

P. Venkata Ramaiah Nani, S vs The State Of Andhra Pradesh, on 7 March, 2025

Author: K Sreenivasa Reddy

Bench: K Sreenivasa Reddy

HONOURABLE SRI JUSTICE K SREENIVASA REDDY

CRIMINAL PETITION NO: 9796 OF 2024

ORDER:

This Criminal Petition, under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'the BNSS'), has been filed on behalf of the petitioner/accused No.6 to grant anticipatory bail in connection with Crime No.349 of 2024 of Bandar Taluq Police Station, Machilipatnam.

2. A case has been registered against the petitioner/accused No.6 and other accused for the offences punishable under Sections 316 (3), 316 (5), 61 (2) read with 3 (5) of the Bharatiya Nyaya Sanhita, 2023 (for brevity 'BNS').

3. Basing on a report dated 10.12.2024 lodged by Ch.Koti Reddy, Assistant Manager Technical, Andhra Pradesh State Civil Supplies Corporation Limited (for short, 'APSCSCL'), Krishna to Bandar Taluq Police Station, Machilipatnam against accused No.1/P.Jaya Sudha and accused No.2/B.Manas Teja, who are the Investor and the Manager, respectively, of JS Warehouse situated at Machilipatnam, the subject crime was registered.

4. It is alleged in the report that accused No.1 submitted a representation on 26.11.2024 stating that for two years, she conducted the operations of warehouse, but due to her health issues for the last six months, she appointed accused No.2 to look after the godown operations; that on 25.11.2024, accused No.2 informed accused No.1 about shortage of rice stocks in JS Warehouse godown, and on that, accused No.1 noticed the shortage and attributed the shortage to be a technical problem with weighbridge and she would take full responsibility for shortage of rice stock and was willing to pay the cost of rice stock or the stock of rice duly following the orders, and the intention of accused No.1 is to avoid any loss to the government exchequer and ensure transparency in their operations and requested to take necessary steps to rectify the situation.

On 04.12.2024, the JC & EOED, APSCSCL, Krishna inspected the JS Warehouse, conducted physical verification of stock, compared the same on ground balance with book balance and found variation of 3,708 bags worth of Rs.85,28,400/-. As per the Agreement, Clause No.19, accused No.1, being the Investor, is liable for criminal action, if any, diversion of stocks/ mishandling of stocks for unlawful activities noticed by the Corporation. Hence, the report.

5. During the course of investigation, it was revealed that the petitioner/accused No.6, husband of accused No.1, at first, got constructed a godown in the name of his mother-in-law viz. Pattapu Satyanara- yanamma, as 'Satya Ware House' in an extent of Ac.2.58 cents in LP No.89/2 in Ac.11.00 cents of vacant land in LP Nos.89/2 and 92/1 situated at Potlapalem village, Bandar Mandal; later, in the year 2022, petitioner/ accused No.6 got constructed another JS Ware House godown in the name of his wife i.e. accused No.1, in an extent of Ac.2.18 cents in part of LP No.89/2 and 92/1; the entire Ac.11.00 cents of land is having compound wall on three sides and on the eastern side, vacant site is situated for both godowns, there is only one weighbridge in the name of Satyanarayanamma, at its office room.

On 30.12.2024 at 8.00 a.m. police arrested accused No.2-Manager of JS Ware House and he confessed that he conspired to divert subsidized rice meant for poor people without reaching them properly and thereby deprived them of their rightful share. In the meantime, police also arrested accused No.3-Assistant Manager Technical, accused No.4-Lorry Driver and accused No.5-lease holder of rice mill. Investigation disclosed that accused No.2 sold PDS rice bags from the godown of accused No.1, through accused No.4 and further, accused No.4 sold the PDS rice bags through accused No.5 and acquired a sum of Rs.22,33,980/- and credited to the bank account of accused No.2 and on that, accused No.2 gave a sum of Rs.2,21,500/- stating that accused No.6 had given the said sum for his co-operation in illegal transportation of stock; whereas, accused No.5 confessed that he purchased rice from A.4 from 30.7.2024 to 11.11.2024 and paid an amount of Rs.16.00 lakhs to A.4, who in turn transferred the said sum to A.2, who in turn would pay to petitioner/A.6. Due to such illegal transactions, A.5 was paid a sum of Rs.1,03,000/- by A.2 on the pretext that petitioner/accused No.6 had given the said sum, thereby, police got remanded accused Nos.2 to 5 to judicial custody.

