

IN THE HIGH COURT OF ANDHRA PRADESH : AMARAVATI

HON'BLE SRI JUSTICE K. SURESH REDDY

CRIMINAL PETITION No.6965 of 2023

ORDER:

Heard Mr. Siddharth Luthra, learned Senior Counsel, Mr. Dammalapati Srinivas, learned Senior Counsel, Mr. Pramod Kumar Dubey, learned Senior Counsel, assisted by Mr. Anmol Kheta, Ms. Aditi, Mr. Satyam Sharma, Mr. Ginjupalli Subba Rao, Mr. M. Lakshmi Narayana, Ms. S. Pranathi, Mr. G. Basaveswara Rao, learned counsel, appearing on behalf of the petitioner, and the learned Advocate General for the State.

2. Accused No.1 in Crime No.16 of 2022 on the file of CID Police Station, A.P., Amaravati, Mangalagiri, filed this petition under Sections 437 and 439 of Cr.P.C., for grant of regular bail in connection with the said crime.

3. The aforesaid crime has been registered for the offences punishable under Sections 120-B, 420, 34, 35, 36, 37, 166, 167 and 217 I.P.C., and Section 13(2) read with 13(1)(a) of the Prevention of Corruption Act, 1988. The said crime has been registered on the basis of a report lodged by one Alla Rama Krishna Reddy, Member of Legislative Assembly, Mangalagiri, dated 27.04.2022, and preliminary enquiry report dated 06.05.2022, alleging certain corrupt and illegal activities on the part of the petitioner, former Chief Minister of the State of Andhra Pradesh, and certain other Government Officials, between 2014 and 2019, in relation to designing of the master plan for the capital city area and alignment of Inner Ring Road and its connected arterial

roads, to cause wrongful gain to certain chosen persons and entities connected to the decision making authorities and thereby causing corresponding wrongful loss to the general public and state exchequer. The allegations were in regard to award of initial work for the preparation of the master plan on nomination basis to M/s. Surbana International Consultants Private Limited (subsequently changed to M/s. Surbana Jurong Consultancy Private Limited), in contravention of the procedure prescribed and guidelines of the Central Vigilance Commission, prescription of mandate to the bidder for concluding the master plan in accordance with the draft perspective plan, ensuring the alignment to secure an increase in the value of lands of Mr. Lingamaneni Ramesh and M/s. Heritage Foods, as *quid pro quo* arrangement and illegal gratification in terms of keeping the house of Mr. Lingamaneni Ramesh on Karakatta Road, Undavalli, at the disposal of the petitioner, etc.

4. At the outset, it is to be noted that admittedly, the petitioner has not yet been arrested in the present crime. He has been arrested in connection with Crime No.29 of 2021 of CID Police Station, A.P., Mangalagiri, in the intervening night of 08/09.09.2023 and upon production before the Court of the III Additional Sessions Judge-cum-Special Judge for SPE & ACB Cases, Vijayawada, he has been remanded to judicial custody on 10.09.2023. While so, contending that since the petitioner has been in judicial custody in Crime No.29 of 2021 of CID Police Station, he cannot move an application seeking anticipatory bail, under Section 438 Cr.P.C., in the present crime, and that the judicial custody of the petitioner in respect of Crime No.29 of 2021 of CID Police

Station, should be treated as deemed judicial custody in the present crime also and he should be granted regular bail in the present crime, the present petition under Sections 437 & 439 of Cr.P.C. has been filed.

