HIGH COURT OF ANDHRA PRADESH

WEDNESDAY ,THE TWENTY NINETH DAY OF JULY

TWO THOUSAND AND TWENTY

PRSENT

THE HONOURABLE SRI JUSTICE M.VENKATA RAMANA

CRIMINAL PETITION NO: 2479 OF 2020

Between:

1. Kinjarapu Atchannaidu, S/o. Late Dali Naidu, aged 50, R/o. Nimmada Village, Kotabommali Mandal, Srikakulam District.

...PETITIONER(S)

AND:

1. The State of Andhra Pradesh, Rep. by Anti-Corruption Bureau, CIU, AP, Vijayawada, through its Special Public Prosecutor, High Court of Andhra Pradesh at Amaravati.

...RESPONDENTS

Counsel for the Petitioner(s): VENKATESWARLU POSANI

Counsel for the Respondents: PUBLIC PROSECUTOR (AP)

The Court made the following: ORDER

HON'BLE SRI JUSTICE M.VENKATA RAMANA

CRL.P.No. 2479 of 2020

ORDER:

A2 in Cr.No.4/RCO-CIU-ACB/2020 of ACB, CIU, AP, at Vijayawada is the petitioner.

2. The offences alleged against him and other accused are under Section 13(1)(c) and (d) r/w. 13(2) of Prevention of Corruption Act, 1988, Section 13(1) (a) r/w. 13(2) of Prevention of Corruption Act as amended in the year 2018, under Sections 409, 420 and under Section 120B IPC. This is an application filed for grant of bail under Section 439 Cr.P.C.

3. The petitioner is stated to be a sitting MLA representing Tekkali Constituency of Srikakulam District and a recognized leader of Telugu Desam Party. He was elected as MLA for five times from Harischandrapuram and Tekkali Constituencies and was a Cabinet Minister for the state of A.P. in between the years 2014 and 2019. Presently he is stated to be the Deputy Leader of Opposition of A.P.State Legislative Assembly. His brother Sri late Yerram Naidu was a Member of Parliament and was Union Minister for Employment and Rural Development representing Telugu Desam Party. Sri K. Ram Mohan Naidu, Son of Sri late Yerram Naidu, is stated to be the Member of Parliament from Srikakulam Parliament Constituency and Smt. Adireddy Bhavani, daughter of eldest brother of the petitioner, is stated to be a Member of Legislative Assembly, representing Rajahmundry City Constituency of East Godavari District.

4. The case of the prosecution against the petitioner and other accused in this case, in brief, is that the petitioner, as then Minister for Labour & Employment, Factories, Youth & Sports Skill Development and Entrepreneurship, Government of A.P., interfered in the activities of the Insurance Medical Services in the State of A.P., which is responsible for running ESI facilities in the State, by issuing letters during October and November 2016 to A1, who was then Director, Insurance Medical Services, ordering and directing him to issue work order to M/s. Tele Health Services Private Limited, Hyderabad, which is represented by A3 as its Director for services relating to Call Center, Toll-free Services, ECG Services and Patient Case Management System/ Software services.

5. In this process, it is alleged by the prosecution that the petitioner had brought pressure on A1 to issue work order to M/s. Tele Health Services Private Limited, Hyderabad in spite of resistance by A1 that it would lead to financial loss affecting Government exchequer. It is also the case of the prosecution that by this process, the petitioner made M/s. Tele Health Services Private Limited, Hyderabad to have wrongful gain, causing wrongful loss to the Government exchequer, wilfully bypassing the relevant rules and regulations in managing the Government and public funds. It is also the case of the prosecution that in a deep rooted criminal conspiracy, the petitioner and other accused in tandem made the State to suffer huge loss, since payments were released to M/s. Tele Health Services under different Heads in sums of Rs.4,15,03,564/- and Rs.3,80,66,160. Thus, in all, the petitioner and other accused are responsible for allowing M/s. Tele Health Services Private Limited to receive Rs.7,95,69,685/-, by abusing their official position, involving

corrupt and illegal means, dishonestly and fraudulently leading to misappropriation of public and Government funds.