6. Learned senior counsel Sri C.Raghu, appearing on behalf of Sri V.CH.Naidu, learned counsel for the petitioner submitted that petitioner is not at all connected to the alleged business transactions inter se between A.1 and the Corporation. According to him, none of the offences aforesaid is applicable as against the petitioner herein. According to the learned senior counsel, A.1, who is wife of the petitioner herein, is signatory to the agreement and she is the owner of the godown, and she was granted anticipatory bail vide Order dated 30.12.2024 in CrI.M.P.No.200 of 2024 passed by the learned IX Additional District and Sessions Judge, Krishna at Machilipatnam, and on a perusal of the said order goes to show that Section 316 (5) of the BNS is held to be not applicable to the facts of the present case. According to the learned senior counsel, the petitioner, who is Ex- Minister, is nothing to do with the aforesaid transactions and the all the allegations are directed against A.2.

7. On the other hand, learned Advocate General appearing on behalf of the respondent-State contended that certain amounts have been transferred to the account of the petitioner herein by A.2, and by virtue of the same, it can be inferred that there is entrustment of money to the petitioner herein. According to the learned Advocate General, an amount to a tune of Rs.1.50 lakh has been sent to the account of the petitioner herein on 13.07.2024, 20.07.2024 and 11.10.2024, and by virtue of the said transfer, it can be inferred that the petitioner is well aware of the alleged transactions that took place. He further submitted that as against the Order passed by the learned Sessions Judge, the State is preferring an appeal. Hence, he prays to dismiss the petition.

The learned Advocate General relied on the following decisions:

(i) in Venkateswara Rao Balusupati v. State of A.P. & others¹ wherein it is held thus: (paragraph 18).

"18. When an investigation by the police is in progress, the Courts should not go into the merits of the allegations in the FIR. On the 2024 SCC OnLine AP 815 contrary, the police must be permitted to complete the investigation. The test of a prima facie or probable case is only required to be shown at the time of framing of charge; however, for an investigation to proceed on the basis of a First Information Report, all that is required to be shown is that the contents of the complaint/First Information Report, when taken at face value, make out an offence. The FIR, in the present case, does contain definite particulars making out the offences complained of."

(ii) in M.Madhusudhan Reddy & another², wherein it is held thus:

"Unless there are special reasons, the courts are not expected to grant the relief of anticipatory bail. The relief of anticipatory bail cannot be granted in a casual manner. The courts must examine the nature and gravity of the alleged offences, particularly, in cases of economic offences and cheating of innocent public is alleged, the courts must verify whether a prima facie case has been made out or not. Considering specific role played by each of the accused, the courts should Order dated 31.7.2013 in Criminal Petition 7825 of 2013 consider whether anticipatory bail can be granted or not."

8. Perused the record. Petitioner is husband of A.1. A.1 happens to be the owner of J.S.Ware House, Potlapalem village, Bandar mandal. A.1 entered into an agreement dated 09.01.2024 with APSCSCL in relation to providing storage space for stocking food grains by the Corporation. A perusal of Clause 2.3 of the said agreement goes to show that food grain stocks should be under the joint custody of the godown owner and an Officer to be posted by the District Manager, APSCSCL. Clause 18 of the said agreement stipulates that all the disputes or differences whatever arising between the parties relating to construction, meaning and operation or effect of this agreement or the breach thereof, shall be settled through appropriate Court of law situated at the place of signing of the said agreement. A.1, on coming to know through A.2 that there was shortage of stocks, made a representation dated 26.11.2024 stating that due to ill- health, she was unable to concentrate on godown operations for the last six months and appointed A.2 to look after operations of the godown; A.2 informed that there is a shortage of rice stock on 25.11.2024, and basing on the same, she submitted the representation to the Joint Collector. In turn, the Joint Collector, vide Lr. No.P.Admn/BufferGodown/2024-25, dated 10.12.2024, addressed letter to the APSCSCL stating that owner submitted a representation that there is shortage of rice stocks and on physical verification, it has come to know that there is shortage of 3708 bags of rice. It is further stated that the owner had taken full responsibility of the said shortage and with an intention to avoid loss to the government exchequer and in order to ensure transparency in their operations, she came forward to