5. So far as the maintainability of this petition under Sections 437 & 439 of Cr.P.C. is concerned, it is argued by the learned Senior Counsel appearing for the petitioner that the petitioner, having been arrested in connection with Crime No.29 of 2021 of CID Police Station, A.P., Mangalagiri, in the intervening night of 08/09.09.2023, is in judicial custody since 10.09.2023, and that the police are now making efforts to secure the custody of the petitioner in connection with the present crime, and as the petitioner, being in judicial custody, cannot move an application under Section 438 Cr.P.C., seeking anticipatory bail, the present petition for regular bail has been filed. It is contended that though the present crime has been registered way back in the month of May, 2022, the police did not choose to take steps to arrest the petitioner for nearly one and a half years thereafter, and it is only after his arrest in the other crime, they are contemplating to secure his custody in the present crime to ensure that he remains in incarceration in one case or the other. It is further contended that there is deliberate negligence on the part of the police to show the arrest of the petitioner in the present crime, even though he is arrested in the other crime, despite having knowledge about the pendency of the present crime on the very same police station. Since the petitioner has already been remanded to judicial custody in one crime, he should be deemed to have been in judicial custody in the present crime also, in which he is figured as an accused, for the purpose of

enabling him to avail the remedy under Section 439 Cr.P.C. In this regard, reliance has been placed upon the judgments of this Court in **Tupakula Appa Rao v. State of Andhra Pradesh**¹, **Viswanathan v. State of Andhra Pradesh**², and **K.R. Giri Babu v. State of Andhra Pradesh**³. It is further contended that this Court being a co-ordinate Bench to the decisions on the plea of deemed custody, relied on by the petitioner, should follow them, and if this Court is in disagreement with the said judgments relied on by the petitioner on the plea of deemed custody, the matter should be referred to a Division Bench, for authoritative pronouncement on the issue, and in support of this argument, reliance is placed upon the judgments of the Hon'ble Supreme Court in **Safiya Bee v. Mohd. Vajahath Hussain**⁴ and **G.L. Batra v. State of Haryana**⁵. It is further contended that if this Court does not find favour with the plea of deemed custody, this petition may be treated as a petition under Section 438 Cr.P.C., as nomenclature under which petition is filed is not relevant, and the case of the petitioner can be considered for grant of pre-arrest bail. In support of this contention, reliance has been placed on the judgment of the Hon'ble Supreme Court in **Pepsi Foods Ltd. v. Special Judicial Magistrate**⁶. It is further contended that it is always open to the High Court to permit the accused to submit himself to its jurisdiction and then, enlarge him on bail, as has been held in the decision of the Hon'ble Supreme

¹ 2001 SCC OnLine AP 1575 : (2002) 1 ALT (Cri) 76

² 2018 SCC Online Hyd 484 : (2019) 1 ALT 755

³ 2019 SCC OnLine AP 115 : (2019) 1 ALD (Cri) 649

⁴ (2011) 2 SCC 94

⁵ (2014) 13 SCC 759

⁶ (1998) 5 SCC 749

Court in **Sundeep Kumar Bafna v. State of Maharashtra**⁷, and submission to the custody by word or action by a person is sufficient, as held in **Gurbaksh Singh Sibbia v. State of Punjab**⁸.

On merits, it is contended that when the proposal for laying an Inner Ring Road itself was abandoned by the incumbent State Government and no land was acquired for that purpose from any individual, the question of reaping windfall benefits by some persons and entities and causing wrongful loss to others does not arise. There is no allegation to attract the offences under the Prevention of Corruption Act, 1988, against the petitioner. The present crime has been registered with all false allegations only as part of regime revenge and vindictive agenda of the present State Government. As per Section 146 of the A.P. Capital Region Development Authority Act, 2014 (for short, 'the APCRDA Act'), prosecution against the Government or Authority or officer or any person for any act done or purporting to be done under the said Act, is barred. The allegation of awarding contract on nomination basis for preparation and framing of master plan for the proposed capital city and alignment of Inner Ring Road, without following due procedure, is also not correct, since prior to that, tenders were called for and since nobody turned up, M/s. Surbana Jurong Consultancy Private Limited of Singapore, which is a world class company in preparation of master plans, was selected on nomination basis. So far as finalization of master plan is concerned, a public notification was issued and objections were called