6. Director, FAC, Insurance Medical Services, Vijayawada, presented a complaint in respect of these instances furnishing necessary details. A authorization was given to ACB by Memo dated 10.06.2020 through Principal Secretary to Government, Labour, Factories, boilers & IMS (IMS&VIG) Department. Thereupon, to investigate into these affairs, a case was registered for the offences stated above, by CIU unit of ACB, Vijayawada through its DSP at 11.00 p.m. on 10.06.2020. The matter is stated to be under investigation.

7. The petitioner was arrested in connection with this case on 12.06.2020 at 7.20 a.m. at his residence in Nimmada village, Kotabommali Mandal of Srikakulam District and when produced before the Court of the learned Special Judge for SPE & ACB Cases, Vijayawada, he was remanded to judicial custody.

8. The petitioner's attempt for bail in the trial Court in Crl.M.P.No.11715 of 2020 was dismissed by an order dated 03.07.2020.

9. Sri Siddardha Luthra, learned Senior counsel, representing Sri Posani Venkateswarlu, learned counsel for the petitioner, submitted arguments assailing the basis and manner of the arrest of the petitioner and whereas the learned Advocate General for the State, representing Smt. M. Renuka, learned Standing Counsel for ACB, submitted arguments in detail opposing this petition.

10. Now the point for determination is- "Whether the petitioner is entitled for bail?"

Point:-

11. The principles relating to grant of bail were considered in ***P.Chidambaram v. Central Bureau of Investigation***[1] (for short, 1st Chidambaram's case). After reviewing the law in this respect, in para-22 of this ruling, it is stated as under:

> *"22. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations (**vide Prahlad Singh Bhati v. NCT, Delhi (2001)4 SCC 280**). There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner…."*

12. In relation to economic offences, in ***P. Chidambaram v. Directorate of Enforcement***[2](for short, 2nd Chidambaram's case) after considering the law in this respect including the observations referred above in 1st Chidambaram's case observed in para-23 as under-

> *"23.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*

---

[1]. 2019 SCC OnLine SC 1380

[2]. 2019 SCC OnLine SC 1549

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."

13. A recent judgment of Hon'ble Supreme Court, particularly to consider menace of corruption affecting the society and this country particularly in ***State of Gujarat v.Mansukhbhai Kanjibhai Sha***[3] relied for the respondent is relevant and apt to consider. In para-1 of this ruling, it is stated thus:

"1. Corruption is the malignant manifestation of a malady menacing the morality of men. There is a common perception that corruption in India has spread to all corners of public life and is currently choking the constitutional aspirations enshrined in the preamble."

14. Further observations in the same ruling are also pertinent and they are in para-60, which read:

"60. Zero tolerance towards corruption should be the top-notch priority for ensuring system based and policy driven, transparent and responsive governance. Corruption cannot be annihilated but strategically be dwindled by reducing monopoly and enabling transparency in decision making. However, fortification of social and moral fabric must be an integral component of long-term policy for nation building to accomplish corruption free society."

15. Bearing in mind the law thus enunciated, this case has to be considered.

16. Sri Siddartha Luthra, learned senior counsel for the petitioner, mainly contended that the medical condition of the petitioner be taken into consideration, who was under treatment for anal fissure, admittedly, at the time of his alleged arrest and that the procedure once again he had when was in judicial custody in Government General Hospital, Guntur is a pointer of significance in this context.

---

[3] . 2020 SCC OnLine SC 412

17. The learned senior counsel further contended that the petitioner has been in custody for the last 45 days and having regard to the back ground of this case in as much as the present disposition in Government in the State of A.P. is bent upon harassing the petitioner and his family, since his brother was responsible for launching criminal prosecution against the present incumbent in office as Chief Minister in the State, it is unlikely that the investigation would be reported as closed within the statutory period either of 60 days or 90 days in terms of Section 167 Cr.P.C. request for bail be considered. In the same context, it is contended by the learned senior counsel that the investigating agency would never report about the status of investigation giving a true and correct picture and subjecting the petitioner to police custody as per the orders of the trial Court from 25.06.2020 to 27.06.2020 is also pointed out as a relevant factor.

