KABC010090902023

IN THE COURT OF XXXI ADD. CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-82)

Present:

Sri B. Jayantha Kumar, B.A.Law., LL.M.,
LXXXI Addl. City Civil & Sessions Judge,
Bengaluru City (CCH-82)
(Special Court exclusively to deal with criminal cases related to elected former and sitting MPs/ MLAs in the State of Karnataka)

Dated this the 15th day of April, 2023

Crl. Misc. No.3063 / 2023

PETITIONER: Sri K. Madal Virupakshappa

(Sri Sandeep Patil, Advocate for petitioner)

V/s

RESPONDENT: State by Karnataka Lokayukta Police Bengaluru City Police Station, Bengaluru

(Sri Santosh S.Nagarale, Learned Special Public Prosecutor)

*** * * * ***

ORDER

This petition is filed by the petitioner Sri K.Madal Virupakshappa, who is arraigned as accused No.1, under Sec.439

of the Code of Criminal Procedure (‘Cr.P.C.’ for short) praying for an order to enlarge him on regular bail in Crime No.13/2023, registered by the Karnataka Lokayukta Police, Benglauru City P.S., for the offences punishable under Sec.7(a) & (b), 7(A), 8, 9 and 10 of the Prevention of Corruption Act, 1988 (‘P.C. Act’ for short).

2. The grounds urged by the petitioner in this petition are as follows:-

“The Sections invoked at the time of registration of the FIR are under Sec.7(a) & (b) of the P.C.Act and to invoke the said provisions and the alleged commission of an offence under the said provision, the public servant concerned himself should have demanded and accepted the bribe amount or attempted to get any undue advantage in order to perform a public duty. In the present case, there are no such allegation that the petitioner had ever demanded any pecuniary advantage in order to do a public duty in favour of the complainant. The petitioner was not the person who was trapped pursuant to the FIR. Such being the case, the petitioner is entitled for regular bail.

It is further contended that there was no official favour or any official work pending with the petitioner in order to show official favour to the complainant and as such the same also not averred in the complaint and therefore, in the absence of existence

of any official favour, demand or acceptance, it cannot be said that the petitioner has committed any offence under Sec.7 of the P.C.Act.

It is further contended that any person is said to be guilty of the offence under Sec.7A of the P.C.Act, when anyone obtains or accepts or makes an attempt to obtain from any person any undue advantage as a motive or reward to influence any public servant to perform or cause to perform a public duty either by such public servant or by another public servant. In the present case, petitioner has neither contacted the complainant nor has received any gratification in order to influence any public servant to perform a public duty. Therefore, petitioner is entitled to regular bail.

It is further contended that there are no allegations in the complaint to show that a commercial organisation has caused any undue advantage to the petitioner so as to obtain or retain its commercial business.

It is contended that Sec.9 of the Act is referable only to the bribing of a public servant by a Commercial organisation and the person who could be hauled up is only the commercial organisation and no one else. Hence, there could not have been any offence said to have been committed by the petitioner under Sec.9 punishable under Sec.10 of the Act and therefore, the petitioner is entitled for regular bail.

It is contended that the illegal gratification came to be demanded on two counts, firstly, on the score that the tender that had been sought for by him has to be granted and secondly, after

such compliance of the tender, smooth passage of the invoices that would be submitted by him. It is further contended that from the material available on record as is evident that the tender allotment committee had granted tender in favour of the informant, to which committee the petitioner is no way concerned as early as January 2023. It is not the case of the prosecution that the informant has submitted the invoices/bills in relation to the materials said to have supplied by him and that the invoices / bills are not passed for payment. In fact, the evidence on record show that the informant has not even supplied the materials in relation to the tender that was awarded in his favour. In the absence of any materials been supplied by the informant and subsequent thereto, there was no submission of bills towards the supply of materials pending, it cannot be said that the element of demand of illegal gratification as against the alleged clearance of the bills is present. There is no prima facie case.

It is further contended that there is no compliance of Sec.41 and 41(A) of the Code of Criminal Procedure, 1973 and therefore, the petitioner is entitled bail in the case as laid down in the cases of Arnesh Kumar and Satender Kumar Antil.