⁷ (2014) 16 SCC 623

⁸ (1980) 2 SCC 565

for and dealt with, and having chosen not to submit any objections at that time and not to lay any challenge to the final notification of master plan, the *de facto* complainant, after a lapse of long years, came up with the present false report with a *mala fide* intention to tarnish the image of the petitioner and is politically motivated. A co-ordinate Bench of this Court, taking note of all the above aspects, specifically observed that there is no reliable material on record to hold that the alleged acts are in violation of relevant Rules and also observed that the entire exercise remained on papers only, and accordingly, vide common order dated 06.09.2022 in Crl.P.Nos.3811 of 2022 & batch, granted anticipatory bail to accused Nos.2 to 5 in the present crime with certain conditions, which has been upheld by the Hon'ble Supreme Court. The allegations levelled against the petitioner regarding *quid pro quo* and drawing of house rent allowance but not paying any rent to the landlord, are all incorrect and there is sufficient proof to show that an amount of Rs.27.00 lakhs has been paid towards house rent and that Heritage company being a listed company, lakhs of people are holding shares in the said company and no *mala fides* can be attributed merely because the petitioner's family members are shareholders in it. It is, therefore, prayed that that considering the above submissions and also considering that the petitioner is aged about 74 years, and as there is no chance of his fleeing from justice owing to his stature as leader of the opposition party and national President of Telugu Desam Party, he may be granted regular bail in connection with the present crime.

6. Learned Advocate General appearing for the State would contend that even though the petitioner is in judicial custody in respect of one case, such custody of the petitioner cannot be treated as custody in the present crime, wherein he is not arrested by the police. The crime in which the petitioner is undergoing judicial custody and the crime in respect of which the present application has been filed relate to different transactions. The offences alleged against the petitioner in the two crimes being different and distinct, the investigation in respect of each of the offence is to be carried out individually and independently. Thus, the petitioner cannot take the plea of deemed custody and seek regular bail in the present crime in which he is not arrested and remanded to judicial custody. It is further contended that an application under Section 267 Cr.P.C. seeking production warrant to secure the presence of the petitioner before the concerned court in connection with the present crime is being filed and at this stage, granting bail to the petitioner treating his judicial custody from 10.09.2023 in the other crime as deemed custody in respect of the present crime also, would deprive the police of the right to have custodial interrogation of the petitioner for the purpose of investigation in the present crime. It is further contended that owing to the nature of the offences alleged in the present crime and the time that would be consumed in the course of investigation of such offences, it cannot be said that the investigating agency has not taken steps to arrest the petitioner immediately after registration of the said crime. It is further contended that the petition under Section 267 Cr.P.C. was filed on the very next day of the arrest of the petitioner

in Crime No.29 of 2021 and thereafter, the present bail application has been filed. Reliance has been placed on the judgments of the Apex Court in **C.B.I. v. Anupam J. Kulkarni**⁹ and **State of West Bengal v. Dinesh Dalmia**¹⁰, and in view of the proposition laid down therein, learned Advocate General contended that the judgments of the single Benches of this Court relied upon by the petitioner in relation to the plea of deemed custody do not apply to the facts of the case on hand and the present application for regular bail is not maintainable. Reliance has also been placed on the judgment of the High Court of Bombay in **Susan Abraham v. State of Maharashtra**¹¹ and judgment of the High Court of Rajasthan in **State of Rajasthan v. Santosh Yadav**¹².

So far as the contentions raised on merits are concerned, it is contended that it is not a case of regime revenge and that there is sufficient *prima facie* material to show that the decision making process in relation to the master plan of capital city area and alignment of Inner Ring Road is oriented primarily to secure the interests of a few people and that floating of tender was based on the condition that whatever the city planner gives, it should be approved, which cannot be given the colour of what is permissible under the APCRDA Act. It is further contended that the investigation so far conducted would reveal that adequate care was taken in alignment of Inner Ring Road, so as to cause undue advantage to the lands of Lingamanenis, Heritage Foods, Ramakrishna