18. The learned senior Counsel Sri Siddartha Luthra further contended about effect of Section 17-A of the Prevention of Corruption Act referring to the manner in which the alleged memo dated 10.06.2020 appears, which can never be taken to reflect true compliance with the statutory requirement. Further referring to the alleged sum of money involved in these transactions, as per the alleged directions of the petitioner as the Minister concerned, the learned senior counsel has drawn attention to counters filed by the respondent investigating agency in the trial Court as well as in this Court, stating that it boiled down ultimately to Rs.30 lakhs or even less. Thus mainly urging, basing on facts, it is requested to consider grant of bail to the petitioner.

19. In support of his contention, Sri Siddartha Lurtha, learned Senior Counsel relied on apart from P.Chidambaram 1st and 2nd cases referred to above, the following rulings: ***Sanjay Chandra v. Central Bureau of Investigation***[4], ***H.B.Chaturvedi v. C.B.I.***[5], ***Manoranjana Sinh Alias Gupta v. Central Bureau of Investigation***[6], ***State of Maharashtra v. Nainmal Punjaji Shah and another***[7], ***Central Bureau of Investigation v. Sandip Jhunjhunwala***[8], **Yashwant Sinha and others v. Central Bureau of Investigation through its Director and another**[9], ***M. Soundararajan v. State through the Deputy Superintendant of Police through Vigilance and Anti Corruption, Ramanathapuram***[10], ***Kaladindi Sanyasi Raju vs. State of Andhra Pradesh***[11] and ***Sri Kancharla Sri HariBabu @ K. Babji vs. The State of Telangana through ACB-CIU, Hyderabad, rep. by its Public Prosecutor, High Court for the State of Telangana, Hyderabad***[12].

20. The learned Advocate General representing the State seriously opposed such request on behalf of the petitioner pointing out that the instances concerned in this case are indeed grave whereby the public apparatus viz., ESI was taken for ride for monetary gains, in which process the role of the petitioner is pivot. The learned Advocate General further contended that it was his initiation in the nature of a meeting

---

[4]. (2012) 1 Supreme Court Cases 40
[5]. 2010 SCC OnLine Del 2155
[6]. (2017) 5 Supreme Court Cases 218
[7] . 1969(3) Supreme Court Cases 904
[8] . Appeal (Crl.) No. 10931/2018, dt. 02.05.2019
[9] (2020)2 Supreme Court Cases 338
[10]. Crl.A.(MD) Nos.488 &8712 of 2018, dt. 30.10.2018
[11]. MANU/AP/0215/2018
[12]. Criminal Petition No. 7108 of 2019.

called by the petitioner on 25.09.2016, minutes of which is a part of material record in this case, to which the petitioner is a signatory apart from A1 that was responsible for all further acts that followed. Reference is also made to three letters dated 22.11.2016, 13.10.2016 and 25.11.2016 of the petitioner, that allowed to providing enormous facilities to M/s. Tele Health Services Private Limited of A3, which had led to ultimate siphoning of funds of the Government.

21. Further contention advanced by the learned Advocate General is that though the benefit sought to be conferred under the proposed ESI scheme was to specified sections of the society falling within its scope and purview, it was sought to be applied, as is reflected in the aforestated meeting, for the alleged purpose of 'implementation of Chandranna Bheema Scheme' and thus, there was enormous misuse of not only the Government machinery but also the public funds in the entire process. The learned Advocate General also referred to the terms and conditions of the agreements entered into, for such alleged purposes in support of his contention to point out the gravity of the situation involved.

