

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

DATED THIS THE 19<sup>th</sup> DAY OF APRIL, 2021

BEFORE

THE HON'BLE MR. JUSTICE K. NATARAJAN

CRIMINAL PETITION No.2489 of 2021

**BETWEEN:**

MR. BRIJMOHAN K.S.,  
AGED ABOUT 48 YEARS  
S/O K.L. SWAMY  
RESIDING AT  
M/s. KHODAY RCA INDUSTRIES  
(KHODAY ESHWARSA AND SONS)  
No.11, RACE COURSE ROAD  
OPPOSITE TO RAILWAY  
DIVISIONAL OFFICE  
BENGALURU CITY - 560 009.

... PETITIONER

(BY SRI P.P. HEGDE, ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
BY SHESHADRIPURAM P.S.,  
REPRESENTED BY  
STATE PUBLIC PROSECUTOR  
HIGH COURT OF KARNATAKA  
BENGALURU - 560 001.
2. PADMANABHASA K.L.  
S/O LATE K. LAKSHMANASA  
AGED ABOUT 81 YEARS

RESIDING AT No.9, SHESHADRI ROAD  
BENGALURU – 560 009.

... RESPONDENTS

(BY SRI RAVI B. NAIK, SENIOR COUNSEL ALONG WITH  
SMT. VIJETHA R. NAIK, ADVOCATE FOR R-2;  
SMT. RASHMI JADHAV, HCGP FOR R-1/STATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439(2) READ WITH SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO SET ASIDE THE ORDER DATED 12.03.2021 PASSED BY THE LXVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-68) IN CRL.MISC.No.2192/2021 GRANTING ANTICIPATORY BAIL TO RESPONDENT No.2 IS CONCERNED IN CONNECTION WITH FIR IN CRIME No.8/2021 OF SESHADRIPURAM POLICE STATION FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 120B, 406, 420, 465, 468, AND 471 READ WITH SECTION 34 OF THE INDIAN PENAL CODE.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 09.04.2021 AND COMING ON FOR PRONOUNCEMENT, THIS DAY THE COURT PRONOUNCED THE FOLLOWING:

**ORDER**

This petition is filed by the *de facto* complainant/first informant under Section 439(2) read with 482 of Cr.P.C. for cancellation of anticipatory bail granted to respondent No.2 by the LXVII Additional City Civil Sessions Judge, Bengaluru, (CCH-68) in Crl.Misc.2192/2001 dated 12.3.2021 for the offences punishable under Sections

120B, 406, 420, 465, 468, 471 read with 34 of IPC in Crime No.8/2021 registered by Sheshadripuram Police Station, Bengaluru.

2. Heard Sri P.P. Hegde, learned counsel for the petitioner and Sri Ravi B. Naik, learned Senior Counsel along with Smt. Vijetha R. Naik, learned counsel for respondent No.2 as also Smt. Rashmi Jadhav, learned High Court Government Pleader for respondent No.1-State.

3. The case of the petitioner is that he is the first informant before the Police and he has filed a complaint to the Sheshadripuram Police on 27.02.2021 alleging that the first informant is one of the Partners of M/s. Khoday Eshwarsa and Sons and RCA Industries. M/s. Khoday Eshwarsa and Sons is a partnership firm engaged in the manufacture and production of Indian made liquor and carrying on business since 60 years. The office of the firm is situated at No.9, Sheshadri road, Bengaluru. It is alleged by the informant that respondent No.2 herein, who

is accused No.2, is one of the partners entrusted with the responsibility of taking decisions in respect of payments to be made for M/s. Khoday Eshwarsa and Sons and RCA Industries, who approve or disapprove the same. Respondent No.2-accused No.2 is the authorised to release payments. It came to the knowledge of the complainant and other partners of the firm that an amount of Rs.17,73,00,000/- (Rupees Seventeen Crore and Seventy Three Lakh only) was shown as expenditure towards the promotional activities of the Branches of the firm all over the State as per the invoices raised in the name of one Surabhi Enterprises (accused No.5) and there was no signature of the accused persons on such invoices. The accused persons have committed irregularity in releasing the funds by forging the signatures by creating false documents and have cheated the firm by causing misappropriation of funds of the firm. It is revealed from the informant's verification with the dealers that no such promotional activities took place. The said Surabhi