It is further contended that the petitioner is heart patient and he suffering age-related problems, the Doctor who attended him implanted a stunt instead of giving him a major surgical treatment which infact was warranted. He has got pain in his chest, giddiness, uneasiness, fainting attacks, difficulty in breathing. He is also having problems while answering calls of nature. For emergency treatment, the petitioner has been advised to take blood

thinning agents and immediately thereafter, to rush to the hospital for the treatment for his problems. The petitioner came to be treated for his heart ailment at the Apollo Hospital, Bangalore and continuing to take treatment in the said hospital right from June 2022 till the date Investigating Officer laid his hands upon him. The petitioner is aged about 75 years and the offence is not punishable with more than 7 years of imprisonment and there is no thing for the petitioner to tamper with the prosecution evidence. The investigation has almost came to an end and he is law maker being sitting MLA, he owns and possess vast immovable properties worth hundreds of crores of rupees besides being an agriculturist and law maker. He is public servant and he has deep roots in the society and there are no reasonable grounds to believe that the petitioner is guilty of any offence punishable with death or imprisonment for life. The petitioner undertakes to co-operate and assist in fair investigation/ trial of the case and that he will not directly or indirectly make any inducement or hold threat to any person acquainted with the facts of the case so as to dissuade him or her from disclosing such facts to the Court. Hence, prayed for granting regular bail."

3. Learned Special Public Prosecutor filed objections to the above petition para-wise denying the contentions of the accused taken in his application and further contended that on the basis of complaint lodged by one Sri Shreyas Kashyap S/o B.S.Gururaj, Partner, Chemixil Corporation, Karnataka Lokayukta

Police, Bengaluru City has registered case in Crime No.13/2023 for offences punishable under Sec.7(a), 7(b), 7-A, 8, 9 and 10 of the P.C.Act, 1988. The petitioner is arraigned as accused No.1. The petitioner is sitting MLA of Channagiri Vidhanasabha Constituency and Chairman of KSDL and hence, he is public servant. The complainant has alleged that the accused No.1 and his son accused No.2 have demanded bribe of Rs.1 Crore 20 lakh for tender and thereafter for smooth clearance of bills in respect of company of the complainant and another company M/s.Delicia Chemicals. On the instructions of petitioner/accused No.1, the complainant has contacted accused No.2 and accused No.2 has placed demand of bribe on behalf of accused No.1. Accused No.2 was trapped while receiving Rs.40 lakh bribe. Therefore, it cannot be believed that the accused No.1 is not working through his son accused No.2. Petitioner /accused No.1 is having high status in the society and he is highly influential and without his interference, tender process of KSDL is difficult. Therefore, for awarding of tender and for smooth clearance of future bills, the accused has demanded bribe and thereby committed offences under the Prevention of Corruption Act. The petitioner is member of Legislative Assembly and highly influential and therefore, there

are every chance of he tampering evidence and hampering investigation of the case and on these grounds, the prosecution prayed for rejection of the petition filed by the accused/petitioner.

4. Now the points that arise for my consideration are:

1) Whether the I.O. has not complied the provisions of Sec.41 of the Cr.P.C.?

2) Whether the petitioner/ accused No.1 is entitled for bail?

3) What order?

5. After hearing the argument of both the parties and on considering the relevant materials on record, my findings on the above points are as hereunder:

Point No.1 : In the Negative

Point No.2 : In the Affirmative

Point No.3 : As per final order for the following:

REASONS

6. **Point No.1**: This petition is filed by accused No.1 Sri K.Madal Virupakshappa on 31.03.2023 for grant of regular bail. After issuance of notice, this court posted the case for filing

objections by the respondent and on 06.04.2023, the learned Special Public Prosecutor filed objections to the petition. Thereafter, learned counsel for the petitioner addressed his argument on 10.04.2023.

7. It is pertinent to note that in the grounds urged in the petition seeking bail, the learned counsel for accused has taken contention that the prosecution has not complied Sec.41 of Cr.P.C., and therefore, the accused is entitled for bail.

8. The learned counsel for accused has cited the following decisions and the gist of the decisions reads hereunder.

1. "**Arnesh Kumar Vs. State of Bihar and another**" reported in **(2014) 8 SCC 273**, wherein the Hon'ble Apex Court has held as hereunder:

> "7. As the offence with which we are concerned in the present appeal, provides for a maximum punishment of imprisonment which may extend to seven years and fine, Section 41(1)(b), Cr.PC which is relevant for the purpose reads as follows:
>
> > "41. When police may arrest without warrant.-(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person –
> >
> > (a) x x x x x x
> >
> > (b) against whom a reasonable complaint has been made, or credible information has been

received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely :-

(i) x x x x x

(ii) the police officer is satisfied that such arrest is necessary – (a) to prevent such person from committing any further offence; or (b) for proper investigation of the offence; or (c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or (d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or (e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest."

7.1 From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term

which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the police officers to record the reasons in writing for not making the arrest."

2. **"Satender Kumar Antil Vs. CBI and Another"** reported in **(2022) 10 SCC 51**, wherein the Hon'ble Apex Court has held as hereunder:

"23.Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offense, an arrest is not mandatory as can be seen from the mandate of this provision. If the officer is satisfied that a person has committed a cognizable

offense, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offense, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offense, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured.