pay the said amounts. The Joint Collector and E.O. E.D., inspected the godown on 04.12.2024 and on physical verification with ground balance to the book balance, found variation to the extent of 3,708 bags. Thereby the V.C. & M.D., APSCSCL directed to recover an amount of Rs.1,70,56,800/- within three days from the management of J.S. Ware House against the shortage of 3,708 bags of sufer fine rice. Thereafter, the present case has been registered on 10.12.2024, originally against A.1 and A.2 for the offences punishable under Sections 316 (3), 316 (5) and 61 (2) read with 3 (5) of the BNS, by seizing the godown. A.1, having expressed her intention to pay the cost for the shortage of stock without prejudice, paid an amount of Rs.1,70,56,800/- immediately. By virtue of the same, it can be safely inferred that there is no dishonest intention on the part of A.1 in the shortage of stock, which is claimed to be due to technical defect in weighbridge. It is pertinent to note that when A.1 made a representation to the Corporation that there is shortage of stock on 25.11.2024 and the same has been informed by the Joint Collector to the APSCSCL on 26.11.2024 itself, it is not known as to why no inspection was conducted in the Godown till 04.12.2024 and no report was given till 10.12.2024. Absolutely, no reasons have been assigned.

9. On coming to know of the fact that the case has been registered against her, A.1 filed Crl.M.P.No.200 of 2024 before the IX Additional District and Sessions Judge, Krishna at Machilipatnam, and by an Order dated 30.12.2024, the learned Sessions Judge granted anticipatory bail to A.1.

10. In the First Information Report, name of the petitioner has not been shown as accused. In pursuance to the grant of anticipatory bail to A.1 by the learned Sessions Judge, name of the petitioner has been arrayed as accused in the present crime. The reason for arraying the petitioner as accused is to the extent that there was entrustment of certain monies to the petitioner herein by A.2. The allegation is that in the months of July, 2024 to October, 2024, certain amounts were transferred to the account of the petitioner by A.2 to a tune of Rs.1.50 lakhs. The prosecution is trying to connect the petitioner to the subject crime on the ground that there is entrustment of monies by A.2 to the petitioner herein, which would come within the purview of an offence punishable under Section 316 (5) of the BNS.

11. Under Section 316 (5) of the BNS, whoever, being in any manner, entrusted with property, or with any dominion over property, in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished. In order to constitute the aforesaid offence, there must be an entrustment of property or dominion over the property, and the said person entrusted has to dishonestly misappropriate or convert it to his own use. The onus is on the prosecution to prove that the accused, being a public servant or a banker, merchant, etc., was entrusted with the property which he is duty bound to account for, and that he committed criminal breach of trust. On this aspect, it is pertinent to refer to the following decisions.

(i) in N.Raghavender v. State of Andhra Pradesh, CBI3, wherein it is held thus: (paragraphs 45 to 48) "Ingredients necessary to prove a charge under Section 409IPC

45. Section 409 IPC pertains to criminal breach of trust by a public servant or a banker, in respect of the property entrusted to him. The onus is on the prosecution to prove that the accused, a public servant or a banker was entrusted with the property which he is duly bound to account for and that he has committed criminal breach of trust. (See *Sadhupati Nageswara Rao v. State of (2021) 18 SCC 70 A.P. [Sadhupati Nageswara Rao v. State of A.P., (2012) 8 SCC 547 : (2012) 3 SCC (Cri) 979 : (2012) 2 SCC (L&S) 638]*)