22. The learned Advocate General also referred to the medical condition of the petitioner while expressing his sympathy and at the same time contended that the petitioner, by virtue of an order of a Co-ordinate Bench of this Court, is now stated to be undergoing treatment in a suitable hospital at Guntur. The learned Advocate General further pointed out that the investigating agency is making efforts, since the medical situation of the petitioner is sought to be taken beyond proportions for his personal benefit and advantage, to get the order of this Court vacated.

23. Thus pointing out that the release of the petitioner on bail, having regard to the extent largesse flown out of this entire episode as well as the extent of influence which the petitioner would wield to affect the process of investigation, a strong opposition is presented. The learned Advocate General also contended that if the petitioner is released on bail, there is every possibility that the witnesses, which the investigating agency would choose to examine, would be threatened not to make any statements, which the situation already the investigating agency is facing with the aid and assistance of the media carrying out parallel trial as well as his supporters. Thus, a strong resistance is offered by the learned Advocate General for grant of bail to the petitioner.

24. The learned Advocate General, in support of his contention relied on ***Vishwanath Chaturvedi vs. Union of India (UOI) and Ors.***[13], ***Lalita Kumari vs. Govt. of U.P. and Ors.***[14], ***Nimmagadda Prasad v. Central Bureau of Investigation***[15], ***The State of Telangana vs. Managipet***[16], ***Station House Officer, CBI/ACB/Bangalore v. B.A.Srinivasan and another***[17], ***State of Gujarat vs. Mohanlal Jitamalji Porwal and Ors***.[18], ***R.K.Dalmia Etc. v. Delhi Administration***[19], to support his contentions.

25. The fact situation presented by Sri Siddartha Luthra, learned senior counsel, relating to medical condition of the petitioner and he being in judicial custody for the last 45 days is true and correct. This medical situation of the petitioner in the given circumstances of the present case

---

[13]. 2007(4) SCC 380
[14]. AIR 2014 SC 187
[15]. (2013) 3 SCC (Cri) 575
[16]. 2019(17) SCALE 96
[17]. (2020) 2 Supreme Court Cases 153
[18]. 1987 CriLJ 1061
[19]. AIR 1962 SC 1821

has lost its sheen and effect, as a ground to consider the request of the petitioner for bail. The reason is, admittedly the petitioner is not now lodged in any jail in judicial custody. He is stated to be undergoing treatment, for his ailment in an appropriate hospital at Guntur and stated to be well in certain caring hands. Thus, he has appropriate medical facilities attending on him to take care of his needs. Though several contentions are advanced how situation went on at Government General Hospital, Guntur, where the petitioner was taken for treatment as per the directions of the learned trial Judge, it is rather unnecessary to dilate or consider those circumstances, having regard to the present situation of the petitioner. It is also to be noted that the petitioner was subjected to examination in the course of police custody ordered by the trial Court on the dates referred to above. It is the complaint of the respondent agency that the petitioner was tight lipped and was singularly silent without explaining any circumstances or factors relating to this case. It is another ground urged by the learned Advocate General to point out the difficulty the investigating agency is facing in conduct of investigation.

26. Similarly, the ground that the petitioner has been in judicial custody for long, cannot have any bearing. The reason is that a *prima facie* consideration of the material indicates the pivotal role, the petitioner had played at the relevant period of time, right from convening a meeting at his residence on 25.09.2016, as per his instructions and directions, for the purpose of the scheme referred to in the minutes dated 25.09.2016 itself. It appears a deflection from the process directed to be followed by the Government of India in implementation of a welfare measure under ESI scheme. More importantly, the undisputed nature of letters issued by the petitioner favouring M/s. Tele Health Services Private Limited referred

to above, did indicate the impact the whole process has to bear and the largesse conferred on the above instrumentality viz., M/s. Tele Health Services Private Limited of A3. It is not as though it was an effort innocuously made for betterment of certain sections of the society.