⁹ (1992) 3 SCC 141

¹⁰ (2007) 5 SCC 773

¹¹ 2010 SCC OnLine Bom 98

¹² 2005 SCC OnLine Raj 317

Housing and many other companies, while preventing any significant loss to their lands by acquisition, and also by creating arterial infrastructure to add maximum value to the landholdings of certain selected people or companies involved and spending funds from the State Exchequer to bestow undue pecuniary advantage through a steep appreciation in the value of lands owing to the proximity to the arterial roads and other key infrastructure elements. Further, as part of execution of the hidden agenda, the master planner was specially identified and chosen to be given the work on nomination basis by the APCRDA, with a *mala fide* intention of causing undue advantage in favour of some chosen entities. It is further contended that the findings in the earlier bail order are not binding on this Court and the Hon'ble Supreme Court has made it clear that the Investigating Agency would be free to investigate, uninfluenced by the observations made in the order of the High Court. So far as the delay in lodging the report is concerned, it is contended that in an economic offence, delay is not fatal. So far as application of the provisions of Section 146 of the APCRDA Act is concerned, it is argued that sanction is required only for those who are performing statutory functions under the Act, that it does not go to the root of the matter while considering the plea for grant of bail and it comes into picture only at the time of taking of cognizance. It is further argued that there were series of offences committed by the petitioner and other government officials during the process of achieving the object of Inner Ring Road and merely because the project has not been implemented or no land has been acquired, preparation, motive and consummation in securing the objectives

cannot be ignored. So far as the contention regarding payment of house rent is concerned, it is contended that there is no material to show that the payment of Rs.27.00 lakhs was towards house rent only and that the Income Tax Returns and GST Returns of the landlord Mr. Lingamaneni Ramesh, do not indicate the said amount to be house rent. It is, therefore, prayed that the plea of the petitioner for grant of bail in the present crime does not merit acceptance even on merits.

7. In the light of the rival contentions advanced, the main question that requires to be considered in this petition is whether the judicial custody of the petitioner in another crime can be held to be deemed judicial custody in the present crime, which pertains to different occurrence/transaction, in which the petitioner is not arrested and remanded to judicial custody, for the purpose of entertaining this petition for grant of regular bail.

8. To deal with the above question, it would be appropriate to refer to the judgments relied on by the petitioner and the State, in support of their respective contentions.

9. In **Tupakula Appa Rao v. State of A.P.** (supra), four crimes were registered against the petitioner therein, he was granted bail in one case, and apprehending arrest in other three crimes, he filed petitions seeking anticipatory bail. A coordinate Bench of this Court was considering the question whether the petitioner therein was deemed to have been in custody in other crimes also although there has been no formal arrest in connection with those

cases. This Court referred to paragraphs 8 and 9 of the judgment of the Hon'ble Supreme Court in **Niranjan Singh v. Prabhakar**¹³, which deal with the meaning of the term "custody" appearing in Section 439 Cr.P.C., which read as under:

"8. Custody, in the context of Section 439, (we are not, be it noted, dealing with anticipatory bail under Section 438) is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.

9. He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions..."

10. This Court also took note of the observation made by the Hon'ble Supreme Court in **Niranjan Singh**, that no person accused of an offence can move the Court for bail under Section 439 Cr.P.C. unless he is in custody. Further, reference was made to the judgment of the Hon'ble Supreme Court in **Government of Andhra Pradesh v. A.V. Rao**¹⁴, wherein, at paragraph No.8, it was held as follows:

"In *A.V. Rao case* (WP 1865/76), he was already in detention under the Preventive Detention Act when the first information report was lodged on December 18, 1969 in connection with the sessions cases. Some of the co-accused in these cases

¹³ (1980) 2 SCC 559

¹⁴ (1977) 3 SCC 298

were arrested and produced before the Magistrate for remand on December 19, 1969, but Rao was produced before the Magistrate sometime in April 1970 after he was released from preventive detention. It was argued that he also could have been produced before the Magistrate on December 19, 1969. On behalf of the respondent, State of Andhra Pradesh, it was contended that as Rao was already in detention under the Preventive Detention Act, it was not possible to produce him before the Magistrate for remand until the period of preventive detention was over. We do not find any justification in law for the position taken up by the State. Rao being already in custody, the authorities could have easily produced him before the Magistrate when the first information report was lodged. Nothing has been pointed out to us either in the preventive detention law or the Code of Criminal Procedure which can be said to be a bar to such a course. That being so we think that the claim that the entire period from December 19, 1969, when many of the co-accused were produced before the Magistrate, to April 18, 1970 should be treated as part of the period during which Rao was under detention as an undertrial prisoner, must be accepted as valid. A.V. Rao's Appeal 484 of 1976 is allowed to this extent."

