

THE HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO

CRIMINAL PETITION No.7951 OF 2023

ORDER:

1. This petitioner/A.37 has filed the present Criminal Petition invoking the provisions of Sections 437 and 439 of the Code of Criminal Procedure (**Cr.P.C.**) seeking regular bail pertaining to Crime No. 29 of 2021, registered at the C.I.D., Police Station, Amaravati, Andhra Pradesh.

2. The petitioner, along with others, stands accused in a case involving the offences punishable under Sections 166, 167, 418, 420, 465, 468, 471, 409, 201, 109 read with Section 120(B) of the Indian Penal Code, 1860 (referred to as '**IPC**'), and Sections 13(2) read with Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 (referred to as '**PC Act**').

3. The case against the petitioner and others is as follows:

- i. Based on a report dated 07.09.2021 filed by the Andhra Pradesh State Skill Development Corporation's (**APSSDC**) Chairman, Crime No. 29 of 2021 was registered by the CID. The report asserts that APSSDC, established on 13.12.2014 by G.O.Ms.No.47 (HE) (EC.A2) Department, collaborated with **SIEMENS** on a project to impart Hi-end technology to trainers. APSSDC sent a team to evaluate existing SIEMENS Centres of Excellence in Gujarat. Negotiations resulted in the agreement to establish SIEMENS Centre of Excellence, Technical Skill Development Institutions, and Skill Development Centres in clusters.
- ii. Six clusters were formed at the inception for Rs. 546,84,18,908/-, with SIEMENS and Design Tech providing a grant-in-aid of 90%, i.e.,

Rs. 491,84,18,908/-, and the Government's share thereof 10%, i.e., Rs. 55,00,00,000/-. A Memorandum of Agreement (MoA) was signed between APSSDC and SIEMENS under G.O.Ms. No. 4, dated 30.06.2017. Subsequently, a tax investigation by the Additional Director General, GST, Pune, regarding CENVAT credit claims by **M/s. Design Tech Systems Private Limited** and **M/s. Skillar Enterprises India Private Limited** exposed a significant financial scam by SIEMENS and Design Tech involving funds allocated to APSSDC.

- iii. The Memorandum of Agreement (MoA) specifies that Design Tech is obligated to provide training software development, including various sub-modules for advanced manufacturing CAD/CAM. The MoA explicitly prohibits sub-contracting. Despite this, SIEMENS and Design Tech subcontracted a substantial portion of their work to M/s. Skillar Enterprises Private Limited, New Delhi, employs a self-centric approach reminiscent of Solomon's wisdom.
- iv. Design Tech claimed that M/s. Skillar Enterprises Private Limited provided training software development for advanced manufacturing of CAD/CAM, and payments for royalty and subscription were made as they developed the software. M/s. Skillar allegedly supplied the software directly to Skill Development Centers in Andhra Pradesh. When tax authorities questioned M/s Skillar, it denied subcontracting technical work, stating the software provided was technical material, and invoices wrongly mentioned royalty and subscription.
- v. A.D.G.G.I., Pune, found contradictory stands between the service provider and service receiver. Further scrutiny revealed that M/s. Skillar purchased the software from shell/defunct companies, forming a cartel to siphon off public funds amounting to crores of rupees. The

Managing Director of Design Tech admitted a lack of evidence showing services received from these companies.

- vi. The Corporation was directed to conduct a forensic audit upon discovering financial irregularities. M/s. Sharat and Associates, a Forensic Audit Firm, conducted an inquiry, revealing flaws in policies, systems, fund utilization, and various spending practices. The audit covered the financial years 2014-15 to 2018-19, despite their responsibility to oversee the work and maintenance of the clusters, M/s. SIEMENS and Design Tech engaged in fraudulent activities, dubiously swindling crores of rupees.

4. The case of the petitioner/A.37, in brief, is that:

- i. The petitioner was detained on 08.09.2023 at 11 P.M. and formally arrested at 6 A.M. on 09.09.2023 in connection with Crime No.29 of 2021 by the CID Police, Mangalagiri. He preferred a regular bail through Crl. M.P.No.1167 of 2023 before the Special Judge, Vijayawada, handling SPE & ACB Cases, which was rejected via an order dated 09.10.2023 without the court appreciating the petitioner's case.
- ii. The petitioner, a former Chief Minister of Andhra Pradesh and the current Leader of the Opposition, aged about 73, and National President of the Telugu Desam Party (TDP), was not initially named in the FIR during its registration. Several accused individuals, including those specifically implicated (Nos. 6, 8, and 10), were granted anticipatory and regular bail, with none presently in custody. The petitioner contends that his addition as an accused was malicious and politically motivated, executed through a memo on 08.09.2023, utilizing Sections 34 and 37 of the IPC. The petitioner asserts that his sudden, strategically timed arrest is aimed at obstructing him and his

party from campaigning for the upcoming State Elections, with the State resorting to this arrest to derail his public outreach efforts.

- iii. The petitioner, a senior citizen aged about 73, has a medical history of long-standing diabetes and hypertension. His arrest allegedly violated the procedures outlined in Section 50 of the Cr.P.C. Notably, the petitioner has a medical record of Hypertrophic Cardiomyopathy, Diabetes Mellitus, and Vitiligo. Regular check-ups by a longstanding team of doctors are necessary for monitoring his heart/cardiac and skin conditions. Given his health concerns, maintaining proper hydration is crucial to prevent complications. Notably, due to a perceived threat, the Central Government provided Z+ security by the National Security Guard (NSG) following an attempted assassination in 2002.
- iv. The prosecution, even after more than 30 days of continuous incarceration, has failed to present any material linking the petitioner to witnesses. Without tangible evidence, the petitioner argues against being held in custody based on the whims and caprices of the investigating agency. The respondent's attempt to attribute the actions of other co-accused to the petitioner, alleging obstruction to the investigation, is contested. The petitioner asserts the legal principle that bail is the rule, and jail is the exception, emphasizing that an accused person is better positioned to handle their case and defend themselves when not in custody.
- v. The petitioner asserts that there is no prima facie material or evidence in the investigation records proving his guilt. It is claimed that he was implicated in this crime with malicious intent for political vendetta and at the behest of the current ruling party. During bail applications of other accused, the court reportedly observed a lack of material showing how the pecuniary loss was caused to the APSSDC.

The petitioner contends that the sole motive behind seeking his continued incarceration is to mentally harass and torture him in an attempt to extract a confession for the alleged offences.