24. This provision mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record the reasons for arrest in writing. Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offense alleged is more than seven years, among other reasons.

25. The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offense. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail.

3. In the case of "**Mahantesh S/o Devindrappa Patil Vs. State of Karnataka"** in **Crl.P.No.201224/2022 c/w Crl.P. No.201396/2022** decided on 15.12.2022, the Hon'ble High Court of Karnataka has held as hereunder:-

"14. As per Section 41 of the Cr.P.C. a police officer shall record his reasons in writing while making a arrest. In Arnesh Kumar (Supra) at Para No.10, the Hon'ble Apex Court has emphasised that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 of Cr.P.C. for effecting arrest be discouraged and discontinued and certain directions are given to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorize detention casually and mechanically and it is made clear that the said directions shall apply not only to the accused under Section 498-A of IPC or Section 4 of the Dowry Prohibition Act, but also in such cases where offence is punishable with imprisonment for a term which may be less than 07 years or which may extend to 07 years, whether with or without fine. One of the directions issued is that all the police officer be provided with a check-list containing specified sub-clauses under Section 41(1)(b)(ii)."

4. **"Sunita Devi and Another Vs. State of Haryana"**

reported in **(2023) 1 SCC 178**, wherein the Hon'ble Apex Court has held as hereunder:

"Instant order is being passed having regard to the fact that the appellants have joined investigation and at present stage, there is no allegation as regards their participation in investigation – In the event appellants refuse to co-operate with investigating agency at any subsequent stage, it shall be open to State to apply for cancellation of bail before trial Court – Penal Code, 1860, 420 and 406.

9. Learned Special Public Prosecutor has relied on the decision in the case of **"Y.S.Jagan Mohan Reddy Vs. CBI"** reported in **(2013) 7 SCC 439** wherein the Hon'ble Apex Court has held as hereunder:

"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which

> conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."

10. I have gone through the said decisions. Learned counsel for accused has argued that Sec.41 of Cr.P.C., is mandatory provision and in view of the decisions of Hon'ble Supreme Court in Arnesh Kumar Vs. State of Bihar and in the case of Satender Kumar Antil Vs. CBI and another, the accused is entitled for bail. The learned counsel for accused has argued that the offences alleged against the accused is punishable under Sec.7(a) and (b), 8, 9, 10 and 12 of P.C.Act and the punishment prescribed for the said offences are with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine. Relying on the decision of Arnesh Kumar Vs. State of Bihar, learned counsel for accused has argued that when the accused is produced before the Magistrate, the police officer effecting the arrest, required to furnish to the Magistrate, the facts, reasons and its conclusions for the arrest and the Magistrate in turn is to be satisfied with the

condition precedent for arrest under Sec.41 of Cr.P.C., has been satisfied and it is only thereafter, that he will authorize the detention of an accused.

11. Relying on the decision of Hon'ble Apex Court in the case of Satender Kumar Antil Vs. CBI, he argued that the Hon'ble Apex Court has categorized the types of offences as ‘A’, ‘B’, ‘C’, and ‘D’ and the offence punishable under Sec.7(a) and (b), 7A and 12 of P.C.Act, comes under Category (A), as the offence punishable with imprisonment of 07 years or less and not falling under the categories (B) and (D). He further argued that in the said decision, the Hon'ble Apex Court held that the police officer before arrest must put a question to himself, Why arrest? Is it really required? What purpose it will serve? What object it will achieve?

12. I have gone through the decisions cited by the learned counsel for accused. A plain reading of Section 41 of Cr.P.C., and going through the decisions of Hon'ble Apex Court, it is clear that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the

offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. In the said decision, it is further stated that the law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions of Sec.41 of Cr.P.C., while making such arrest and the law further requires the police officers to record the reasons in writing for not making the arrest. It is further stated that all police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii) of Cr.P.C. Hon'ble Apex Court also held that there is no requirement of aforesaid procedure when the offence alleged is punishable with more than 7 years, among other reasons.

13. Now it is the case of the prosecution that in the month of January-2023, KSDL had invited tenders for supply of chemical oils and the Company of the complainant i.e., M/s.Chemixil Corporation and M/s.Delicia Chemicals had participated in the said tender and 30% of the amount had to be given towards the acceptance of tender and issuance of the purchase order and clearance of the bills. It is further alleged that in order to get the tender allotted in favour of the complainant's company and M/s. Delicia Chemicals and to sanction the bills towards the supply of chemicals without any hastle, the complainant met the accused No.1, the then Chairman of KSDL and the accused No.1 asked the complainant to approach accused No.2, who is his son and presently working as Chief Accounts Officer, BWSSB. It is further alleged that on 12.1.2023 at about 5.30 p.m., the complainant and T.A.S. Murthy, Director of M/s.Delicia Chemicals, went to the office of accused No.2 situated at Crescent Road, Sheshadripuram and as per the instruction of accused No.2, the complainant went alone and met accused No.2 in his chamber and the complainant had discussed about the tender and accused No.2 told him that the tender will be allotted in his favour and without any hastle the bill towards supply of chemicals will be cleared.