27. In this context, the contention of the learned Advocate General that usual Government norms including Finance Code having had been flouted without there being any concurrence of Finance Department in doling out huge amount of money without the approval of the Government as such under a scheme, should be taken into consideration. The terms and conditions in the agreements, pointed out by the learned Advocate General, stated to affect the insurance medical services itself. In all, Rs.7,95,69,685/- was involved in this affair. It is the contention of the respondent that not less than Rs.3,00,00,000/- out of it was the loss suffered by the Government on account of such unlawful and illegal diversion of amounts, to illegally benefit the company of A3.

28. These circumstances did make out the seriousness in the matter involved exposing their gravity on a *prima facie* consideration.

29. In the backdrop of these circumstances, it cannot as such be inferred that the whole case has been foisted in a scheme on account of political enemity nor there was unusual and unnecessary rush of efforts on 10.06.2020 itself either in issuing a memo of authorization to the respondent agency to investigate this matter by the Principal Secretary to Government, Labour, Factories, boilers & IMS (IMS&VIG) Department, Government of A.P., presenting a complaint by the *de facto* complainant on the same day to the respondent agency, where FIR was registered on

the same day i.e., 10.06.2020. Added to it, these serious questions require a deep probe, possibly in the course of investigation.

30. The instances in relation to the role of the petitioner occurred in between October, 2016 and November, 2016. The learned senior counsel Sri Siddartha Luthra also contended that the petitioner was the concerned Minister only upto April, 2017 and any subsequent event in relation to these instances cannot be tagged on to him. Nonetheless, the instances, had initiation as well as origin on account of certain effort by the petitioner as stated above, and change in situation of the petitioner, as Minister not concerned to the relevant department at appropriate point of time, cannot in any manner dilute the gravity of situation appearing against him.

31. The manner in which the petitioner was arrested, when he was in post-surgery medical condition, making him to travel a distance of nearly 600 Kms. to Vijayawada on road from his native place and effort of the investigating officer to serve a notice purportedly under Section 41A Cr.P.C. on the petitioner at about 11.30 p.m. on 11.06.2020 are pointed out to demonstrate the intense animosity the petitioner had to face from the respondent investigating agency. These factors are projected to question the manner of arrest of the petitioner and its tainted nature. Of course, the manner in which the petitioner was called to follow the investigating officer to Vijayawada in a serious medical condition has left much to desire. Nonetheless, for necessary redressal he had approached this court as stated supra, where he was afforded relief.

32. Contentions are sought to be advanced on behalf of the petitioner questioning the nature of authorisation issued under Section 17-

A of the Prevention of Corruption Act to the effect that it is retrospective in operation and therefore, initiation of any action against the petitioner is improper. In the course of addressing arguments the learned senior counsel Sri Siddartha Luthra, when enquired by this Court fairly informed that his claim for bail is more based on facts of admitted nature including the medical situation of the petitioner and duration of his detention in judicial custody. However, learned Advocate General canvassed on this question at length to the effect that it is only prospective in operation and it cannot as such be applied to the present case on hand.

33. Section 17-A of the Prevention of Corruption Act is as under:

> ***17-A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.****- No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public sevant in discharge of his official functions or duties, without the previous approval-*
>
> *(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government*
>
> *(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that government:*
>
> *(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:*
>
> *Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:*
>
> *Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.*

34. It was introduced by means of an amendment by Act 16 of 2018 w.e.f. 26.7.2018. According to the contention of the petitioner his

role was long prior to this effective date viz., 26.07.2018 and as such, when benefit is so conferred by means of this provision to an accused, the same has to be extended to him.

35. One strong circumstance to take into consideration in this respect is that the transactions relating to various instances involved in this matter continued for a considerable length of time viz., from the years 2014-15 to 2018-19. The situation which is in the nature of a hybrid, in application of Section 17-A of the Prevention of Corruption Act is thus seen. Further circumstance to be noted in this context is that there are other accused apart from the petitioner who have been attributed definite and certain roles in the whole affair including certain Government (Public) servants.