5. A counter filed by the Respondent/State, denying all the allegations made in the petition, contending as below:

- i. The bail decisions should consider the prima facie case and the gravity of the alleged offence. The petitioner and others are accused of conspiring to manipulate a Skill development project, allotting it on a nomination basis with the intent of causing wrongful gain to themselves and loss to the Government Exchequer. Notably, multiple institutions, including the State of A.P., the Enforcement Directorate, Securities and Exchange Board of India, Goods and Services Tax Intelligence, Income Tax authorities, SIEMENS Group, and APSSDC's forensic audit, have uncovered illegalities related to the petitioner's activities and the project in question.
- ii. The scam, totalling more than Rs.370 Crores, came to light in 2018 through a letter from the Director General of Goods and Services Tax Intelligence to the government. However, no action was taken by the then government. Subsequently, an inquiry was ordered by DG, ACB, AP, in response to a whistleblower petition dated 05.06.2018, entrusted to Mr. N. Venkateswara Rao, DSP, ACB, AP. Unfortunately, the inquiry was not conducted until the petitioner's regime ended. Continuing the inquiry, letters dated 09.02.2021 and 22.02.2021 were sent to APSSDC within ACB, A.P. Based on the Forensic Audit Report and the MD of APSSDC's request, the Principal Secretary on 11.07.2021 directed ADGP, CID, AP to investigate. ACB officials, including Mr N. Venkateswara Rao, DSP, and Mr Giribabu, Inspector of Police, examined and collected documents from APSSDC.

- iii. The present complaint revolves around the misappropriation and transfer of Rs.370 Crores into various shell companies, from which the petitioner and other accused withdrew the funds in cash. Notably, the Securities and Exchange Board of India (SEBI) conducted an independent investigation into the existence of shell companies in India, submitting a report dated 07.08.2017. Through an independent examination, the Income Tax authorities concluded that the petitioner engaged in large-scale fraudulent cash transactions. The petitioner allegedly influenced the government's release of substantial cash amounts to specific private entities, facilitated through intermediaries like Mr. Manoj Vasudev Pardasany. Subsequently, these entities transferred the received cash back to the petitioner through individuals such as Mr Pendyala Srinivas (the petitioner's former Personal Secretary), Mr Kilaru Rajesh (a close associate), or Mr Nara Lokes (the petitioner's son). A notice dated 04.08.2023 from the Income Tax authorities details that the petitioner received over Rs.100 Crores in cash.
- iv. In the context of the current case, an internal inquiry conducted by the SIEMENS Compliance Regulatory Department revealed that SIEMENS does not employ a Grant-in-Aid financial mechanism, which is pertinent to the present scam. Notably, SIEMENS discovered Hawala transactions and significant swindling by the involved parties. The transfer of swindled amounts followed the typical Hawala method, utilizing specific currency note numbers to identify the intended recipients.
- v. Following the FIR filed on 09.12.2021, the Enforcement Directorate (ED) independently initiated an ECIR dated 04.03.2023 under the Prevention of Money Laundering Act, 2002, related to the project. This led to the arrest of individuals, including (1) Soumyadri Sekhar

Bose (Ex-MD of SISW), (2) Vikas Vinayak Khanvelkar (MD of Design Tech), (3) Mukul Chandra Agarwal, and (4) Suresh Goel (a Chartered Accountant from Delhi) in a money laundering case involving the diversion and misutilization of funds from APSSDC and others.

- vi. The Forensic Audit report conclusively states that out of the Rs.371 Crores, at least Rs.241 Crores were misappropriated by SISW and Design Tech diverted to various shell companies. The investigation focuses on a similar modus operandi employed by the accused during the petitioner's tenure as the Chief Minister. The petitioner, implicated in multiple scams, faces objections from the Finance Secretary, who insisted on the necessity of bank guarantees for fund releases, recommending phased disbursements.
- vii. In the initial draft agreement, the Project team was required to provide bank guarantees as security. However, an internal SISW email dated 26.05.2015 suggests the Project team considered approaching the petitioner to remove the bank guarantee clause. The petitioner, demonstrating knowledge, intent, oversight, and control, facilitated the removal of the bank guarantee clause from the final agreement. APSSDC allowed this at the petitioner's instruction. Once funds were disbursed to Design Tech, they were promptly transferred to shell companies, such as PVSP IT Skills/Skillar Enterprises Pvt. Ltd., Allied Computers International (Asia) Ltd., M/s. Patrick Info Services Pvt. Ltd., M/s. IT Smith Solutions Pvt. Ltd., M/s. Inweb Services Pvt. Ltd., M/s. Knowledge Podium, M/s. Talent Edge, who had raised bogus invoices upon SISW/Design Tech, issued bogus invoices to SISW/Design Tech.
- viii. The petitioner's claim of lacking prior approval for investigation under Section 17-A of the PC Act is to be dismissed as misconceived. The penal provisions are prospective, and Article 20 of the Constitution

prohibits retrospective criminal laws. Section 17-A of the PC Act does not protect the petitioner, as his actions were unrelated to official functions and solely pursued personal benefit.

- ix. A prima facie case against the petitioner has been clearly established. The Remand Report thoroughly discussed all material facts and submitted relevant documents. Note files related to the project were removed from the Secretariat once central tax agencies began uncovering the misappropriation of funds. Witness statements and note files regarding relevant government orders revealed that the petitioner, acting as a public servant during 2015-19, abused his position, securing financial advantages for M/s. DesignTech (A.4) then funnelled the funds into various shell companies like PVSP/Skillar, ACI, Inweb, and Patrick Info.
- x. The petitioner, identified as the Principal Conspirator, served as the sole decision-maker in transactions, orchestrating a scheme to disproportionately transfer public funds to private entities, bypassing official protocols. The offences, punishable by over 10 years of imprisonment, constitute a financial misdemeanour by public officials. The deep-rooted conspiracy necessitates thorough interrogation to unravel all elements, securing information through witness confrontations. Releasing the petitioner on bail would impede the investigation, preventing the conclusion of this complex financial fraud.
- xi. During the investigation, bank account transaction statements of TDP were obtained from Union Bank of India, Jubilee Hills Branch, Hyderabad, and Bank of Baroda, Jubilee Hills Branch, Hyderabad, covering the period from 01.06.2014 to 31.12.2018. Analysis revealed cash deposits of Rs.77.37 Crores into these accounts. According to the Representation of People's Act, 1951, cash deposits exceeding

Rs.2000 should only be accepted through banking channels, with KYC details of the donor maintained as a record. For electoral bonds exceeding Rs.20,000, political parties must also preserve the KYC details of the donor.