Enterprises is a fake company. In fact, the owner of the Surabhi Enterprises was the driver of the tanker who supplies the spirit for manufacture of liquors. The said Surabhi Enterprises has no office, it is created for self. An amount of more than Rs.17,73,00,000/- has been paid to Surabhi Enterprises which was in fact transferred to the mother's account of a person who is a transporter of spirit. The said amount has been immediately withdrawn from his mother's account. A false promotional agreement has been created by accused Nos.1 and 2. Accused No.3 is the Manager of the firm. All have colluded together and created false documents in the name of Surabhi Enterprises alleged to have been owned by accused No.5 thereby, they caused loss of Rs.17,73,00,000/-. They have not only mis-appropriated the amount, but also cheated other partners. Hence, he has prayed for taking action.

4. After registering the case by the Police in Crime No.8/2021 against 5 accused persons, accused Nos.1 and 2 approached the Sessions Judge for granting anticipatory bail, which came to be allowed in-part. The bail application of accused No.1 has been rejected, but the bail application of accused No.2 has been allowed. Against granting of anticipatory bail, the present petition is filed by the informant/*de facto* complainant for cancellation of the bail.

5. Learned counsel for the petitioner has contended that the order passed by the Sessions Judge is erroneous; based on extraneous consideration; the case is an economic offence not only in the interest of individual, but also in the interest of public at large. The offence committed by accused No.2 is heinous one and serious allegations are made against him regarding breach of trust and misappropriation of funds. The investigation is still under progress. The Investigating Officer requires custody

of the respondent No.2-accused No.2 for interrogation. The accused No.2 is the authority who was entrusted with the financial operation of the firm. The Sessions Judge has not assigned any reason for granting bail except stating that the age of the accused is 81 years. The Hon'ble Supreme Court rejected bail in the case of ***P.Chidambaram vs. Directorate of Enforcement [(2019) 9 SCC 24]***. Learned counsel further contended that accused No.2 is the main person who signed the cheque. The approval is made by accused No.1. Both accused Nos.1 and 2 colluding with other accused i.e., the Manager, created documents in the name of Surabhi Enterprises and released more than Rs.17,73,00,000/- to a bogus company. In fact, they themselves received the amount which is nothing but mis-appropriation of funds and cheating the complainant. Even after ordering release of the accused No.2 on anticipatory bail on 12.02.2021, the accused No.2 did not surrender before the Police as per the direction given by the Court. Almost more than 13

days is over from the date of the order, but he has not chosen to surrender, which itself is the violation of the order of the Court. The accused No.2 took time for surrendering which helped him for destroying the evidence and tampering the prosecution witnesses. Therefore, prayed for setting aside the order granting bail and cancel the bail.

6. Learned counsel further contended that the Sessions Judge while rejecting bail of accused No.1 considered the judgment of the Hon'ble Supreme Court, but has not assigned any reason for granting bail to accused No.2 except stating that he is super-senior and the Sessions Judge has wrongly held that he is not directly involved in raising the bills or signing the bills so as to create fake payments. Learned counsel contended that he is the authority for signing the cheques and accused No.1 is the son of accused No.2 who is in-charge of verifying the bills. Therefore, it cannot be said that he has not participated in

the commission of crime. Therefore, the finding of Sessions Judge is perverse, which requires to be set aside.

7. Learned counsel in support of his arguments has relied upon various judgments, produced the photograph of accused No.2 and also other documents for transferring huge amount to the account of the accused No.1 who is son of respondent No.2. Learned counsel also produced the bail order of accused No.4 in which, the Sessions Judge has rejected his bail. Hence, prayed for allowing the petition and to cancel the bail granted to accused No.2.