11. This Court also referred to the judgment of Full Bench of the Allahabad High Court in **Shaboo v. State of U.P.**¹⁵, which having followed the judgment of the Hon'ble Supreme Court in **Government of Andhra Pradesh v. A.V. Rao**, held as follows at paragraph 18 of the judgment:

"...Whether or not the detention of a person in one case should also be treated to be his detention for the purpose of any other case, wherein he is wanted, is a question to be decided upon

¹⁵ 1982 Cri. L.J 1757 (FB)

the facts and circumstances of each case. No set formula can be laid down in that behalf. If the facts and circumstances of a particular case indicate that a person already detained in one case was also subsequently wanted in another case and he was not formally detained in that other case on account of the negligence of the concerned authorities, and for no fault of his, he can, with all justification, claim that his detention in the earlier case should also be deemed to be his detention for the purposes of the second case. In that event the benefit of Sec. 428 Cr.P.C. can be extended to him....”

12. Having taken note of the ratios laid down in the above cases, this Court, in **Tupakula Appa Rao**, held at paragraphs 19 and 20, as follows:

19. If the arrest is shown in all the cases, simultaneously there is no difficulty he can be said to be in custody in each of those cases. If for any reason his arrest is limited to one case like in the instant cases it is not as though he is remedy less. The fall out of the above discussion is that whether or not the custody of a person in one case should also be treated as custody in other cases wherein he is wanted is a question of fact and is to be decided with reference to facts and circumstances of each case. If the facts indicate that a person already detained in custody in one case out of more than one case and his arrest is not formally shown on account of the negligence of the concerned authorities and for no fault of the accused he can with all justification claim that his custody in one case should also be deemed to be in custody for the purpose of other case or cases.

20. The problem would arise only in cases where the accused is concerned in different cases pertaining to different Police Stations and pending before the different Courts where no negligence on the part of the authorities can legitimately be shown. Whether it is a case where the accused is involved in series of offences pertaining to the same Police Station or a case where he involved himself in different offences pertaining to different Police Stations, if he is arrested in one case and produced before the Court in connection with the other case, the period of detention would enure to the benefit of the accused in both the cases. In view of the Judgment of the Apex Court in *Niranjan Singh's* case (referred to supra 2), no person accused of an offence can move the Court for bail under Section 439 of the Code unless he is in custody. In such cases, he cannot surrender himself before another Court on account of the fact that he has been in judicial custody in the former case. This situation would not arise when he is involved himself in series of cases pertaining to the same Police Station and within the territorial jurisdiction of the same Court where negligence on the part of the authorities can validly be attributed. Even if no negligence can be validly attributed to Police, the accused can himself offer to surrender before the Court on his production before the Court in connection with one case when he is remanded to judicial custody, and as a result whereof he can be in custody in all cases. To surmount such contingency, an application seeking his production in connection with the case before it can be mooted in the other Court in which case that Court after issuing notice to the concerned police can pass appropriate orders. The investigating agency can also seek police custody of the accused for the purpose of interrogation in that case or cases as the case may be. That appears to be the possible solution, in my considered

view, which can obviate the difficulty of the accused who has been involved in more than one case pertaining to different Police Stations. The procedure suggested by me supra is consistent with administration of justice and would safe guard the interests of the accused as well as the investigating agency and would meet the ends of justice. Turning to the instant cases, having regard to the fact all the cases registered against the petitioner pertain to the same police station and the fact that his arrest could have been shown in other cases also simultaneously but not shown the facts warrant a conclusion that he is deemed to have been in custody in respect of other crimes also although formal arrest is not shown in the other cases also. However, it is needless to say whether the bail can be granted or not, depends upon the facts of each case and would be left to the discretion of the Court to exercise the same on merits in each case.”