- xii. The investigation is in a crucial stage, and if the accused, particularly the petitioner and associates, are released on bail, their exhibited acts and intimidating tactics against officers could impede the investigation. The substantial financial fraud involving misappropriation of significant public funds underscores the seriousness of the case. The reliance on various bail pronouncements is either misconceived or inapplicable to the specific facts of this case.

6. An additional counter filed by the Respondent-State alleges that the petitioner/A.37 indirectly influenced witnesses through co-accused and party members by filing false complaints and making press/media statements against the witnesses. Following the petitioner's arrest on 09.09.2023, co-accused Mr Sumon Bose (A.6) and Mr Vikas Khanvelker (A.8) sought to derail the investigation by addressing the media and making false allegations. Bail cancellation petitions were filed against Mr Vikas Khanvelker (A.8). The investigation revealed significant cash deposits into TDP party accounts during the period corresponding to the offence timeline, involving misappropriation of APSSDC funds and their diversion to various accused, including Hawala transactions.

7. Moreover, the nature of cash deposits, primarily in Rs.500 and Rs.1000 between November 2016 and January 2017, raised suspicions, especially considering the demonetization of these denominations

announced on 08.11.2016. Notices under Sections 160 & 91 of Cr.P.C. were sent to the General Secretary-cum-Treasurer, TDP on 31.10.2023 and 04.11.2023 and to the State President of TDP to furnish the Books of Accounts for the said cash deposits. In turn, fresh notices dated 13.11.2023 were sent to the State President of TDP and the General Secretary of TDP with a request to produce the books of accounts pertaining to the huge cash deposits, specifically for the period January 2015 to June 2019. However, associates of the petitioner/A.37 allegedly avoided cooperation with the investigation under the petitioner's influence. The other contentions raised will be considered in the following part of the order.

8. Heard Sri Siddharth Luthra and Sri Dammalapati Srinivas, learned Senior Counsel, representing the petitioner/A.37, and Sri Ponnawolu Sudhakar Reddy, learned Additional Advocate General, representing the Respondent-State. Both sides reiterated their submissions on par with the contentions presented in the petition, counter, and additional counter. Consequently, the contentions raised by learned counsel need not be reproduced.

8. The learned Additional Advocate General for the Respondent-State submits that the Economic offences having deep-rooted conspiracies need to be viewed seriously. In support of his contention, he relied on a decision

reported in **Gautam Kundu v. Directorate of Enforcement** (2015) 16 SCC 1¹, wherein the Hon'ble Supreme Court observed that:

"37. xx We are sure that it is not expected at this stage that the guilt of the accused has to be established beyond reasonable doubt through evidence. We have noted that in Y.S. Jagan Mohan Reddy v. CBI : (2013) 3 SCC (Cri) 552], this Court has observed that: (SCC p. 449, para 34)

"34. ... 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."

9. Learned Additional Advocate General for the Respondent-State relied on a decision reported in **State of Gujarat v. Mansukhbhai Kanjibhai Shah**², wherein the Hon'ble Supreme Court observed that:

"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."

10. He further relied on a decision reported in **State of Bihar & Anr v. Amit Kumar Alias Bachcha Rai**³, wherein the Hon'ble Supreme Court held that:

"11. Although there is no quarrel with respect to the legal propositions canvassed by the learned counsel, it should be noted that there is no straitjacket formula for consideration of grant of bail to an accused. It all depends upon the facts and circumstances of each case. The

¹ (2015) 16 SCC 1

² (2020) 20 SCC 360.

³ (2017) 13 SCC 751

Government's interest in preventing crime by arrestees is both legitimate and compelling. So also is the cherished right of personal liberty envisaged under Article 21 of the Constitution. Section 439 of the Code of Criminal Procedure, 1973, which is the bail provision, places responsibility upon the courts to uphold procedural fairness before a person's liberty is abridged. Although "bail is the rule and jail is an exception" is well established in our jurisprudence, we have to measure competing forces present in facts and circumstances of each case before enlarging a person on bail".

11. He further relied on a decision reported in **Central Bureau of Investigation v. Santosh Karnani & Anr.**⁴, the Hon'ble Apex Court held that:

"23. In Sushila Aggarwal v. State (NCT of Delhi)⁹, the Constitution Bench reiterated that while deciding applications for anticipatory bail, courts should be guided by factors like the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case.

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31. The nature and gravity of the alleged offence should have been kept in mind by the High Court. Corruption poses a serious threat to our society and must be dealt with iron hands. It not only leads to abysmal loss to the public exchequer but also tramples good governance. The common man stands deprived of the benefits percolating under social welfare schemes and is the worst hit. It is aptly said, "Corruption is a tree whose branches are of an unmeasurable length; they spread everywhere; and the dew that drops from thence, Hath infected some chairs and stools of authority." Hence, the need to be extra conscious."

12. Whereas the learned Senior counsel for the petitioner relied on a decision reported in **P. Chidambaram v. CBI**⁵, wherein the Hon'ble Apex Court held that:

"22. 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 its own merits. The discretion of the court has to be

⁴ 2023 SCC Online SC 427.

⁵ (2020) 13 SCC 337

exercised judiciously and not in an arbitrary manner. At this stage itself, it is necessary for us to indicate that we are unable to accept the contention of the learned Solicitor General that the "flight risk" of economic offenders should be looked at as a national phenomenon and be dealt with in that manner merely because certain other offenders have flown out of the country. The same cannot, in our view, be put in a straitjacket formula so as to deny bail to the one who is before the court due to the conduct of other offenders if the person under consideration is otherwise entitled to bail on the merits of his own case. Hence, in our view, such consideration, including "flight risk", is to be made on an individual basis, being uninfluenced by the unconnected cases, more so when personal liberty is involved.

23. *In Kalyan Chandra Sarkar v. Rajesh Ranjan [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977], it was held as under : (SCC pp. 535-36, para 11)*

"11. The law in regard to grant or refusal of bail is very well-settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*
- (c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598:2002 SCC (Cri) 688] and Puran v. Rambilas [Puran v. Rambilas, (2001) 6 SCC 338 : 2001 SCC (Cri) 1124])."*

13. In a decision reported in **Satender Kumar Antil v. Central Bureau of Investigation⁶**, the Hon'ble Apex Court held that:

⁶ (2022) 10 SCC 51.

"90. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in P. Chidambaram v. Directorate of Enforcement [P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791 : (2020) 4 SCC (Cri) 646] , after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgments, will govern the field".

14. In the light of the above settled legal principles, this Court is of the view that though a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice, a brief examination to be satisfied with the existence or otherwise of a prima facie case is necessary.