14. It is further alleged that accused No.2 has demanded a sum of Rs.60 lakhs each from two companies and totally a sum of Rs.1.20 Crore demanded and upon request made by the complainant, the accused No.2 had reduced the amount to Rs.33 lakhs from M/s.Chemixil Corporation and Rs.48 lakhs from M/s.Delicia Chemicals Company, in total Rs.81 lakhs. It is alleged in the case that, it was agreed that the said amount has to be given when the purchase order was issued in favour of complainant's Company and to M/s.Delicia Chemicals towards supply of chemicals of 5100 kg of Guiac wood oil at the rate of Rs.850/- per K.G. by the complainant's company and 29520 Kgs of abbalide / musk-50 at the rate of Rs.4349/- per kg by M/s.Delicia Chemicals and both the suppliers had agreed to give commission amount. It is further alleged that the accused No.2 got the tender allotted in his favour and accordingly on 28.01.2023 and 30.01.2023, the purchase orders were issued in favour of M/s.Delicia Chemicals and complainant's company. On 08.02.2023 at about 11.30 a.m., accused No.2 had made a whatsapp call from his mobile No.9008339336 to complainant's mobile No.9886324494 and informed him to come to his office at 5.00 p.m. which is situated at Sheshadripuram, so as to discuss about the bribe amount.

15. It is alleged that the complainant went to the office of accused No.2 at 5.30 p.m. and at that time, when the complainant was discussing about some other tender related matter, the accused No.2 had demanded the complainant to give the amount of Rs.81 lakhs towards the allotment of tender and towards clearance of bills towards the supply of the chemicals. It is alleged that the complainant had informed the accused No.2 that within two days he will give the amount. It is alleged that the complainant had recorded the said conversation in his Techno View Smart Watch. It is further alleged that since the complainant had to go to Calcutta for business purpose, he was unable to meet accused No.2 and the accused No.2 had called him through whatsapp call and demanded money and the complainant had informed the accused No.2 that he would come back to Benglauru and will give the amount.

16. It is alleged that on 01.03.2023 at about 12.00 p.m., the accused No.2 had again called the complainant and told him to meet at his office on 02.03.2023 at 5.30 p.m. and accused No.2 had demanded money on behalf of accused No.1 and since the complainant did not want to pay any bribe amount, he had decided to approach the Police. It is further alleged that the Lokayukta

police had initiated trap proceedings and accordingly trap mahazar was drawn on 02.03.2023 and during the trap proceedings, certain other persons who were present in the private office of accused No.2 were also enquired and amount that were with them were also seized and thereafter, they were taken in to custody and the accused No.2 to 6 were produced before this court on 03.03.2023 and they were remanded to judicial custody.

17. The present petition is filed for regular bail. It is pertinent to note that on 02.03.2023, the police have trapped the accused No.2 while receiving bribe amount of Rs.40 lakhs from complainant and they have also recovered Rs.1.62 Crore from accused No.2 to 6. It is true that the offence under Sec.7(a) and (b), 7A and Sec.12 of P.C.Act is punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine. The punishment is not prescribed less than 7 years and minimum punishment prescribed is 3 years. Another important aspect is that the offences under the P.C. Act are economic offences. It is alleged that the accused No.1 did not co-operate with the police, even this Court handed over to police on police custody. During the course of

investigation, the police have secured one Dr.Mahesh.M, Managing Director of KSDL and said Dr.Mahesh.M. gave statement before XXXVI ACMM, Bengaluru on 16.3.2023 under Sec.164(5) of Cr.P.C., and he stated before the Magistrate that there were frequent instructions given by the accused No.1 to accused No.2 in tender process of KSDL and at the instruction of accused No.1, the tender has been finalized and accused No.2 has actively given all the instructions to the complainant on behalf of accused No.1 and there were whatsapp messages and telephone instructions given by accused No.1 through accused No.2. This prima facie shows that the accused No.2 has almost interfered with the tender process of KSDL for the procurement of chemicals. Therefore, this is not a simple case of trap.