Holding thus, this Court refused to entertain the anticipatory bail applications as the petitioner therein was deemed to be in custody in the remaining cases also.

13. In **K.R. Giri Babu v. State of Andhra Pradesh** (supra), the bail application filed by the petitioner, who was arrested in different crimes, before the District Court, Kadapa, under Section 439 Cr.P.C., was returned with an endorsement that P.T. Warrants and remand reports were not filed. It was the case of the petitioner that the police officials were not producing him before the concerned Magistrates in respect of the respective crimes, though they have knowledge of the fact that he was arrayed as an accused, and that police officials were filing P.T. Warrants in respective crimes, one after another, only

after his getting bail in one case, with an intention to keep him in custody as long as possible without affording him an opportunity of approaching the courts to obtain bail. A co-ordinate Bench of this Court referred to the judgment of the Hon'ble Supreme Court in **Sundeeep Kumar Bafna** (supra), wherein the order passed by a learned single Judge of the High Court of Bombay dismissing the application filed by the accused, firstly, to permit him to surrender to the High Court and secondly, to consider his case for grant of bail by the High Court, was set aside with a direction that the learned single Judge of the High Court shall consider the appellant's plea for surrendering to the Court and depending on that decision, he shall, thereafter consider the appellant's plea for grant of bail. This Court also referred to the judgment of this Court in **Tupakula Appa Rao** (supra), and held at para 11 as follows:

"11. In view of the above, there need not be any further demur to hold that the petitioner, who is in custody in different crimes, can be deemed to be in custody pertaining to other crimes, in which he figured as accused. Therefore, the remedy of bail under Section 439 Cr.P.C. cannot be denied, on the ground that his arrest was not shown in the crime in which he is shown as accused. There can be no reason for the police not to show his arrest in the current crime except for the reason alleged by the petitioner."

Holding so, this Court set aside the impugned endorsements, and directed the District and Sessions Judge, Kadapa, to entertain the bail applications filed by the petitioner under Section 439 Cr.P.C., subject to his filing remand report pertaining to the crimes in which he was in custody.

14. In **Viswanathan v. State of Andhra Pradesh**, a co-ordinate Bench of this Court was dealing with a question as to whether the person accused in several crimes, having been arrested during investigation by police in one crime and produced therein within 24 hours and taken to judicial custody and is in jail as pre-trial prisoner, having been not asked by him or by the police concerned to issue P.T. warrant for taking to judicial custody in all other crimes, was entitled to claim set-off for the period under Section 428 Cr.P.C., in other crimes and further, whether he is in deemed custody for purposes of Sections 437 to 439 Cr.P.C. Having taken note of the fact that the Superintendent of Police concerned has got knowledge of the other crimes registered against the petitioner and having referred to various decisions, this Court issued direction to the Superintendent of Police, the concerned S.H.Os. and Director General of Police, State of A.P, to see that the petitioner is produced on P.T. warrants immediately after receipt of the warrant in all the crimes where so far he was not produced irrespective of he is entitled to bail or not and granted bail or not, unless released on bail and not in judicial custody. A direction was also issued to the Sessions Judges or the Magistrates concerned in both the States, to entertain regular bail applications from the accused in deemed custody even not produced on P.T. warrant and not surrendered voluntarily, as the case may be.

15. In **C.B.I. v. Anupam J. Kulkarni**, relied upon by the State, the Hon'ble Supreme Court was considering a question whether a person arrested and

produced before the nearest Magistrate as required under Section 167(1) Cr.P.C. can still be remanded to police custody after the expiry of the initial period of 15 days. It is pertinent to refer to relevant portions of paragraph 11 of the said decision, which read as under:

“11..... In one occurrence it may so happen that the accused might have committed several offences and the police may arrest him in connection with one or two offences on the basis of the available information and obtain police custody. If during the investigation, his complicity in more serious offences during the same occurrence is disclosed that does not authorise the police to ask for police custody for a further period after the expiry of the first fifteen days. If that is permitted then the police can go on adding some offence or the other of a serious nature at various stages and seek further detention in police custody repeatedly, this would defeat the very object underlying Section 167. However, we must clarify that this limitation shall not apply to a different occurrence in which complicity of the arrested accused is disclosed. That would be a different transaction and if an accused is in judicial custody in connection with one case and to enable the police to complete their investigation of the other case, they can require his detention in police custody for the purpose of associating him with the investigation of the other case. In such a situation he must be formally arrested in connection with other case and then obtain the order of the Magistrate for detention in police custody...