15. The petitioner was produced before the Special Judge, Vijayawada, at 6 A.M. on 10.09.2023, with the time and date of his arrest indicated as 6 A.M. on 09.09.2023. Subsequently, the Respondent filed an application under Section 167 of Cr. P.C. before the Special Judge, seeking judicial custody of the petitioner for 15 days. The petitioner opposed the custody, citing non-compliance with Section 17-A of the PC Act. The Special Judge later remanded the petitioner to judicial custody until 22.09.2023. On 11.09.2023, the Respondent filed another application under Section 167(2) of Cr. P.C before the Special Judge through Crl. M.P.No.1108 of 2023, seeking Police Custody of the petitioner for five days.

16. On 12.09.2023, the petitioner filed Criminal Petition No.6942 of 2023 before this Court, seeking the quashing of FIR in Crime No.29 of 2021 and all consequential proceedings, citing lack of sanction under Section 17-A of the PC Act. Simultaneously, the petitioner sought the suspension of his remand as interim relief. On 14.09.2023, the petitioner filed Crl. M.P.No.1167 of 2023 before the Special Judge, seeking regular and interim bail. On 22.09.2023, this Court dismissed Criminal Petition No.6942 of 2023. Subsequently, the petitioner filed SLP (Crl) No.12289 of 2023 before the Hon'ble Supreme Court. On 22.09.2023, the Special Judge granted police custody of the petitioner for two days until 24.09.2023 through Crl. M.P.No.1108 of 2021. On 25.09.2023, the respondent filed another application, seeking an additional 15 days of police custody for the petitioner, but this request was rejected on 09.10.2023. Furthermore, the Special Judge dismissed the application for regular bail filed by the petitioner on the same day, 09.10.2023.

17. To better understand the case and weigh the arguments made by both sides, this court views that narration of the admitted facts would help decide the petitioner's application.

- i. The Chairman of the APSSDC lodged a report dated 07.09.2021, and C.I.D. registered a case in Crime No. 29 of 2021. Admittedly, the APSSDC was incorporated by G.O.Ms.No.47 (HE) (EC.A2) Department, dated 13.12.2014. The SIEMENS Project/scheme aims to impart Hi-end technology to the trainers in collaboration with various

State Governments. APSSDC deputed a team to visit SIEMENS Centres of Excellence, already established in Gujarat, and submit a report.

- ii. During negotiations, the State Government agreed to establish the SIEMENS Centre of Excellence, Technical Skill Development Institutions, and Skill Development Centres in different clusters. Six clusters were formed for Rs. 546,84,18,908/-at the inception. SIEMENS and Design Tech contributed 90% as a grant-in-aid, amounting to Rs. 491,84,18,908/-, while the government's share was 10%, equivalent to Rs. 55,00,00,000/- (Rs. 55 Crores). A Memorandum of Agreement (MoA) was entered into between the APSSDC and SIEMENS, under G.O.Ms.No.4, dated 30.06.2017 of the Skill Development Entrepreneurship and Innovation (Skills) Department. As per the Memorandum of Agreement, Design Tech has to provide training software development, including various sub-modules designed for high-end software for advanced manufacturing CAD/CAM.

18. It is the case of the Prosecution that the scam at the centre of the Subject crime, running into an amount of more than Rs.370 Crores, was first discovered by the State when a letter dated 14.05.2018 was addressed from within the Director General of Goods and Services Tax Intelligence (DGSTI) to the then Government (D.G., A.C.B., A.P.), bringing forthwith concerning the project in respect of claims of availing of CENVAT credit by M/s. Design Tech Systems Private Limited and M/s. Skillar Enterprises India Private Limited led to unearthing a huge financial scam involving crores of rupees by

M/s. SIEMENS Industry Software India Private Limited and M/s. Design Tech Systems Private Limited and the funds relate to the APSSDC.

19. It is the prosecution case that the then Government did not take any action. In this connection, D.G., A.C.B., A.P. ordered a regular enquiry into the contents of the whistle-blower petition dated 05.06.2018, entrusting the matter to Mr N. Venkateswara Rao, D.S.P., A.C.B., A.P. However, the enquiry was not conducted till the petitioner's regime was ended due to the influences of the petitioner. Continuing the enquiry on the above petition within the A.C.B., A.P. Letters dated 09.02.2021 and 22.02.2021 were addressed to the APSSDC. Based on the Forensic Audit Report by M/s. Sarath & Associates, and on the request of the M.D. of APSSDC to entrust the case to the C.I.D., A.P., the Principal Secretary dated 11.07.2021, ADGP, C.I.D., A.P. was directed to investigate the matter.

20. The Prosecution contends that the funds amounting to Rs.370 Crores were swindled/transferred into various shell companies from where different accused persons, including the petitioner herein, withdrew the amount in cash. No material is placed to substantiate the contention that the petitioner had withdrawn the amount in cash, as contended. On the other hand, it is the prosecution case that during the investigation, the bank account transactions statements of T.D.P. have been obtained from Union Bank of India, Jubilee Hills Branch, Hyderabad and bank accounts of Bank of Baroda, Jubilee Hills Branch, Hyderabad, for the period from 01.06.2014 to

31.12.2018. It is not in dispute that the petitioner is the former Chief Minister of Andhra Pradesh, and he is presently the Leader of the Opposition and the National President of the Telugu Desam Party.

21. According to the prosecution, a thorough analysis of cash deposits into the mentioned accounts revealed significant amounts deposited in the T.D.P. account. This aligns with the timeline of the alleged misappropriation of APSSDC funds and their diversion to various accused individuals. Notices were sent to the T.D.P.'s General Secretary-cum-Treasurer and the State President on October 31, 2023, and November 4, 2023, requesting the books of accounts for the cash deposits. However, it cannot be definitively concluded that the misappropriated amounts were diverted to the Telugu Desam Party's bank accounts based solely on these observations.

22. The petitioner, A.37, was arrested on September 9, 2023, and remained in judicial custody until being granted interim bail on health grounds on October 31, 2023, following the court's orders. Despite allegations of transferring misappropriated amounts to the T.D.P. party's account, no prima facie evidence is presented to support this claim. This court views that such serious allegations should be backed by substantial material before seeking the remand of the petitioner. The court, at this point, views the lack of supportive material as a gap in the investigation's conclusion that the alleged misappropriated amount had been transferred to the T.D.P. party's account.