18. Therefore, this is a serious offence and accused No.2 being a public servant allegedly making deals by sitting in the office of M/s.Unisquare Builders and Developers Pvt Ltd., 1st Floor, M.Studio Building, Crescent Road, Sheshadripuram, Bengaluru and therefore, these offences comes under the category of (A) and (D), stated in the judgment of Hon'ble Apex Court in“***Satender Kumar Antil Vs. CBI and another”***. Therefore, I am

of the opinion that the alleged offence does not come under the purview of Sec.41 of Cr.P.C. Even if the present case is considered that it comes under the purview of Sec.41(1) of Cr.P.C., the Investigation Officer has not violated the provision. Further, in the present case arrest of accused No.1 was effected following the rejection of anticipatory bail by the Hon'ble High Court of Karnataka. At the time of arrest of accused No.1, the Investigation Officer has prepared arrest intimation and stated that he has arrested the accused No.1 following the rejection of anticipatory bail petition by the Hon'ble High Court of Karnataka and arrest is necessary for interrogation.

19. Further, while producing the accused before the Court seeking police custody, the Investigation Officer has given 11 reasons in the remand application and among those reasons, it is stated that the accused No.1 is required to investigate regarding the tender process conducted during the tenure of accused No.1 as Chairman of KSDL and amount received by accused No.1 through his son accused No.2 from tenderer and to collect information regarding phone contacts made by the accused No.1, with the help of mirror image of phone data, inquire regarding the amount

brought by companies during the time of trap, money transaction made through M/s. Leelavathi Limited and Liabilities and Sri Kanakagiri Mallikarjuna Steels and Stones Pvt Ltd., and to get explanation from accused regarding documents collected during raid, inquire regarding collection of commission amount from tenderers. So these grounds are mentioned in Sec.41 of Cr.P.C., and this court after satisfying the grounds urged in the remand application and looking to the gravity of the offence alleged against the accused, remanded the accused No.1 to the police custody. Therefore, the Investigation Officer has complied the conditions of Sec.41 of Cr.P.C., even though he has not filed check-list. Therefore, I am of the opinion that the Investigation Officer has not violated Sec.41 of Cr.P.C., and accordingly, I answer point No.1 in the Negative.

20. **Points No.2**:- Learned Senior Counsel appearing for accused has vehemently argued that the police have recovered Rs.6,10,30,000/ from the house bearing No.39, KMV Mansion, 6th Main Road, A.E.C.S. Layout, 1st Stage, Sanjayanagara, Bengaluru. He further argued that the police have not seized any amount from the hands of accused No.1. He further argued that the said house

belongs to M/s. Kanakagiri Mallikarjuna Steels and Stones Private Limited, the said house does not belong either to accused No.1 or accused No.2 and therefore, the prosecution has failed to prove the allegation that the amount seized by the police belongs to accused No.1 and it is tainted money. In support of his arguments, he has produced the Certificate of Incorporation of M/s.Kanakagiri Mallikarjuna Steels and Stones Private Limited. He has also produced two sale deeds dated 09.10.2015 executed by M/s.Creative Homes Pvt Ltd., represented by its Managing Director Sri K.Venkateshwar Reddy in favour of M/s.Kanakagiri Mallikarjuna Steels and Stones Private Limited., pertaining to (1) house property bearing No.38, katha No.295, Geddalahalli village, old Muncipal No.38/19, New No.19, PID No.100-365-19, situated at 1st Cross, Muniramappa Garden, Geddalahalli (Sanjaynagar), BBMP Ward No.100 (2) house property bearing No.39, katha No.295, Geddalahalli village, old Muncipal No.39/20, New No.20, PID No.100-365-20, situated at 1st Cross, Muniramappa Garden, Geddalahalli (Sanjaynagar), BBMP Ward No.100. Therefore, he argued that the accused No.1 has no relation with the said house and the money does not belongs to him and the accused No.1 was not present when the amount was seized. I have gone through the

certificate of incorporation and contents of the two sale deeds. As per these sale deeds, the properties were purchased by M/s.Kanakagiri Mallikarjuna Steels and Stones Private Limited., represented by Sri M.V.Mallikarjuna S/o Sri K.Madal Virupakshappa.

21. Learned Special Public Prosecutor has argued that Sri M.V.Mallikarjuna is the son of Sri K.Madal Virupakshappa. Said Sri K.Madal Virupakshappa is the accused No.1.

22. Learned counsel for accused No.1 further argued that the accused No.1 is permanent resident of Channeshpura village, Channagiri Taluk, Davanagere and he is staying in Room No.119 of Shashakara Bhavana (Legislators Home) Bengaluru, whenever he comes to Bengaluru. Therefore, question of occupying the room in the alleged house does not arise.

23. In support of his arguments, he has relied upon the following decisions.

1. **“Moti Ram and others Vs. State of Madhya Pradesh”** reported in **(1978) 4 SCC 47**, wherein the Hon'ble Apex Court has held as hereunder:

   “The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the

psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job is he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family."