46. The entrustment of public property and dishonest misappropriation or use thereof in the manner illustrated under Section 405 are a sine qua non for making an offence punishable under Section 409IPC. The expression "criminal breach of trust" is defined under Section 405 IPC which provides, inter alia, that whoever being in any manner entrusted with property or with any dominion over a property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property contrary to law, or in violation of any law prescribing the mode in which such trust is to be discharged, or contravenes any legal contract, express or implied, etc. shall be held to have committed criminal breach of trust. Hence, to attract Section 405 IPC, the following ingredients must be satisfied:

46.1. Entrusting any person with property or with any dominion over property.

46.2. That person has dishonestly misappropriated or converted that property to his own use. 46.3. Or that person is dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law or a legal contract.

47. It ought to be noted that the crucial word used in Section 405IPC is "dishonestly" and therefore, it pre-

supposes the existence of mens rea. In other words, mere retention of property entrusted to a person without any misappropriation cannot fall within the ambit of criminal breach of trust. Unless there is some actual use by the accused in violation of law or contract, coupled with dishonest intention, there is no criminal breach of trust. The second significant expression is "misappropriates" which means improperly setting apart for ones use and to the exclusion of the owner.

48. No sooner are the two fundamental ingredients of "criminal breach of trust" within the meaning of Section 405IPC proved, and if such criminal breach is caused by a public servant or a banker, merchant or agent, the said offence of criminal breach of trust is punishable under Section 409IPC, for which it is essential to prove that:

(i) The accused must be a public servant or a banker, merchant or agent;

(ii) He/She must have been entrusted, in such capacity, with property; and

(iii) He/She must have committed breach of trust in respect of such property."

(ii) in Common Cause, a registered society v. Union of India & others⁴, wherein it is held thus: (paragraphs 167 to 173) "167. This brings us to the definition of the offence of "Criminal Breach of Trust" as defined in Section 405 of the Penal Code, 1860 which, minus the Explanation, provides as under:

"405. Criminal breach of trust.--Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'."

168. A trust contemplated by Section 405 would arise only when there is an entrustment of property or dominion over property. There has, therefore, to be a property belonging to someone which is entrusted to the person accused of the offence under Section

405. The entrustment of property creates a trust which is only an obligation annexed to the ownership of the property and arises out of a confidence reposed and accepted by the owner. This is what has been (1999) 6 SCC 667 laid in State of Gujarat v. Jaswantlal Nathalal [AIR 1968 SC 700 : (1968) 2 SCR 408] . In Rashmi Kumar v. Mahesh Kumar Bhada [(1997) 2 SCC 397 :

1997 SCC (Cri) 415] the essential ingredients for establishing the offence of criminal breach of trust, as defined in Section 405, have been spelt out as follows: (SCC pp. 406-07, para 13) "(i) entrusting any person with property or with any dominion over property; (ii) the person entrusted dishonestly misappropriating or converting to his own use that property; or dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract made touching the discharge of such trust."

169. In this case, the earlier decision in Pratibha Rani v. Suraj Kumar [(1985) 2 SCC 370 : 1985 SCC (Cri) 180] was affirmed. The case essentially related to the entrustment of "Stridhan", but nevertheless, it is important in the sense that the ingredients of the offence are set out and discussed. In Chelloor Mankkal Narayan Ittiravi Nambudiri v. State of Travancore-Cochin [(1952) 2 SCC 392 : AIR 1953 SC 478 : 1954 Cri LJ 102] it was laid down that every breach of trust in the absence of mens rea or dishonest intention cannot legally justify a criminal prosecution.

170. The expressions "entrusted with property" and "with any dominion over property" used in Section 405 came to be considered by this Court in CBI v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045 : AIR 1996 SC 2452] and the view earlier expressed was reiterated. It was held that the expression "entrusted" has wide and different implication in different contexts and the expression "trust" has been used to denote various kinds of relationships like trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee.