8. Learned counsel appearing for respondent No.2-accused No.2 filed objections statement and contended that the respondent No.2 has not violated any bail conditions as enumerated in the anticipatory bail. He is 81 years old and he has not tampered with the prosecution witnesses nor threatened any prosecution witness. The Hon'ble Supreme Court held that normally bail should not be interfered unless there is any blatant violation of any

bail condition. M/s. Khoday Eshwarsa and sons is having 9 partners who were all members of Khoday family. The petitioner and respondent No.2 are members of the partnership firm. Accused Nos.1 and 2 together have 25% of the share. The allegation is pertaining to expenditure. There are many civil disputes pending between the parties. A commercial arbitration application was also filed for appointment of an arbitrator. There were six civil suits pending between the parties. The FIR is also filed against the father of the petitioner/complainant in Crime No.171/2019. Charge sheet has been filed. Another case has also been filed by accused No.1. Accused No.2 questioning the complainant about the accounts that there were 1000 crores received by the father of the complainant, but he has not accounted. In order to overcome the said complaint, this complaint has been filed as a counterblast. The respondent No.2-accused No.2 is suffering from thyroid, hypertension, LVF (Clinical Syndrome of Heart Failure). Due to Covid-19 pandemic

and his old age, it would not be advisable to send him to jail. The father of the complainant has mis-used the dominion and entrustment. It is further contended that the period of offence is from 2017 to August 2020. Additional excise duty has been paid and there are documents pertaining to the same. There is no *prima facie* case shown to launch criminal prosecution. The entire allegation pertains to family run partnership firm. The Hon'ble Supreme Court has also held in the case in ***Ahmad Ali Quraishi and another vs. The State of Uttar Pradesh and another*** reported in **(2020) 13 SCC 435**, that any criminal proceedings maliciously instituted with ulterior motive due to animosity arising out of partition of family properties and continuation of such criminal proceedings is nothing but abuse of process of Court which is liable to be quashed. Hence, prayed for dismissal of the petition.

9. Sri Ravi B. Naik, learned Senior counsel appearing for respondent No.2 contended that the complaint itself is filed as a counterblast to the complaint filed by accused No.1 against the complainant's father. There are documents maintained by the firm. The auditing is continuously done every year. The question of misappropriation does not arise. Absolutely there is no perversity in the order passed by the Sessions Judge, while granting bail. Hence, prayed for dismissing the petition.

10. Heard the arguments of learned counsel for the petitioner and learned Senior counsel for respondent No.2-accused No.2 as also learned HGCP for the respondent No 1-State as to whether the petitioner has made out a case for cancellation of the bail granted to respondent No.2 by the Sessions Judge and perused the impugned order passed by the Sessions Judge, Bengaluru.

11. The case of the prosecution as per the complainant is that the complainant, his father and the accused No.1 and

2 and others were partners of M/s. Khoday Eshwarsa and sons and RCA Industries which is a partnership firm manufacturing and trading in Indian made liquor. The allegation against the accused No.1 to 5 in the FIR as per the complaint is that accused No.1, the son and accused No.2, the petitioner who is the father are responsible for the entire partnership business. Accused No.2 is authorised to sign all the documents pertaining to the company and accused No.1 used to approve and disapprove the documents for making any payments in respect of firm's business. It is further alleged that between 2017 and 2020, accused No.1 to 4 have shown accounts for making payment of Rs.17,73,00,000/- to accused No.5-Surabhi Enterprises towards promotional advertisement activities of the branches of the firm all over the State. In fact, accused No.5 do not have any office. It is a fictitious company which is said to have been run by the transporter who used to supply spirit. Nowhere, the company products has been promoted or made any

advertisement, but all the bills were created in the name of fictitious Surabhi Enterprises. They forged the documents, prepared fake bills and shown payments made to Surabhi Enterprises for Rs.17,73,00,000/-. In fact, no such promotional work has been executed. The Surabhi Enterprises is the house of the spirit transporter and the amounts were paid to the mother of the said person. The entire amount has been withdrawn immediately, thereby, they caused loss to the firm of more than Rs.17,73,00,000/- and wrongfully gained by the accused persons and cheated the partners. Hence, they committed the offence under Sections 420, 120B, 406, 465, 468 and 471 of IPC.