23. The prosecution alleges that officials of APSSDC, including Ghanta Subba Rao (A1), Dr. K. Lakshmi Narayana (A.2), and Nimmagadda Venkata Krishna Prasad (A.3), engaged in dishonest and fraudulent activities while holding public offices. They entered into an agreement, deliberately drafted contrary to the terms of G.O.Ms.No.4 dated 30.06.2015, in collusion with Soumyadri Shekar Bose (A.6) and Vikash Vinayak Khanvelkar (A.8), intending to misappropriate and convert funds of APSSDC for personal pecuniary benefits. Severe accusations have been made against A.1 to A.3, A.6, and A.8 compared to the allegations against the petitioner, A.37.

24. The learned Additional Advocate General for the Respondent-State submits that the bail cannot be granted to the petitioner on the ground that the other accused were granted bail, and in the event of parity is claimed, it is for the court to determine whether a case for the grant of bail on reasons of parity is made out. In support of his contention, he relied on the observations made in a decision reported in **Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana (Koli) and Anr.**⁷, wherein the Hon'ble Apex Court referred a decision in *Neeru Yadav v. State of U.P.* [*Neeru Yadav v. State of U.P.*, (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527], this Court has held that while applying the principle of parity, the High Court cannot exercise its powers in a capricious manner and has to consider the totality of circumstances before granting bail."

⁷ (2021) 6 SCC 230.

25. Regarding A.1, this Court observed in Crl.P.No.7263 of 2021 that there are no prima facie-specific allegations against him, confirming interim bail granted on 20.12.2021. For A.2, in Crl.P.No.7217 of 2021, the court noted that he gave an undertaking to cooperate with the investigating agency, suffers from old age ailments, and has already been granted bail. A.3, according to the order in Crl.P.No.7258 of 2021, was granted pre-arrest bail as the allegations against him were limited to not placing relevant files before the concerned authority.

26. As for A.6 and A.8, this Court, in orders dated 17.01.2022 in Crl.P.No.7339 of 2021 and Crl.P.No.31 of 2022, stated that there are no specific allegations that A.6 swallowed APSSDC funds or diverted them to personal accounts. A.8 also had no specific allegations in the F.I.R. or remand report, and there was no basis for the petitioner's involvement in the alleged offences, leading to bail being granted to both.

27. The prosecution also implicates Mukul Chandra Aggarwal (A.10) for fraud, forgery, and fabrication of books and accounts in collaboration with A.6 and A.8. However, the court, in an order dated 17.01.2022 in Crl.P.No.7265 of 2021, observed that he never worked as C.O.O., the DGGI report didn't mention siphoning of funds, and the petitioner was not directly concerned with the allegations in the F.I.R. He was granted bail as he was an employee demitted from the office on medical grounds in 2017.

28. The prosecution contends that Shirish Chandrakant Shah (A.13) employed a standard procedure involving the cycling of bogus bills to facilitate the layer re-routing of inward money back to the entity that provided or transferred the funds to the bank account of M/s. A.C.I. Shah, a key figure, devised a plan for the layering of funds originating from PVSP and Design Tech. He allegedly issued several bogus invoices to M/s. Skiller, amounting to approximately Rs.58.24 Crores for Training Software development, including various modules. A.13 was granted bail as per the order dated 19.01.2022 in Crl.P.No.151 of 2022 under Section 437 & 439 Cr.P.C.

29. The records indicate that the accused No.13 allegedly issued bogus invoices through various shell companies to avoid paying G.S.T. A.13 was granted regular bail, and anticipatory bail was extended to A.20, A.21, A.22, and A.36. A.36, accused of playing a significant role in diverting APSSDC funds by conspiring with her husband (A.35), received an email from him. The Hon'ble Apex Court granted anticipatory bail to A.35 in S.L.A. (Crl.) No.9772/2023.

30. The Prosecution has not asserted that SIEMENS and Design Tech, parties to a Memorandum of Agreement with APSSDC, have failed to deliver high-end technology to trainers in collaboration with various State Governments. At this juncture, it is pertinent to refer to the observations made by this Court in Crl.P.No.2904 of 2023 filed under Sections 437 & 439

of Cr.P.C. seeking to grant regular bail to the petitioner/A.4 in Crime No.29 of 2021 of CID PS, which reads as under:

"13. In pursuance of the agreement, it is borne out of the record that 2,13,000 students were trained, and to that extent, certificates have been issued to all the students that they have been trained. The service certificates issued by the other companies would go to show that the monies are being spent on the training programmes."

31. The learned Additional Advocate General for the Respondent-State highlighted that a review of the chat transcript (SMS and WhatsApp messages) between Mr Bose and Mr Khanvelkar, owner of Design Tech, confirms multiple similar transactions executed from December 31, 2014, to January 2016. However, the chat transcript messages involving the exchange of currency note numbers as tokens do not establish the relevance of WhatsApp messages between Mr. Bose and Mr. Khanvelkar to the present transaction. The Memorandum of Agreement (MoA) was entered in between APSSDC and SIEMENS, dated 30.06.2017, under G.O.Ms.No.4 of the Skill Development Entrepreneurship and Innovation (Skills) Department. The Prosecution has not linked the WhatsApp messages to the present transaction, and it remains unclear how these messages connect to the petitioner/A.37 in the alleged transactions. The Prosecution acknowledges that the source of cash received and the purpose of this transaction could not be determined from the messages.

32. The Prosecution heavily relies on the Forensic Audit Report of APSSDC, SIEMENS project by M/s. Sarath & Associates. The report notes

that APSSDC provided photocopies of the Board Minutes concerning the SIEMENS project and the Minutes of the State Level Monitoring Committee and Local Board of Governance Committee, which are not available with APSSDC. The report mentions conflicting statements from DESIGNTECH and SIEMENS regarding the place of MOA execution.

33. When there is no dispute about the MOA's execution, it is the Prosecution's responsibility to explain how conflicting statements about the place of execution, without mentioning the date in the agreement, support the case against the accused, especially the petitioner/A.37, who is not a party to the agreement. The report highlights that the final draft of the agreement did not contain a bank guarantee clause, allegedly removed by SISW on the petitioner's instructions. It is not brought to this Court notice as to which witness stated like so during the course of the investigation.