171. Mr K. Parasaran contended that "power to allot petrol pumps", and that too under discretionary quota, cannot be treated as "property" within the meaning of Section 405 of the Penal Code, 1860. It is pointed out by him that the Minister merely makes an order of allotment. Subsequently, the Indian Oil Corporation or the Bharat Petroleum Corporation enters into a dealership agreement with that person and the business is regulated by the agreement between the allottee and the Corporation (Indian Oil Corporation or Bharat Petroleum Corporation). It is also pointed out that in pursuance of the agreement, the allottee invests money, constructs the building and sets up the petrol pump. Mere exercise of "power to allot", it is rightly contended, cannot, therefore, be treated as "property" within the meaning of Section 405, capable of being misutilised or misappropriated.

172. The word "property", used in Section 409 IPC means the property which can be entrusted or over which dominion may be exercised. This Court in *R.K. Dalmia v. Delhi Admn.* [AIR 1962 SC 1821 : (1963) 1 SCR 253] held that the word "property", used in Section 405 IPC, has to be interpreted in a wider sense as it is not restricted by any qualification under Section 405. It was held that whether an offence defined in that section could be said to have been committed would depend not on the interpretation of the word "property" but on the fact whether that particular kind of property could be subject to the acts covered by that section. That is to say, the word "property" would cover that kind of property with respect to which the offence contemplated in that section could be committed.

173. Having regard to the facts of the case discussed above and the ingredients of the offence constituting criminal breach of trust, as defined in Section 405, or the offence as set out in Section 409 IPC, we are of the opinion that there was no case made out against the petitioner for any case being registered against him on the basis of the judgment passed by this Court nor was there any occasion to direct an investigation by CBI in that case."

12. Vide Order dated 30.12.2024 in CrI.M.P.No.200 of 2024 passed by the learned IX Additional District and Sessions Judge, Krishna at Machilipatnam, anticipatory bail was granted to A.1 on the ground that the offence under Section 316 (5) of the BNS would not attract as against A.1 for the reason that she is not an Agent as there is no contract of agency, as required under Sections 182 to 185 of the Indian Contract Act, 1872. At this stage, the learned Advocate General contended that against the aforesaid Order passed by the learned Sessions Judge, State is preferring an appeal. Irrespective of the said case, going by the record, there is absolutely no averment that the petitioner was taking care of the business of the ware house. The only allegation against the petitioner is that certain amount to a tune of Rs.1.50 lakh was transferred by A.2 to the account of the petitioner. Merely because certain paltry amount of Rs.1.50 lakh was transferred by A.2 to the account of the petitioner, it would not in any way come within the purview of an offence punishable under Section 316 (5) of the BNS. The other offences alleged are all punishable with imprisonment up to 7 years.

13. Entire case rests on the confessional statement of the co-accused and transfer of certain amount by A.2 to the account of the petitioner. It is stated that A.2 was working with the petitioner since 2016 for a salary of Rs.10,000/- per month. Apart from the same, since A.1, who is wife of the petitioner, repaid the entire amount of Rs.1,70,56,800/-, being the price of the shortage of rice bags, showing her bona fides. In the case on hand, there is no averment either in the First Information

Report or in remand report of other accused that petitioner was involved in day to day affairs of the ware house. Since the said amount has already been paid to the Corporation, there is no reason for custodial interrogation of the petitioner. The petitioner got fixed abode. There is absolutely no flight risk. Considering the aforesaid facts and circumstances of the case, this Court feels that the request of the petitioner for anticipatory bail can be considered, however, on certain conditions.

14. Accordingly, in the event of his arrest in the aforesaid crime, the petitioner shall be released on bail on his executing a personal bond for a sum of Rs.25,000/- with two sureties for the like sum to the satisfaction of the arresting officials.

The petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

The petitioner shall co-operate with the investigating agency and attend before it whenever called.

15. Accordingly, the Criminal Petition is allowed. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

_____. JUSTICE K. SREENIVASA REDDY 07.03.2025.

DRK HONOURABLE SRI JUSTICE K SREENIVASA REDDY CRIMINAL PETITION NO: 9796 OF 2024 07.03.2025 DRK