APPDFE Act, 1999, is as follows:

“10. The Act is applicable in relation to non-payment of deposits made by victims in financial establishments. Section 2(b) of the Act defines deposit as:

“deposit means the deposit of a sum of money either in lumpsum or instalments made with a financial establishment for a fixed period, for interest or return in any kind.”

Similarly, financial establishment is defined in Section 2(c) in the following manner:

“Financial establishment means any person or group of individuals accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined under clause (c) of Section 5 of the Banking Regulation Act, 1949 (Central Act 10 of 1949)

11. The definition of deposit under Section 2(b) requires that the deposit be made for a fixed period with interest or return in any kind. In the case of a chit transaction, the payment of money in the form of a deposit is not for a fixed period as the money paid by the chit subscriber is returned upon the subscriber being declared as the prized subscriber. As the time frame within which a chit subscriber is declared as a prized subscriber, is not a fixed period, it would have to be held that chit subscriptions and subscribers of chit funds cannot be treated as victims falling within the ambit of the Act.”

7. In the present case also, the allegations squarely fall under the purview of the above decision. As such, the petitioners can approach the High Court for appropriate relief as in the above cited case. Then, the rest of the offences are only Section 420 and 406 IPC r/w 34 IPC for which the procedure under Section 41-A Cr.P.C can be adopted.

8. In view thereof, while disposing of this petition, it is made clear that the petitioners are entitled to the benefit under Section 41-A Cr.P.C. and the concerned police shall follow strictly guidelines given by the Supreme Court in **Arnesh Kumar v. State of Bihar**¹, on appropriate relief being obtained with regard to accusation under Section 5 of the APPDFA Act, 1999.

Pending miscellaneous petitions, if any, shall stand closed.

Dt. 03-02-2023
PNV

B.S.BHANUMATHI, J

¹ (2014) 8 SCC 273