12. Admittedly, accused Nos.1 and 2 approached Sessions Judge for anticipatory bail by filing petition under Section 438 of Cr.P.C. and the Sessions Judge rejected the bail petition of accused No.1 and allowed the bail petition of accused No.2. The Sessions Judge while

rejecting the bail petition of accused No.1 followed the decision of the Hon'ble Supreme Court in the case of **Varinder Kumar vs. State of Himachal Pradesh** reported in **(2020)3 SCC 321** wherein, it has been held as under page No.15.

*" Individual right of the accused are undoubtedly important. But equally important is the societal interest for bringing the offender to book and for the system to send the right message to all in the society-be it the law-abiding citizen or the potential offender. "Human rights" are not only of the accused, but extent apart also of the victim-the symbolic member of the society as the potential victim and the society as a whole."*

He also relied upon another judgment in Crl.A.1175/2018 and also judgment in the case of **CBI., Hyderabad vs. Ramaraj** reported in **AIR 2010 SCW 6697** wherein, it has been held as under;

*" The accused persons were involved in one of the greatest corporate scam of the commercial world. It has cause financial storm through out country and world over. The lakhs of share holders and*

*others were duped and the corporate credibility of the national received serious set back. The bail order was cancelled."*

Following the said judgments, the bail petition of accused No.1 was rejected, but while granting bail to accused No.2, the Sessions Judge has held paragraph 13 as follows;

*"13. So far as the petitioner No.2 is concerned, the learned counsel for petitioner No.2 has contended that the petitioner No.2 is aged about 81 years and super senior citizen and he is not directly involved in raising bills or signing the bills so as to create fake payments. Therefore, his involvement and participation in the crime are to be proved in full-fledged trial. That apart, during this pandemic COVID-19 situation, it is not desirable to detain this petitioner No.2 in any custody. Hence, he is entitled for anticipatory bail. Accordingly, I answer point No.1 partly in the affirmative."*

And granted bail by imposing the following conditions;

**Order**

*The bail petition filed by the petitioner No.1 under Section 438 of Cr.P.C. is hereby dismissed.*

*So far as, the bail petition filed by the petitioner No.2 under Section 438 of Cr.P.C. s hereby allowed, subject to the following conditions;*

- (1) The petitioner No.2 is ordered to be released on bail in the event of his arrest in Crime No.8/2021 of the respondent- Sheshadripuram Police Station, Bengaluru, on executing his self bond for a sum of Rs.5,00,000/- along with two sureties for the likesum;*
- (2) He shall appear before the Investigating Officer as and when required for the purpose of investigation;*
- (3) He shall appear before the trial court on all the dates of hearing;*
- (4) He shall not tamper with the prosecution witnesses;*
- (5) He shall not indulge in committing any offences;*
- (6) He shall not leave the jurisdiction without prior permission of the Court."*

13. On perusal of the findings of the Sessions Judge at paragraph 13 and the Conditions Nos.1 and 2, it appears that the Sessions Judge has not properly read the prosecution papers and the allegation made against accused No.2 has not been properly considered. First of all, while granting bail by imposing conditions, there was no direction for the accused No.2 to surrender before the Police within the prescribed period. Therefore, in spite of granting bail on 12.03.2021, accused No.2 has not chosen to appear before the Investigating Officer for the purpose of any investigation till 25.03.2021 when this Court stayed the impugned order. Atleast the Sessions Judge ought to have imposed condition for voluntary surrendering before the Police within a short period, but the blanket order of granting anticipatory bail is nothing but the order which is *non-est* in the eye of law.