34. The report further notes that according to the MOA and License Agreement, the actual signatory for SIEMENS was Mr. Soumyadri Sekhar Bose, but Mr. Suman Bose signed the MOA. The report points out differences in signatures and the absence of the signing date and government sanction letter number and date. The Prosecution needs to clarify how the petitioner can be held responsible for such discrepancies, as it is not his duty, as the then Chief Minister, to verify and compare parties' signatures. The Forensic Audit report includes disclaimers in Paragraph 9:

- “(h) S&A is not intending or agreeing to act as an expert witness or provide an expert opinion or expert testimony during any legal proceeding or be deemed as representing or advocating any position on behalf of any party in any legal matter or proceeding.
- (i) This report is furnished solely for the information of the Client with its request to S&A to conduct a forensic audit engagement letter dated August 6 2020. It should not be used, circulated, quoted or otherwise referred to for any other purpose, nor included or referred to in whole or in part in any document without our prior written consent (Except Regulatory Authorities).
- (j) S&A assumes no responsibility to any user of the report other than the Client. Any other persons who choose to rely on our report do so entirely at their own risk (Except Regulatory Authorities).
- (k) Information obtained during the search on the identified databases (internet) is included in this report without any further verification. Ascertaining the reasons or genuineness or completeness/correctness of such information was beyond the scope of this engagement.”

35. The disclaimer provided by S&A emphasizes its significance. Nevertheless, it is crucial to underscore that the petitioner cannot be held accountable for the discrepancies highlighted in the report. It remains to be clarified how the differences outlined in the report can be deemed the fundamental cause for the alleged misappropriation of funds.

36. As per the material on record, the Authorized Signatory of SIEMENS addressed a letter dated 17.05.2023 to C.I.D., Government of Andhra Pradesh, responding to the question as to whether SISW provided any Grant-in-Aid in this project, which reads as follows:

"Response: As the Grant-in-Aid, i.e. 90% Grant-in-Aid as mentioned in the Government Order, was not required to be provided by SISW for the APSSDC Project, so, SISW did not provide 90% grant-in-aid on total project cost for APSSDC project. The tripartite agreement also does not mention any Grant-in-Aid. SISW only provided discounts on the products supplied by it, which is often referred to as Go P.L.M. grant or In-Kind Grant by the commercial team that is a discount on software cost provided by SISW only, but there was no requirement of the Grant-in-Aid on the project cost".

37. In the said letter, it is mentioned in Para 19, which reads as follows:

"19. We note that the projection to APSSDC of "discounts offered by SISW on its product/software price projected as "90% Grant-in-Aid on the total APSSDC project cost" by Mr. Suman Bose and the relevant project team members was wrong, and grant-in-aid was not approved by the board of SISW. The current management of SISW or its global management is not aware of the reasons and intention of Mr Bose in such a false projection and does not mention the Grant in Aid in Tripartite Agreement. As stated above, an "In-kind grant" is a discount provided on the academic price of the SISW products/software and any projection on a percentage basis can only be made in relation to the cost of the SISW products/software and not the project cost. However, we

understand from our discussions with you and records available with SISW that Mr Bose and the relevant Project team have wrongly projected this discount as "90% Grant-in-Aid, i.e. in the total project cost of 3300 crores". We reiterate that an "In-kind grant" is not a separate monetary contribution, sponsorship or donation, nor a Grant-in-Aid. It is only a discount given on the academic price over the products/software supplied by SISW."

38. In the Forensic Audit Report, Para 'E' reads as follows:

"E. Out of 370.78 Crores, DESIGNTECH charged Rs.92 Crores for providing Running Interactive Learning Contents and Updates, however as per the mail confirmation given by the SIEMENS stated that they provided the update and maintenance services for a period of one year only and the cost already included in the cost of the software as per the bills provide to us by SIEMENS."

39. It is pertinent to note that this Court has granted regular bail to Soumyadri Shekar Bose (A.6). It is not in dispute that the team, including Smt. K. Sunitha, Secretary to Govt., the Finance Department, visited L.D. College of Engineering, Ahmedabad, The representative of SIEMENS and Design Tech, has also participated in the discussions. The team submitted a report on the activities of SIEMENS and Design Tech in the State of Gujarat with the following observations:

"SIEMENS is a reputed company working with Design Tech, and implementation of the Project in Gujarat is satisfactory. The training facilities proposed to be set up in Andhra Pradesh will immensely benefit the students/trainees by imparting employable skills to the students/trainees and making available the required

skilled workforce in the State of Andhra Pradesh. These trainees can also avail themselves of global employment opportunities with the skills acquired in these facilities.

Therefore, the entire amount of Rs.270 Crores available in the P.D. Account of the Corporation may be released immediately to retain the interests of the SIEMENS in the project."

40. The Prosecution has not alleged that Smt. K. Sunita and her team submitted an incorrect report, and actions were taken against them. The petitioner's counsel argues that the respondent should acknowledge the project's goodwill, aimed at equipping students with skills, benefiting approximately 2,13,000 students. While it is undisputed that around 2 lakhs of graduates received technical training and appreciation letters, the Prosecution contends that out of the funds totalling Rs.371 Crores, at least Rs.241 Crores were misappropriated by SISW and Design Tech, diverted to various shell companies. The petitioner questions the feasibility of providing training to over 2 lakh graduates under such circumstances, as the Prosecution has not indicated a lack of infrastructure in the Technical Skill Development Institutions and Skill Development Centres in different clusters.

41. The Prosecution asserts that the Finance Secretary raised objections, emphasizing that funds should only be released with necessary security in the form of bank guarantees. Despite objections, the Chief Secretary, with the Chief Minister's endorsement, ordered the release of funds. The Prosecution does not argue that the Chief Minister lacked authority to issue

such directions when objections were raised for the release of B.R.O.s. The petitioner's inclination to clear funds does not imply his involvement in the offence without evidence of funds being diverted to his or his party's account. The court agrees with the petitioner's Senior Counsel that the petitioner cannot be held responsible for every subcontractor's evasion. There is no prima facie indication that officials informed the petitioner of such deviations.

42. Learned Additional Advocate General for the Respondent-State submits that the petitioner could not claim the case as a regime revenge by the present Government. The issue started on 14.05.2018 by a whistleblower during the previous government's regime, but that blame is unfairly thrown on the present government. He relied on a decision reported in ***Jitender Kumar & Ors. V. State of Haryana & Anr.***⁸, the Hon'ble Supreme Court held that:

"57. There cannot be any doubt in regard to the aforementioned proposition of law but the question herein is whether public interest would be subserved by asking the State to proceed to make appointments. Whereas, on the one hand, an action on the part of the State to interfere with the good work done by the previous Government solely on the basis of change in the regime must be deprecated, there cannot however be any doubt whatsoever that the successor Government cannot blink over the illegalities committed by the previous Government. If illegalities have been committed, the same should be rectified. When there exists a reasonable apprehension in the mind of the State, having regard to the overall situation including the post-haste manner in which actions had been taken, to cause an inquiry to be made and suspend the process of making appointments till the result of

⁸ (2008) 2 SCC 161.

such inquiry is obtained, such a decision on its part per se cannot be said to be an act of arbitrariness or unreasonableness."