2. **"Bhagirathsinh S/o Mahipat Singh Judeja Vs. State of Gujarat"** reported in **(1984) 1 SCC 284**, wherein the Hon'ble Apex Court has held as hereunder:

"Very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail. And the trend today is towards granting bail because it is now well-settled by a catena of decisions of this 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. The order made by the High Court is conspicuous by its silence on these two relevant considerations. It is for these reasons that we consider in the interest of justice a compelling necessity to interfere with the order made by the High Court."

3. **“Joginder Kumar Vs. State of U.P. and others”** reported in **(1994) 4 SCC 260** wherein the Hon'ble Apex Court has held as hereunder:

“20. In India, Third Report of the National Police Commission at p.32 also suggested:

"An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

(i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror stricken victims.

(ii) The accused is likely to abscond and evade the processes of law.

(iii) The accused is given to violent behavior and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines....."

4. **“Sanjay Chandra Vs. CBI”** reported in **(2012) 1 SCC**

40 wherein the Hon'ble Apex Court has held as hereunder:

“In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, `necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most

extraordinary circumstances.

Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

In the instant case, as we have already noticed that the "pointing finger of accusation" against the appellants is `the seriousness of the charge'. The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor : The other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather "recalibrating the

scales of justice."

5. "**Sundeep Kumar Bafna Vs. State of Maharashtra and another"** reported in **(2014) 16 SCC 623**, wherein the Hon'ble Apex Court has held as hereunder:

"A Judge is expected to perform his onerous calling impervious of any public pressure that may be brought to bear on him."

6. **"Dataram Singh Vs. State of Uttar Pradesh and another"** reported in **(2018) 3 SCC 22**, wherein the Hon'ble Apex Court has held as hereunder:

"The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in Nikesh Tarachand Shah v. Union of India going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia v. State of Punjab in which it is observed that it was held way back in Nagendra v. King-Emperor that bail is not to be withheld as a punishment. Reference was also made to Emperor v. Hutchinson wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.

However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the

judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory."

7. **"P.Chidambaram Vs. Directorate of Enforcement"** reported in **(2020) 13 SCC 791**, wherein Hon'ble Apex Court held as hereunder:

"Thus from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made

against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case to case basis on the facts involved therein and securing the presence of the accused to stand trial."

8. **"Arnab Manoranjan Goswamy Vs. State of Maharashtra and others"** reported in **(2021) 2 SCC 427** wherein the Hon'ble Apex Court has held as hereunder:

"More than four decades ago, in a celebrated judgment in State of Rajasthan, Jaipur vs Balchand, Justice Krishna Iyer pithily reminded us that the basic rule

of our criminal justice system is “bail, not jail”. The High Courts and Courts in the district judiciary of India must enforce this principle in practice, and not forego that duty, leaving this Court to intervene at all times. We must in particular also emphasise the role of the district judiciary, which provides the first point of interface to the citizen. Our district judiciary is wrongly referred to as the subordinate judiciary. It may be subordinate in hierarchy but it is not subordinate in terms of its importance in the lives of citizens or in terms of the duty to render justice to them. High Courts get burdened when courts of first instance decline to grant anticipatory bail or bail in deserving cases. This continues in the Supreme Court as well, when High Courts do not grant bail or anticipatory bail in cases falling within the parameters of the law. The consequence for those who suffer incarceration are serious. Common citizens without the means or resources to move the High Courts or this Court languish as under trials. Courts must be alive to the situation as it prevails on the ground – in the jails and police stations where human dignity has no protector. As judges, we would do well to remind ourselves that it is through the instrumentality of bail that our criminal justice system‘s primordial interest in preserving the presumption of innocence finds its most eloquent expression. The remedy of bail is the “solemn

> expression of the humaneness of the justice system." Tasked as we are with the primary responsibility of preserving the liberty of all citizens, we cannot countenance an approach that has the consequence of applying this basic rule in an inverted form. We have given expression to our anguish in a case where a citizen has approached this court. We have done so in order to reiterate principles which must govern countless other faces whose voices should not go unheard.

And hence, prayed for granting bail to the petitioner / accused No.1.