14. That apart, coming to the paragraph 13, the finding of the Sessions Judge holding that accused No.2 is not

directly involved in raising bills or signing bills for creating fake payments is also a perverse finding. Further, the finding that the involvement of this accused No.2 has to be proved in the Court during full-fledged trial is nothing but a perverse finding. As per the complaint averments, accused Nos.1 and 2 have been entrusted with all the day-to-day affairs of the firm. Accused No.2 is the authority to sign and operate the accounts and accused No.1 was also managing the day-to-day operations of the firm. The payments made to Surabhi Enterprises to the tune of Rs.17,73,00,000/- within three years is definitely within the knowledge of accused Nos. 1 and 2. While signing the cheques, accused No.2 has not raised any objection. Accused No.1 who approved the bill has not raised any objection on the other hand, it is alleged that all the documents were created by accused No.1 and 2 along with other accused in the name of accused No.5 and paid hefty amount on the ground of promotional activities, but no promotional activities were undertaken by them.

Therefore, it is a clear case of misappropriation by creating fake documents which are produced as genuine document, making payment in the name of accused No.5 and in turn, it was taken by themselves. Therefore, it cannot be said that accused No.2 is not directly or indirectly involved in the creation of fake documents and fake payments.

15. That apart, the Sessions Judge held that because accused No.2 is aged 81 years, he is super-senior citizen. In this regard, learned counsel for the petitioner submitted the photograph which reveals that accused No.2 is hale and healthy. That apart, some documents were produced which shows that previously accused No.1 got transferred Rs.18,99,81,058/- to his personal account from the company's account and subsequent to the objection raised by this complainant, the said amount was re-credited to the current account of the firm. Those documents clearly reveal that nearly Rs.19,00,00,000/- has been transferred to the personal account of accused No.1 from the firm's

current account. The bail petition of accused No.1 has been rejected by the Sessions Judge and also the bail petition of accused No.4 was rejected by the same Sessions Judge on the ground that the matter requires free investigation and the Investigating Officer to investigate the matter smoothly as the allegation is, huge stake is involved. Such being the case, granting bail to accused No.2 only on the ground that his age is 81 years is also a perverse finding.

16. Learned Senior counsel for the respondent No.2 has stated in the objection statement that there are several civil cases pending between the parties in the civil court and also the matter went up to Hon'ble Supreme Court and there is no dispute in this regard. Learned Senior counsel also submitted that accused No.1 filed a complaint against the father of the complainant namely., K.L. Swamy. Also, against the informant/complainant/petitioner, a case was registered in Crime No.26/2021 in Upparpet Police Station

on 05.02.2021 for the offences under Sections 341, 448, 323, 511, 506, 504 read with 34 of IPC, therefore, as a counterblast this complaint came to be filed against the accused persons.

17. I have perused the FIR produced by the respondent's counsel where accused No.1 filed a complaint to the Police on 05.02.2021 alleging that when the complainant went to the house of the accused persons on 02.02.2021, at that time, the informant and his family members assaulted with hands and made criminal intimidation. Looking to the said complaint, there was a dispute between them in respect of forming layout and flats, but the allegation is simple. Here in this case, the allegation against accused No.2 and other accused is cheating an amount of Rs.17,73,00,000/-. Therefore, it cannot be said that this complaint came to be filed as a counterblast to the complaint filed by the respondent-accused. Therefore, the contention of learned Senior counsel for respondent No.2 not acceptable.

18. Learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in **P.Chidambaram's** case (*supra*) wherein, The Hon'ble Supreme Court rejected the anticipatory bail in the case of an economic offence. In the case of **Sudhir vs. State of Maharashtra and another** reported in **(2016)1 SCC 146**, the Hon'ble Supreme Court has held that where there is misappropriation of public funds and corruption, the custodial interrogation is required and the investigation cannot progress without custodial interrogation and cancellation of anticipatory bail has been affirmed by the Hon'ble Supreme Court. In the case **Maruthi Nivrutti vs. State of Maharashtra and another** reported in **(2012)9 SCC 235**, the Hon'ble Supreme Court upheld the rejection of anticipatory bail. In the case of **Ranjit Singh vs. State of Madhya Pradesh and others** reported in **(2013)16 SCC 797**, the Hon'ble Supreme Court has held that the parameters for granting bail under Section 439 of Cr.P.C. not been considered and bail has been cancelled. In **State**