43. Learned Additional Advocate General for the Respondent-State, relied on a decision reported in ***Ramveer Upadhyay & Anr. V. State of U.P⁹***, wherein the Hon'ble Supreme Court held that:

"30. The fact that the complaint may have been initiated by reason of political vendetta is not in itself grounds for quashing the criminal proceedings, as observed by Bhagwati, CJ in Sheonandan Paswan v. State of Bihar. It is a well-established proposition of law that a Criminal prosecution if otherwise justified and based upon adequate evidence, does not become vitiated on account of mala fides or political vendetta of the first informant or complainant. Though the view of Bhagwati, CJ in Sheonandan Paswan (supra) was the minority view, there was no difference of opinion with regard to this finding. To quote Krishna Iyer, J., in State of Punjab v. Gurdial Singh, "if the use of power is of the fulfillment of a legitimate object, the actuation or catalyzation by malice is not logical."

44. During the ongoing investigation, this Court is unconvinced by the petitioner's claim that the case was politically motivated as a regime revenge by the present Government. The Respondent-State highlights that the issue was raised by a whistle-blower during the previous Government's regime. While the Respondent argues that the Income Tax authorities independently examined the petitioner's role and found fraudulent transactions, no supporting material has been presented.

45. The Prosecution's claim that the petitioner indirectly influenced witnesses, co-accused, and party members lacks substantiating material. The filing of a petition by Kilaru Rajesh before the S.H.O., Jubilee Hills Police

⁹ 2022 SCC OnLine 484

Station, and the non-appearance of Pendyala Srinivas, Ex. P.A. to the petitioner do not bear relevance to the bail application. The agency should follow legal procedures to address any concerns regarding Pendyala Srinivas. The allegation that the petitioner influenced key witnesses and hindered the investigation lacks supporting evidence. The copy of the F.I.R. in Crime No.531 of 2023 of Begumpet Police Station does not show a violation of interim bail conditions by the petitioner, such as conducting a rally. The fact that the petitioner is on interim bail for medical reasons does not preclude him from seeking remedies through other legal channels, like applying before the Special Court, Vijayawada, by filing an application in Crl. M.P.No.1093 of 2023 seeks to direct the Investigation Agency to furnish the mobile records of the entire team arresting the petitioner and accompanying officers of CID. The court maintains its stance on the maintainability of the bail application during the pendency of S.L.P. (Crl). No.12289 of 2023 before the Hon'ble Apex Court, as previously expressed while disposing of I.A.Nos.1 and 3 of the 2023 interim bail application.

46. The Prosecution placed the statement of Shujayath Khan, S/o. Basheer Khan, before the Deputy Superintendent of Police, EOW-II, C.I.D., AP, Mangalagiri and Shri Mathew Thomas, Managing Director of M/s. SIEMENS Industry Software (India) Pvt. Ltd. before Assistant Director of Enforcement, Hyderabad Zone, Hyderabad. Those statements do not show *prima facie* the complicity of the petitioner in the commission of the offence.

At this stage, it is not necessary to go into the correctness or otherwise of the statements made by those persons, which were recorded subsequent to the registration of the crime against the officials of M/s.SIEMENS Industry Software (India) Pvt. Ltd. This Court views that while considering an application seeking bail, it cannot enter into an in-depth analysis of the case so as to hold a mini-trial of the case. It is also unnecessary to give lengthy reasons at the time of granting bail. This is a matter that will, of course, be dealt with by the trial Judge.

47. The learned Additional Advocate General for the Respondent-State argues that the Memo filed by the petitioner regarding his present medical condition is in contravention of the bail conditions. The Court, however, has directed the petitioner to provide details about the treatment received and the hospital where he was treated, in a sealed cover, to the Superintendent, Central Prison, Rajamahendravaram, at the time of his surrender. This sealed cover is to be forwarded intact to the trial court. The Court, without delving into the correctness of the contents of the medical report submitted by the petitioner, opines that the filing of health reports before this Court should not be considered a contravention of the bail conditions. Any infringement will occur if the petitioner fails to produce his health report during his surrender before the Superintendent of Central Prison, Rajamahendravaram.

48. It is evident from the record that the petitioner has been shown as an accused one year and ten months after the registration of the crime. The case against him was filed just before his arrest. There is no indication on the record that, during this period of one year and ten months, the petitioner interfered with the investigation. The Prosecution has not made any such claim either.

49. 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 a 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 grant or refusal of bail is entirely within the discretion of the court hearing the matter, and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Except for the petitioner, all other accused involved in this crime have been released on regular or anticipatory bail. The order, dated 22.09.2023 in Crl.P.No.6942 of 2023, shows that the investigation agency, pursuant to the registration of the crime in the year 2021, examined as many as more than 140 witnesses and collected documents to a tune of more than 4000 and the investigation is on the fulcrum of attaining finality. The said documents are expected to be in the custody of Respondent-State. The petitioner is provided with Z+ Security of the National Security Guard

(N.S.G.) by the Central Government. The said fact goes to show that there is no flight risk, and there is no possibility of tampering with the evidence or influencing/intimidating the witnesses. The petitioner is aged about 73 years. Considering the petitioner's age, this Court finds that it is quite probable to suffer from old age ailments. This Court was pleased to grant interim bail to the petitioner in this crime, based on his health reports, as per Orders of this Court in I.A.No.1 of 2023 and I.A.No.3 of 2023 from 31.10.2023 to 28.11.2023. All these facts are an indication that there is no apprehension that the petitioner/A.37 would abscond or would hamper the trial.

50. The learned Senior Counsel for the petitioner contends that under Section 439 of Cr.P.C., the Court can impose conditions while granting bail, but such conditions must balance the liberty of the accused and not result the arbitrary deprivation of the right to carry out normal activities. In support of his contention, he relied on a decision reported in **Parvez Noorddin Lokhandwalla V. State of Maharashtra and another.**¹⁰, the Hon'ble Apex Court held that:

"14. The language of Section 437(3) CrPC, which uses the expression "any condition ... otherwise in the interest of justice" has been construed in several decisions of this Court. Though the competent court is empowered to exercise its discretion to impose "any condition" for the grant of bail under Sections 437(3) and 439(1)(a) CrPC, the discretion of the court has to be guided by the need to facilitate the administration of justice, secure the presence of the accused and ensure that the liberty of the accused is not misused to impede the investigation, overawe the

¹⁰ (2020) 10 SCC 77

witnesses or obstruct the course of justice. Several decisions of this Court have dwelt on the nature of the conditions which can legitimately be imposed both in the context of bail and anticipatory bail.