24. The learned Special Public Prosecutor has vehemently argued that the petitioner/ accused No.1 has involved in the offence of receiving bribe, to pass the bill of complainant and he is public servant and the statement given by Dr.Mahesh.M., Managing Director of KSDL, clearly discloses the involvement accused No.1 and interference of accused No.2 in the tender process of KSDL and the investigation is in progress and the police have to record the statement of witnesses of KSDL and the investigation has to be conducted as to whether the accused No.1 has received bribe money from other companies while accepting the tender and if the bail is granted, he may abscond, he may

tamper the prosecution witnesses and therefore, the bail application filed by the petitioner/ accused No.1 may be dismissed. In support of his arguments, he has relied on the following decisions:

1. **“Serious Fraud Investigation Office Vs. Nittin Johari and Another”** reported in **(2019) 9 SCC 165**, wherein the Hon'ble Apex Court has held as hereunder:

   “At this juncture, it must be noted that even as per Section 212(7) of the Companies Act, the limitation under Section 212(6) with respect to grant of bail is in addition to those already provided in the Cr.P.C. Thus, it is necessary to advert to the principles governing the grant of bail under Section 439 of the Cr.P.C. Specifically, heed must be paid to the stringent view taken by this Court towards grant of bail with respect of economic offences. In this regard, it is pertinent to refer to the following observations of this Court in Y.S. Jagan Mohan Reddy:

   “34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country

as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations." This Court has adopted this position in several decisions, including Gautam Kundu v. Directorate of Enforcement and State of Bihar v. Amit Kumar. Thus, it is evident that the above factors must be taken into account while determining whether bail should be granted in cases involving grave economic offences."

2. **"Neeraj Dutta Vs. State (Govt. of N.C.T. of Delhi)"** reported in **2022 SCC OnLine SC 1724**, wherein Hon'ble Apex Court held as hereunder:

"What emerges from the aforesaid discussion is summarised as under:

(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections

7 and 13 (1)(d) (i) and(ii) of the Act.

(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case

of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13 (1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13 (1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13 (1)(d) and (i) and (ii) of the Act.

(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary

evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

(f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

(g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13 (1) (d)(i) and (ii) of the Act.

(h) We clarify that the presumption in law under

Section 20 of the Act is distinct from presumption of fact referred to above in point (e) as the former is a mandatory presumption while the latter is discretionary in nature."

3. **"Syed Ahmed Vs. State of Karnataka"** reported in **(2012) 8 SCC 527**, wherein the Hon'ble Apex Court has held as hereunder:

"We agree with the High Court that in view of Explanation (d) to Section 7 of the Act, the issue whether Syed Ahmed could or could not deliver results (as it were) becomes irrelevant in view of the acceptance of the testimony of Nagaraja (PW1) and Sidheshwara Swamy (PW2)."

4. **"Ranganath Vs. State of Karnataka"** reported in **2015 SCC OnLine Kar 9181.**

"The existence of any official work for demand of bribe is not a sine-quo-non to attract the provisions of Sections 7 and 13(1)(d) of the Prevention of Corruption Act of Section 7, if it is read with explanation, it gives an indication that even a public servant accepts or agrees to accept any gratification other than legal remuneration as a motive or reward for doing or for bearing to do any official act or for showing or for bearing to show in the exercise of his official functions, is said to commit such an offence."

25. The learned Special Public Prosecutor has further invited the attention of this court regarding the seizure mahazar conducted on 2.3.2023 in House No.39, KMV Mansion, 6th Main road, A.E.C.S. Layout, 1st Stage, Sanjayanagara, Bengaluru and relying on this seizure mahazar, he argued that the contents of the said mahazar is very clear that at the time of conducting raid in the said house, Smt.Brunda B.T. W/o Prashanth Kumar M.V., and his son Pruthvi, 10 years and daughter Chethana, aged 2 years and wife of brother of Prashanth Kumar by name Smt.Soumya w/o Praveen Kumar and her daughter Jahnavi aged 14 years, son Gaurav aged 9 years and son of Mallikarjuna M.V. by name Jagruth, aged 10 years and maid Rachamma, Vittal, and Somu were present and Praveen Kumar M.V. told them that the room wherein the amount was seized being used by Madal Virupakshappa. He argued that the I.O. has also recorded the statement of Vittal Patil, who is working as driver of Madal Virupakshappa and he told that the accused No.1 is residing in the said house. It is further argued that they found the amount Rs.6,10,30,000/- in the cupboard and godrej lockers and they also found currency counting machine in the said room and it is further noted in the mahazar that the family members, Praveen Kumar,

Smt.Soumya, Smt.Brunda, did not give any explanation regarding the amount of Rs.6,10,30,000/- found in the room.

26. I have gone through the copies of case diary. I.O. has recorded statements of Assistant General Manager Sri Nagaraj and Chidananad, Umashankar of KSDL and also recorded the statements of staff of KSDL. But so far, there is no break through in the case regarding the source of amount of Rs.6,10,30,000/- seized from the house situated at Sanjayanagara, Bengaluru and no explanation is given by Sri M.V.Mallikarjuna, the Director of M/s.Kanakagiri Mallikarjuna Steels and Stones Private Limited., to establish the source of amount of Rs.6,10,30,000/- seized from his house situated at Sanjayanagara, Bengaluru.