36. On behalf of the petitioner, judgment of Hon'ble Supreme Court in **Yashwant Sinha and others v. Central Bureau of Investigation through its Director and another** (9 referred supra) is relied on stating that the observations therein particularly of Hon'ble Mr. K.M.Joseph,J., have given quietus as to application of Section 17-A of the Prevention of Corruption Act. In this context, observations in para 117 are desirable to consider and they are extracted hereunder:

> "117. In terms of Section 17-A, no police officer is permitted to conduct any enquiry or inquiry or conduct investigation into any offence done by a public servant where the offence alleged is relatable to any recommendation made or decision taken by the public service in discharge of his public functions without previous approval, inter alia, of the authority competent to remove the public servant from his office at the time when the offence was alleged to have been committed….."

37. However, the learned Advocate General contended that these observations, have explained the effect of Section 17-A of the Prevention of Corruption Act above. In the considered opinion of this Court, while

explaining the effect of Section 17-A of the Prevention of Corruption Act these observations did not address its application either prospectively or if retrospective in operation.

38. However, on behalf of the petitioner certain rulings of Hon'ble Supreme Court are produced as to interpretation of extent of operation either prospective or retrospective, of Section 17-A of the Prevention of Corruption Act viz., ***Kapur Chand Pokhraj v. State of Bombay*** [20], ***Commissioner of Income Tax (Central) -1, New Delhi v. Vatika Township Private Limited***[21], ***Vijay v. State of Maharashtra and others***[22], ***Securities and Exchange Board of India v. Alliance Finstock Limited and others*** [23] and ***Surinderjit Singh Mand and another v. State of Punjab and another***[24]

39. Both the learned counsel did not address on the question whether a Member of Legislative Assembly or any one holding such public office is a public servant or not. However, the learned Advocate General relied on ***M. Karunanidhi vs. Union of India and another***[25], ***P.V.Narasimha Rao v. State (CBI/SPE)***[26] and ***L.Narayana Swamy vs. State of Karnataka and others***[27] and as to application of Section 19 of the Prevention of Corruption Act in relation thereto.

40. Further rulings cited by the learned Advocate General are in ***Abhay Singh Chautala vs. C.B.I.***[28] and ***Prakash Singh Badal and Ors., Vs. State of Punjab and Ors.***[29], in the same context.

---

[20]. AIR 1958 SC 993
[21]. (2015) 1 Supreme Court Cases 1
[22]. (2006) 6 Supreme Court Cases 289
[23]. (2015) 16 Supreme Court Cases 731
[24]. (2016) 8 Supreme Court Cases 722
[25]. (1979) 3 Supreme Court Cases 431
[26]. (1998) 4 Supreme Court Cases 626
[27].(2016) 9 Supreme Court Cases 598
[28]. (2011)7SCC 141

41. One of the learned Judges of then High Court of Andhra Pradesh at Hyderabad in Crl.P.No.9144 of 2018 dated 16.11.2018 observed that amended provisions of Section 19 of the Prevention of Corruption Act are prospective in operation without retroactive application. It was followed in a later order of this Court in Crl.P.No.4775 of 2019, dated 23.01.2020 among others.

42. In ***Station House Officer, CBI/ACB/Bangalore v. B.A.Srinivasan and another*** *(*17 referred to supra) the effect of Section 197 Cr.P.C. is considered observing that the acts complained of to attract Section 197 Cr.P.C. should be integrally connected to the official duties and functions of a public servant and if the office became merely a cloak to indulge in activities resulting in unlawful gain to the beneficiaries, it would not offer any protection. It is further observed that protection under Section 19 of the Prevention of Corruption Act (before amendment) similarly did not offer any protection to the retired public servant. Effort of learned Advocate General in placing reliance on this ruling is to draw a parallel between Section 197 Cr.P.C. and Section 17-A of the Prevention of Corruption Act.