**Rep. by the CBI vs. Anil Sharma** reported in **(1997)7 SCC 187**, the Hon'ble Supreme Court has set aside the order granting bail and has held custodial interrogation is required and anticipatory bail should not be granted. In the said case, the High Court of Himachal Pradesh has granted anticipatory bail to a former Minister which was set aside by the Hon'ble Supreme Court and held at paragraphs 7, 8 and 9 as under:

*"The High Court has approached the issue as through it was considering a prayer for granting regular bail after arrest. The learned Single Judge of the High Court reminded himself of the principle that "it is well-settled that bail and not jail is a normal Rule" and then observed thus:*

*"Unless exceptional circumstances are brought to the notice of the Court which may defeat the proper investigation and fair trial, the Court will not decline bail to a person who is not accused of an offence punishable with death or imprisonment for life. In the present case, no such exceptional circumstances have been brought to the*

*notice of this Court which may defeat proper investigation to decline bail to the applicant.*

8. *The above observations are more germane while considering an application for post-arrest bail. The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest. At any rate learned Single Judge ought not to have side-stepped the apprehension expressed by the CBI (that respondent would influence the witnesses) as one which can be made against all accused person all cases. The apprehension was quite reasonable when considering the high position which respondent held and in the nature of accusation relating to a period during which he held such office.*

9. *After bestowing our anxious consideration, including a perusal of the Case-Diary file, we definitely feel that the High Court has mis-directed itself in exercising the discretionary power under Section 438 of the Code by granting a pre-arrest bail order to the respondent. We, therefore, upset the impugned order. The appeal is allowed accordingly."*

19. In the case of ***Puran vs. Rambilas and another*** reported in **(2001) 6 SCC 338**, the Hon'ble Supreme Court cancelled the bail granted to the accused in a case under Sections 498A and 304B of IPC and has held that granting bail by ignoring material and evidence on record and without giving reasons would be perverse and contrary to the principles of law. Such an order would itself provide a ground for moving an application for cancellation of bail. Here in this case, the Sessions Judge has held that accused No.2 is not involved in the offence; not created the documents; not made any payment is the finding against the documentary evidence on record, which is nothing but a perverse finding. Another reason for granting bail is that accused No.2 is aged about 81 years. In this regard, the Punjab and Haryana High Court in CRM-M-25799/2020 (O & M), dated 08.03.2021 has rejected the anticipatory bail petition for the offences under Section 438 of Cr.P.C., where the age of the accused was 95 years. I am in respectful agreement with the decision of

the Punjab and Haryana High Court that age is not a ground for granting bail in a case like forgery, cheating and misappropriation. If at all the accused is having ill-health and suffering from various diseases, he could not have managed the Company and could not have involved in day-to-day affairs of the Company and the certificate produced by the learned Senior counsel for respondent No.2 has been obtained on 24.3.2021, but no documents pertaining to treatment taken were produced to show that he was under treatment prior to registration of the case and in fact, he was the main person for running the partnership firm of the reputed firm. Therefore, the medical certificate obtained on 24.3.2021 on the day on which the petition was filed for cancellation of bail cannot be acceptable.

20. Learned Senior counsel for respondent No.2 contended that there is no violation of conditions of bail in order to cancel the bail etc. In view of my findings above,

the offence is serious one and crores of rupees alleged to have been knocked off by this accused No.2 along with accused No.1 and caused loss to the firm and wrongful gain to himself. If Rs.17,73,00,000/- payment was made, there must be 18% TDS towards GST, but no such document is produced by learned counsel for respondent No.2 for collecting such taxes and depositing the same to the concerned authorities. Mere production of some receipts towards tax paid to the Excise Department is in respect of the business transaction for selling the liquors is not enough, but no document is produced towards the transfer of Rs.17,73,00,000/- to Surabhi Enterprises and its TDS. Therefore, the question of violating any condition does not arise. Even otherwise, 13 days after granting of bail by Sessions Judge, the accused No.2 did not chose to appear before the Police and make himself available for investigation. Such being the case, there is every possibility of accused destroying the evidence and tampering the documents is not ruled out since they are

the custodian of the said documents. Therefore, the argument addressed by learned Senior Counsel for respondent No.2 is not acceptable and there is no violation of conditions of bail and cancellation of bail does not arise. In the aforesaid judgments, the Hon'ble Supreme Court has laid down the principles for granting anticipatory bail and for cancellation of bail.