27. It is for the I.O. to investigate regarding the source of money Rs.6,10,30,000/- seized from the house situated at Sanjayanagara, Bengaluru. It is pertinent to note that accused No.1 was not arrested while receiving the bribe and he was not trapped and he was arrested pursuant to the rejection of anticipatory bail petition by the Hon'ble High Court of Karnataka and he was arrested on 27.03.2023 and produced before this Court on 28.03.2023 and he was handed over to police custody for five days

till 01.04.2023 and then he was remanded to judicial custody and since then he is in judicial custody. Another important aspect is that the accused No.1 is aged 74 years and the medical report i.e., discharge summary produced by the accused No.1 show the following diagnosis.

> "Ischemic heart disease – unstable angina.
>
> Sinus rhythm, preserved LV systolic function EF60%
>
> Coronary angiogram (1.6.2022) – Double vessel coronary artery disease
>
> LMCA: Short, normal
>
> LAD: Proximal to Mid – Diffuse disease maximum of 90% stenosis
>
> LCX-Proximal – Mild disease 20-30% stenosis, Major OM – 50% stenosis
>
> RCA: Proximal – Mild disease
>
> Complex PTCA + stenting to LAD (Mid 2.5 X 38 m Xience Xpedition stent overlapped to proximal with 3.0 X 38 mm Xience Xepedition stent)
>
> Hypertension
>
> Grade II Hemorrhoids
>
> Multiple Gastric polyps, few duodenal erosion."

28. Therefore, the petitioner is having heart disease and he is aged person.

29. It is pertinent to note that proviso to Sec.437 of Cr.P.C., says that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm. So considering the age of petitioner/ accused No.1 and the disease, which he is suffering, I am of the opinion that it is just and proper to release him on bail. The contention of the prosecution that, if the accused is released on bail, he may abscond, he may tamper the prosecution witnesses and he may hamper the investigation and he has not co-operated during police custody for fair investigation, etc., could be met with by imposing stringent conditions. I have gone through the bail petition, wherein the petitioner has undertaken to co-operate and assist in fair investigation and trial of the case. The police alleged that he has not co-operated during investigation. But on this ground alone, his bail application cannot be rejected, as the police have not seized any amount from his hand and he was not trapped and the allegation of the prosecution that the accused No.2 has received bribe of Rs.40 lakhs at the

instruction of accused No.1. The prosecution has also produced the statement of Dr.Mahesh.M. Managing Director of KSDL, which prima facie shows the involvement of accused No.1 and interference of accused No.2 in the tender process of KSDL. In spite of that, keeping the accused No.1 in the custody for a long period, no purpose would be served to the prosecution and it is for the prosecution to investigate the source of amount of Rs.6,10,30,000/-. Therefore, by imposing stringent conditions, the petitioner may be released on bail. With these observations, I answer point No.2 in the Affirmative.

30. **Point No.3**: In view of the discussions made herein above, I proceed to pass the following:

ORDER

Petition filed by the petitioner / accused No.1 Sri K.Madal Virupakshappa under Sec.439 of the Code of Criminal Procedure is hereby allowed.

Petitioner/accused No.1 Sri K.Madal Virupakshappa is ordered to be enlarged on bail on his executing personal bond for a sum of Rs.5,00,000/- (Rupees Five lakh only) with two sureties for the like-sum subject to the following conditions:-

1. The petitioner/accused No.1 shall mark his attendance before the concerned Lokayukta Police Station once in three weeks preferably on Sunday

between 10.00 a.m. and 5.00 p.m. till completion of the investigation.

2. The petitioner/accused No.1 shall appear before the Investigating Officer of Lokayukta as and when directed.
3. The petitioner/accused No.1 shall not threaten or allure the prosecution witnesses.
4. The petitioner/accused No.1 shall not leave the jurisdiction of this Court without prior permission and the petitioner/accused No.1 Sri K.Madal Virupakshappa shall surrender his passport, if any, to the Investigating Officer till further orders.
5. The petitioner/accused No.1 shall not visit the factory and premises of Karnataka Soaps and Detergents Limited, Bengaluru, till investigation is over.

   It is made clear that, breach of any conditions by the petitioner/ accused No.1, would entail cancellation of bail. The petitioner/accused No.1 shall follow the guidelines issued by the Hon'ble High Court of Karnataka in W.P.No.8524/2019 dated 23.09.2022 while offering sureties.

(Dictated to the Judgment Writer, transcribed and typed by him, revised and corrected by me and then pronounced in the Open Court on this ***the 15th day of April, 2023****)*

(B. Jayantha Kumar)
LXXXI Addl. City Civil & Sessions Judge,
Bengaluru City (CCH-82)
(Special Court exclusively to deal with criminal cases related to elected former and sitting MPs/MLAs in the State of Karnataka)