43. A direct ruling of Karnataka High Court in ***T.N.Bettaswamaiah v. State of Karnataka***[30] on the point, is also relied on by the learned Advocate General. In paras 21 and 22 of this ruling the observations are as under:-

> *"21. In Kolhapur Cane Sugar, Supreme Court of India was considering the omission of Central Excise Rule 10 and 10A and simultaneous introduction of Rule 10 without any saving clause. It has been held that Section 6 of General Clauses Act is not application since it is not a repeal of a Central Act, but an omission. But in* ***Hitendra Vishnu***

---

[29]. AIR2007SC1274

[30].MANU/KA/9503/2019, DATED 20.12.2019

> ***Thakur and others vs. State of Maharashtra and others***[31] *it is held that a statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation unless otherwise provided either expressly or by necessary implication. A careful reading of both Section 17-A as also Section 19 do not contain any express provision to show that they are retrospective in nature nor it is so discernable by implication.*
>
> *22. In* ***Dr. Subramanian Swamy vs. Dr. Manmohan Singh and another***[32] *it is held that any anti-corruption law has to be interpreted in such a fashion as to strengthen fight against corruption and where two constructions are eminently reasonable, the Court has to accept the one that seeks to eradicate corruption than the one which seeks to perpetuate it…."*

44. Explaining what is an 'approval' and 'permission', the learned Advocate General also relied on ***U.P.Avas Evam Vikas Parishad and another v. Friends Coop. Housing Society Ltd. And another***[33] in an attempt to make out the purport of memo dated 10.06.2020 issued by the Principal Secretary to Government, Labour, Factories, boilers & IMS (IMS&VIG) Department, A.P.

45. As already stated, hybrid situation is found in the present case, covering a long period of the alleged instances, either prior to amendment of the Prevention of Corruption Act, 1988 or thereafter. However, the nature and import of Section 17-A of the Prevention of Corruption Act reflect that it is procedural in nature. Therefore, the test applied by Karnataka High Court in ***T.N.Bettaswamaiah*** case (30 referred supra) requires application, in this respect. It is also desirable to consider and apply principles of interpretation of Statutes explained in ***Commissioner of Income Tax (Central) -1, New Delhi v. Vatika Township Private Limited*** (21 supra) to understand application of Section 17-A of the Prevention of Corruption Act. They are as under:

---

[31]. (1994) 4 SCC 602
[32]. (2012) 3 SCC 64
[33]. 1995 Supp (3) Supreme Court Cases 456

" 27. A legislation, be it a statutory Act or a statutory Rule or a statutory Notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of 'Interpretation of Statutes'. Vis-à-vis ordinary prose, a legislation differs in its provenance, lay-out and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.

28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit : law looks forward not backward. As was observed in Phillips vs. Eyre[3], a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

29. The obvious basis of the principle against retrospectivity is the principle of 'fairness', which must be the basis of every legal rule as was observed in the decision reported in ***L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co.Ltd [(1994)1 AC 486].*** Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.

30. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In ***Government of India & Ors. v. Indian Tobacco***

Association [(2005)7SCC 396], the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in the case of ***Vijay v. State of Maharashtra & Ors***. ***[(2006)6 SCC 289]*** It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are confronted with any such situation here.

31. In such cases, retrospectively is attached to benefit the persons in contradistinction to the provision imposing some burden or liability where the presumption attaches towards prospectivity. In the instant case, the proviso added to Section 113 of the Act is not beneficial to the assessee. On the contrary, it is a provision which is onerous to the assessee. Therefore, in a case like this, we have to proceed with the normal rule of presumption against retrospective operation. Thus, the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by out weighing factors.

. . . . . .

. . . . . .

. . . . . .

35. We would also like to reproduce hereunder the following observations made by this Court in the case of ***Govind Das v. ITO ((1977) 1 SCC 906]***, while holding Section 171(6) of theIncome-Tax Act to be prospective and inapplicable for any assessment year prior to 1st April, 1962, the date on which the Income Tax Act came into force: (SCC p.914,para 11)

> "11. Now it is a well settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that
>
> > 'all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospectively and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.' "

46. A careful analysis of Section 17-A of the Prevention of Corruption Act, in these circumstances, brings out that it has burdened the authorities enumerated therein and others with certain obligations/ liabilities and advantages to the subjects. Though it is procedural in nature on account of its ultimate effect on the prosecution or investigating agency, it remains prospective. Thus, it gets stranded in its retrospective operation. Hence, it has only prospective application w.e.f. 26.07.2018.