...The occurrences constituting two different transactions give rise to two different cases and the exercise of power under Sections 167(1) and (2) should be in consonance with the object underlying the said provision in respect of each of those

occurrences which constitute two different cases. Investigation in one specific case cannot be the same as in the other. Arrest and detention in custody in the context of Sections 167(1) and (2) of the Code has to be truly viewed with regard to the investigation of that specific case in which the accused person has been taken into custody...

... The procedural law is meant to further the ends of justice and not to frustrate the same. It is an accepted rule that an interpretation which furthers the ends of justice should be preferred. It is true that the police custody is not the be-all and end-all of the whole investigation but yet it is one of its primary requisites particularly in the investigation of serious and heinous crimes. The legislature also noticed this and permitted limited police custody. The period of first fifteen days should naturally apply in respect of the investigation of that specific case for which the accused is held in custody. But such custody cannot further held to be a bar for invoking a fresh remand to such custody like police custody in respect of an altogether different case involving the same accused."

16. At paragraph 13 of the judgment in **C.B.I. v. Anupam J. Kulkarni**, the conclusions arrived at have been summed up briefly and the relevant portion thereof reads as under:

"13..... There cannot be any detention in the police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by him in the same transaction come to light at a later stage. But this bar does not apply if the same arrested accused is involved in a different case arising out of a different transaction. Even if he is in judicial custody

in connection with the investigation of the earlier case, he can formally be arrested regarding his involvement in the different case and associate him with the investigation of that other case and the Magistrate can act as provided under Section 167(2) and the proviso and can remand him to such custody as mentioned therein during the first period of fifteen days and thereafter in accordance with the proviso as discussed above..."

17. Now coming to the fact situation of the case on hand, the petitioner has been arrested and remanded to judicial custody in one crime, i.e., Crime No.29 of 2021 of C.I.D. Police Station, A.P., Mangalagiri, and the police are contemplating to obtain P.T. warrant for his production in the present crime, i.e., Crime No.16 of 2022. The said cases registered against the petitioner are totally different from each other, they arise out of different transactions, the investigation to be conducted by the respective investigating officers is also different from one another, and the witnesses to be examined and the evidence to be collected are also different. This being the position, the observation made by the Hon'ble Supreme Court in **C.B.I. v. Anupam J. Kulkarni**, which states that in a case arising out of different transaction and different occurrence, the accused must be formally arrested in connection with other case and then order of the Magistrate be obtained for detention in police custody be obtained, would be squarely applicable and the judicial custody which the petitioner has been undergoing in respect of one of the above crimes cannot be deemed to be his judicial custody in the present crime also, entitling him to seek regular bail in the present crime, in which he is not arrested and remanded to judicial

custody. The plea of the petitioner that there is negligence on the part of the police in taking steps to arrest him though the crime was registered way back in May, 2022, and the police are now taking such steps only with a view to extend his stay in jail, is without any merit for the reason that the petitioner is aware of the registration of the present crime against him, and in fact, accused Nos.2 to 5 in the present crime obtained anticipatory bails. The petitioner, having slept over his right of applying for an anticipatory bail, now cannot throw the blame on the prosecuting agencies saying that there is deliberate negligence on their part, particularly, when the cases registered against the petitioner are arising out of different offences and transactions. The contention that there is deliberate negligence on the part of the police in showing the arrest of the petitioner in the present crime immediately after his arrest in the other crime, also does not merit acceptance, in view of the stand taken by the State that a petition under Section 267 Cr.P.C. was filed for production of the petitioner before the Court in relation to the present crime on the very next day of the arrest of the petitioner in Crime No.29 of 2021. Viewed in this perspective, the decisions of this Court in **Tupakula Appa Rao** and **Viswanathan**, relied upon by the petitioner, where the negligence of the police in taking required steps was the backdrop of the cases, are not applicable to the fact situation in the present case and hence, do not come to the rescue of the petitioner. At any rate, in view of the proposition laid down by the Hon'ble Supreme Court in **C.B.I. v. Anupam J. Kulkarni**, which is the law of the land and binding on this Court under Article 141 of the Constitution of India and which specifically