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18. This Court also discussed the scope of the discretion of the court to impose "any condition" on the grant of bail and observed : (Sumit Mehta case [Sumit Mehta v. State (NCT of Delhi), (2013) 15 SCC 570 : (2014) 6 SCC (Cri) 560], SCC p. 576, para 15)

"15. The words "any condition" used in the provision should not be regarded as conferring absolute power on a court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail.

22. xxx The human right to dignity and the protection of constitutional safeguards should not become illusory by the imposition of conditions which are disproportionate to the need to secure the presence of the accused, the proper course of the investigation and eventually, to ensure a fair trial. The conditions which are imposed by the court must bear a proportional relationship to the purpose of imposing the conditions. The nature of the risk which is posed by the grant of permission as sought in this case must be carefully evaluated in each case."

51. The learned Senior Counsel, for the petitioner, contends that every citizen of the country is entitled to possess and enjoy the freedom of speech and expression, which are basic in nature. In support of his case, he relied on a decision reported in **M. Hasan and another Versus Government of Andhra Pradesh and others**¹¹, wherein the composite High Court of Andhra Pradesh held that:

"Article 19(1)(a) speaks about freedom of speech and expression but not included the freedom of press. But it is implied that freedom of speech and expression includes freedom of press also. In other words, freedom of speech and expression carries with it the right to publish and

¹¹ 1997 SCC OnLine AP 653

circulate or propogate one's ideas, opinions and views with complete freedom and by resorting to any available means of publication subject again to such restrictions as can be legitimately imposed under Art. 19(2). The success of democracy depends upon free, fair, honest and independent press."

52. Learned Senior Counsel for the petitioner further relied on a decision reported in ***Romesh Thappar v. State of Madras***¹², wherein the majority of the Judges of the Hon'ble Supreme Court on freedom of the press and its limitation held that:

"Freedom of Speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation.

The Constitution, in formulating the varying criteria for permissible legislation, imposes restrictions on the fundamental rights enumerated in Art. 19(1) has placed in a distinct category those offences against public order which aim at undermining the security of the State or overthrowing it and made their prevention the sole justification for legislative abridgement of freedom of speech and expression. Thus, nothing less than endangering the foundations of the State or threatening its overthrow could justify curtailment of the rights to freedom of speech and expression, while the right of peaceable assembly (sub cl. (b)) and the right of association (sub-cl. (c)) may be restricted under Cls. (3) and (4) of Art. 19 in the interest of 'Public Order', which in those clauses includes the security of the State."

53. He further relied on a decision in ***S. Rangarajan v. P. Jagjivan Ram***¹³, while dealing on the issue relating to the pre-censorship of movies and motion pictures, the Hon'ble Supreme Court held as follows:

"Freedom of expression which is legitimate and constitutionally protected, cannot be held to ransom by an intolerant group of people. The fundamental freedom under Article 19(1)(a) can be reasonably

¹² AIR 1950 SC 124

¹³ (1989) 2 SCJ 128

restricted only for the purposes mentioned in Article 19(2) and the restriction must be justified on the anvil of necessity and not the quicks and of convenience or expediency. Open criticism of Government policies and operations is not a ground for restricting. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself.....”

54. As seen from the order passed in I.A.No.04 of 2023 in Crl.P.No.7951 of 2023 while considering the request of the Respondent-State seeking to include the additional conditions in the interim bail order, this Court directed the petitioner to abstain from making any public comments relating to the case and from organizing or participating in public rallies and meetings. In the said order, this Court observed that the petitioner holds the position of the National President of Telugu Desam Party and restricting him from appearing before print, electronic media, or any social media platform to make statements or express opinions during his interim bail period affects his fundamental right to freedom of speech. As this Court granted interim bail on medical grounds, this Court thought fit that the petitioner was not supposed to conduct public meetings and rallies. While disposing of regular bail application, placing such conditions will have an impact on the electoral prospectus of the petitioner's political party. This Court in its order, dated 31.10.2023 in I.A.No.1 of 2023 in Crl.P.No.8490 of 2023, which was filed by the petitioner herein seeking to grant interim anticipatory bail in respect of the Crime No.18 of 2023 of CID Police Station, A.P., Amaravati, Mangalagiri, recorded the undertaking given by the learned Advocate General that Respondent-State has no intention to proceed against the petitioner, as

apprehended by the petitioner, regarding his arrest until the objective of this Court order in I.A.Nos.1 & 3 of 2023 in Crl.P.No.7951 of 2023 is fulfilled. As the said undertaking was given based on the orders, as referred to above, it is needless to observe that it is binding on both parties. As such, this Court views that the said condition is to be relaxed from 29.11.2023 onwards.

55. This Court directed the petitioner, while disposing of interim bail application on medical grounds, to place the details about his treatment in a closed cover to the Superintendent, Central Prison, Rajamahendravaram, at the time of his surrender. In view of granting of regular bail, this Court views that a direction can be given to the petitioner to file such medical record before the Special Court, Vijayawada, on or before 28.11.2023.

56. Accordingly, the interim bail granted to the petitioner/A.37 *vide* common order dated 31.10.2023 is made **absolute**, and the petitioner/A.37 is ordered to be released on regular bail on the bail bond already furnished by him in respect of this case. However, the condition imposed *vide* order in I.A.No.4 of 2023 dated 03.11.2023 in respect of his organizing or participating in public rallies and meetings shall stand relaxed from 29.11.2023 onwards. The petitioner/A.37 is directed to produce the medical reports, regarding his treatment, before the Special Court, Vijayawada on or before 28.11.2023 instead of producing the same before the Superintendent, Central Prison, Rajamahendravaram. The remaining conditions imposed in the common order dated 31.10.2023 in I.A.Nos.1 and

3 of 2023 in Crl.P.No.7951 of 2023 shall be followed by the petitioner/A.37 scrupulously.

57. It is made clear that any observations made herein above shall not be construed to be a reflection on the merits of the case and shall remain confined to the disposal of this bail application alone.

58. With the above directions, this Criminal Petition is ***disposed of.***

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

JUSTICE T. MALLIKARJUNA RAO

Date: 20.11.2023

MS

THE HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO

CRIMINAL PETITION No.7951 OF 2023

Date: 20.11.2023

MS