21. Learned Senior Counsel for respondent No.2 relied upon the judgment of the Hon'ble Supreme Court in the case of ***Dolat Ram and others vs. State of Haryana*** reported in ***(1995) 1 SCC 349*** in respect of dowry death case. In another unreported case between ***Myakala Dharmarajam and others etc.*** and ***The State of Telangana and another*** passed in ***Crl.A. Nos.1974-1975/2019***, the Hon'ble Supreme Court has held that cancellation of bail can be done in case where the order of granting bail suffers from serious infirmities resulting in miscarriage of justice. In the case of ***Simranjit Singh***

***Mann vs. State of Bihar*** reported in **(1986)4 SCC 481**, the Hon'ble Supreme Court has dealt with in respect of bail granted under Section 167(2) of Cr.P.C. In another case in ***State (Delhi Administration) vs. Sanjay Gandhi*** reported in **(1978)2 SCC 411**, the Hon'ble Supreme Court has laid down that the issue of cancellation of bail can only arise in criminal cases, but that does not mean that every incidental matter in a criminal case must be proved beyond reasonable doubt and while canceling the bail, the Court has to exercise power with care and circumspection. Though the power is of an extraordinary nature, it is meant to be exercised in appropriate cases. The Hon'ble Supreme Court has laid down principles for granting bail and cancellation of bail. In another case in ***Ahmad Ali Quraishi and another vs. state of Uttar Pradesh and another*** reported in **(2020) 13 SCC 435** the Hon'ble Supreme Court had dealt with in respect of quashing the criminal proceedings under Section 482 of Cr.P.C. In the case of ***Sanjay Chandra vs. CBI*** reported

in **(2012) 1 SCC 40**, in respect of consideration of bail under Sections 437 and 439 of Cr.P.C., the Hon'ble Supreme Court granted bail to the accused persons in 2G Spectrum case. In **Siddaram Satlingappa Mhetre vs. State of Maharashtra and others** reported in **(2011)1SCC 694**, wherein the Hon'ble Supreme Court has held that Section 438 Cr.P.C. is not extraordinary in the sense that it should be invoked only in exceptional or rare cases and should ordinarily be continued till end of the trial. If the liberty is granted by the Court is misused then Court can cancel or modify the conditions.

22. Learned Senior counsel for respondent No.2 also relied upon the judgment in the case of **Shri Gurubaksh Singh Sibbia and others vs. State of Punjab** reported in **(1980)2 SCC 565** regarding the principles for considering the anticipatory bail applications.

23. On perusal of the judgments relied upon by learned counsel on both sides and looking to the facts and circumstances of the case, the judgments relied upon by learned Senior counsel for respondent No.2 pertaining to the regular bail granted by the Sessions Judge under Section 439 of Cr.P.C. after the accused was arrested and kept in the jail and in some of the cases, anticipatory bail has been granted. On the other hand, most of the cases relied upon by the learned counsel for the petitioner/defacto complainant are all pertaining to granting of anticipatory bail and cancellation of the bail granted by the trial Court, by the High Court as well as by the Hon'ble Supreme Court.