dealt with the scenario relating to custody in cases arising out of different transactions, the judgments rendered by coordinate Bench of this Court referred above, which are distinguishable on facts, cannot be taken into consideration, for the purpose of holding that the petitioner is deemed to be in judicial custody in the present crime also.

18. While there can be no dispute with the proposition that in case of doubt or disagreement about the decision of a coordinate Bench of equal strength, the matter should be referred to a larger Bench, it may be noted that such situation is not present in the case on hand, as the judgments of the coordinate Benches relied upon by the petitioner are distinguishable on facts, and further owing to the fact that this Court is following the proposition laid down by the Hon'ble Supreme Court in **C.B.I. v. Anupam J. Kulkarni**, which is the law of the land on the subject.

19. The other plea urged on behalf of the petitioner is that this bail petition can be treated as a petition for surrender of the petitioner before this Court, as submission to the custody by word or action by a person is sufficient, as held in **Gurbaksh Singh Sibbia**, which has been taken note of in **Sundeep Kumar Bafna**, and this Court can permit him to surrender to its jurisdiction and then consider his case for enlargement on bail, in the light of the decision in **Sundeep Kumar Bafna**. It is to be noted that as per the factual matrix in **Sundeep Kumar Bafna**, the appellant therein has filed an application praying, firstly, that he be permitted to surrender to the High Court and secondly, for his

plea to be considered for grant of bail. The Hon'ble Supreme Court, having referred to the law laid down in **Niranjan Singh** and other earlier decisions on the subject, opined that there are no restrictions on the High Court to entertain an application for bail provided always the accused is in custody, and this position obtains as soon as the accused actually surrenders himself to the Court. The Hon'ble Supreme Court also took note of the fact that the appellant was corporeally present in the Bombay High Court at the material time. In the instant case, though the physical presence or actual surrender of the petitioner is not possible, there is not even a prayer made in this petition for permitting the petitioner to surrender to this Court. In the absence of such plea or prayer, so as to construe it as submission to the custody by word, this Court cannot treat this petition to be a petition for accepting the surrender of the petitioner and considering his case for grant of bail.

20. So far as the plea that in the event this Court disagrees to accept the contention that the judicial custody of the petitioner in the other crime should be deemed to have been his judicial custody in the present crime also, this petition may be treated as a petition filed under Section 438 Cr.P.C. for pre-arrest bail and consider the case of the petitioner for grant of pre-arrest bail, as nomenclature under which the petition is filed is not quite relevant as held in **Pepsi Foods Limited**, it is to be noted that the consideration to be undertaken for grant of pre-arrest bail to an accused is different from that of the consideration that the Court undertakes in case of plea of regular bail. In

that view of the matter and in the facts and circumstances, this Court sees no ground to undertake the exercise of different consideration than what was required to be undertaken.

21. In the light of the above discussion and the opinion arrived at on the aspect of deemed custody, the other grounds raised by both sides on merits of the matter as to the entitlement of the petitioner to regular bail or otherwise, need not be gone into, and the other decisions relied upon by the parties, which more or less reiterate the principles already enunciated in the earlier decisions which were referred to, need not be referred to.

22. Accordingly, this criminal petition is dismissed. Pending interlocutory applications, if any, shall stand closed.

K. SURESH REDDY, J

Dt: 09.10.2023
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HON'BLE SRI JUSTICE K. SURESH REDDY

CRIMINAL PETITION No.6965 of 2023

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