47. A *prima facie* consideration of the memo so issued by the Government, no illegality or impropriety in initiation of the proceedings leading to registration of FIR by the respondent agency, can readily be inferred. Therefore, this is a case where there is no infraction of section 17-A of the Prevention of Corruption Act, affecting the arrest of the petitioner and consequent action in remanding him to judicial custody under Section 167 Cr.P.C.

48. Sri Siddartha Luthra, learned senior counsel further pointed out that there is a long delay in initiating the alleged proceedings and registration of FIR and going by the observations in Lalitha Kumari case referred to supra where 15 days limit is prescribed, this delay is a certain factor favouring the petitioner.

49. However, the learned Advocate General disputed this proposition. In Lalitha Kumari case the instances where a preliminary enquiry is required are stated drawing conclusions and directions, while observing that the police can conduct a sort of preliminary enquiry in limited scope as to whether a cognizable offence has been committed. In para 111, the conclusions and directions in this ruling of Constitution Bench of Hon'ble Supreme Court are as under:

"111. In view of the aforesaid discussion, we hold:

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permission in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates that necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) xxxxx

(viii) xxxxx"

50. Contentions are advanced on behalf of both the parties as to whether there was any preliminary enquiry before registering FIR in this case. On behalf of the petitioner, contents of the counters filed by the respondent agency in the trial Court as well as in this Court are referred to in this context. On behalf of the respondent, the contention is that there was a vigilance enquiry preceding issuance of authorization under Section 17-A of the Prevention of Corruption Act registration of FIR and that it is not in any manner affected. When the instances pointed out in this case

attract cognizable offences leading to registration of FIR, as observed in Lalitha Kumari case, registration in terms of Section 154 Cr.P.C. of FIR is imminent. Even otherwise, prima facie consideration of the material makes out that there was a prior effort in this respect, in the nature of vigilance enquiry basing on which, the complaint was presented, on which FIR was registered.

51. Delay sought to be pointed out on behalf of the petitioner as such in this context in registering FIR to consider grant of bail to the petitioner, did not have bearing.

52. Sri Siddartha Luthra, learned Senior counsel further pointed out effect of covid pandemic, while referring to the present status of the petitioner who is under medical treatment as a possible ground for grant of bail. Reasons are assigned supra that this reason of requiring medical attention is not a ground as such, to canvass in this matter for the petitioner.

53. Apart from the gravity and magnitude of the instances involved in this case that inhibit grant of bail to the petitioner, as rightly contended by the learned Advocate General, possibility of the investigation getting affected once the petitioner is released on bail is very much foreseen. Instances are pointed out by the learned Advocate General as to scaring away the witnesses to come forward to assist the investigating agency. In the back drop of the circumstances in this case, where ramifications and reflections seem to be imminent, this contention as such cannot be brushed aside. These are other factors that warrant rejection of request of the petitioner for bail.

54. It should also to be borne in mind that these instances represent a serious economic offence. Its effect is stated in Nimmagadda

Prasad case (15 referred to supra). The relevant observations in this ruling are in para 25, which read as under:

> *"25. 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 a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."*

55. In the light of these observations, reliance sought to be placed on behalf of the petitioner in ***Kaladindi Sanyasi Raju vs. State of Andhra Pradesh*** (11 referred supra) can have no bearing.

56. Therefore, on a careful consideration of the entire material, the inference to draw is that the petitioner is not entitled for bail and hence this petition has to be dismissed.

57. In the result, the Criminal Petition is dismissed.

_____
JUSTICE M.VENKATA RAMANA

Dt:29.07.2020

Note: LR copy
B/o
RR

HON'BLE SRI JUSTICE M.VENKATA RAMANA

CRL.P.No.2479 of 2020

Dt:29.07.2020

RR