24. As regards the guidelines and principles for granting bail, it has been elaborately dealt with by the Hon'ble Supreme Court in catena of decisions and the Hon'ble Supreme Court in the landmark judgment of **Sanjay Gandhi's** case (supra) has categorically held that the

issue of cancellation of bail can only arise in criminal cases but it does not mean that every identical matter in a criminal case must be proved beyond reasonable doubt like the guilt of the accused. The prosecution therefore can establish its case in an application for cancellation of bail by showing on a preponderance of probabilities that the accused has attempted to tamper or has tampered with its witnesses. If there is reasonable apprehension that he will interfere with the course of justice, is all that necessary for the prosecution to do in order to succeed in an application for cancellation of bail. Keeping the guidelines of the Hon'ble Supreme Court and looking to the case on hand, the allegations are against the accused who is none other than the authorised signatory having power to conduct the day-to-day business and the custodian of the documents and is the person authorised to release the cheques and payments made to various persons. In spite of granting anticipatory bail by the Sessions Judge, he has not chosen to appear before Police for almost 13 days and

the Police has also not chosen to arrest him in this case which goes to show that he is so much influenced person and there are chances of tampering the documents in the office and destroying the evidence is not ruled out. Once there is an allegation of misappropriation and cheating by creating false documents and making payment to a fictitious firm and when a *prima facie* case is made out, the position of accused Nos.1 and 2 being the son and the father respectively, the Sessions Judge though rightly rejected the bail application of accused No.1, but committed error in granting anticipatory bail to accused No.2 without assigning proper reasons for granting bail. As already held above, age is not a criterion in the case of cheating and misappropriation. The Hon'ble Supreme Court in a recent judgment relied upon by learned Senior counsel for respondent No.2 in ***Myakala Dharmarajam's*** case (supra), at paragraph 6 has held that while granting bail, the Court is required to consider the gravity of the crime, the character of the evidence, position and status of

the accused with reference to the victim and witnesses, repeating the offence, the possibility of his tampering with the evidences and witnesses and obstructing the course of justice etc. The Hon'ble Supreme Court has also relied upon the judgment in the case of **Raghubir Singh's** case (supra) wherein, it is held that, it is trite law that cancellation of bail can be done in cases where the order of granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores the relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of granting bail to the accused. In such cases, the High Court or Sessions Court would be justified in canceling the bail as held by the Hon'ble Supreme Court in the case of **Kanwar Singh Meena vs. State of Rajasthan and another** reported in **(2012)12 SCC 180**.

25. As already held above, the Sessions Judge while granting bail at para-13 has not properly considered the material on record, but wrongly held that this accused No.2 is not responsible for creating documents which is nothing but a perverse finding and against the material placed on record. As held by the Hon'ble Supreme Court in the case **Anil Sharina (supra)**, if the accused is continued to be on anticipatory bail, he will tamper the prosecution witness and cause obstruction to the investigation, tampering the witnesses and threatening the witnesses are not ruled out. Therefore, the presence of respondent No.2 is required for custodial interrogation in order to collect all the documents, payments made in the name of Surabhi Enterprises and other bills under the guise of promotional payments, advertisement payment etc., which are to be investigated by the Police. All the accused persons are absconding and none of them were arrested including the owner of the Surabhi Enterprises. Such being the case, granting anticipatory bail to accused

No.2 will be a hurdle to the investigation and he may influence the witnesses and cause obstruction to the Investigating Officer in conducting clear investigation. Therefore, as argued by learned counsel for the petitioner, it is not a fit case for granting anticipatory bail by the Sessions Judge. Therefore, the bail granted by the Sessions Judge under Section 438 of Cr.P.C. requires to be set aside. The petitioner has made out sufficient ground for cancellation of bail granted by the Sessions Judge. Accordingly, I pass the following:

**Order**

Criminal Petition filed under Section 439(2) of Cr.P.C. for cancellation of bail is allowed.

The order passed by the LXVII Additional City Civil Sessions Judge, Bengaluru, (CCH-68) in CrI.Misc.2192/2001 dated 12.3.2021 for the offence offences punishable under Sections 120B, 406, 420, 465, 468, 471 read with 34 of IPC in Crime No.8/2021

registered by Sheshadripuram Police Station, Bengaluru,  
granting anticipatory bail to respondent No.2/accused No.2  
is hereby set aside/cancelled.

**Sd/-  
JUDGE**

mv