IN THE COURT OF THE III ADDTIONAL CHIEF METROPOLITAN MAGISTRATE AT BENGALURU.

Present : Parashuram F. Doddamani
III ADDL. C.M.M., BENGALURU.

Dated this the 13th Day of September, 2022

CC.No.21893/2022

Complainant : State by Seshadripuram PS, Bengaluru

V/s

Accused : Mr. Ramachandra Singri and others

PARTIES TO BAIL APPLICATION

Applicants/Accused No.4: Ramachandrasingri
S/o Late. Tukaram,
Aged about 46 years,
Residing at No.10,
Sree Jagadamba Nilaya,
Hosur Road, Anekal Taluk,
Bengaluru Rural District.

(By Harish Kumar V.L., Advocate)

V/s

Respondent/Complainant : State by Seshadripuram PS, Bengaluru.

(By Sr. APP)

ORDER UNDER SECTION 437 OF Cr.P.C

The counsel for accused No.4 filed bail application under Section 437 of Cr.P.C to release the accused No.4 in the interest of justice.

2. In the bail application it is contended that as per the complaint the Police have registered the case under Section 406, 408, 465, 468, 471, 420, 120-B R/w 34 of IPC against the accused. But on perusal of entire complaint which discloses that there no fraud, cheating, forgery or any other offences committed by the accused No.4 as alleged in the complaint.

3. It is contended that M/s. Khoday RCA Industries is a Proprietary concern of M/s. Khoday Eshwarsa and Sons (Firm) which is a registered Partnership Firm carrying on its business and having its registered office at No.11, Race Course Road, Gandhinagar, Bengaluru. It is stated that the Flagship Branches of Indian Made Liquor being Khodays XXX Rum, Hercules Old Matured XXX Rum, Sovereign Pure Brandy and Five star Whisky (Khodays Brands) are owned by the said firm through Khoday RCA Industries. The said firm has its manufacturing facility at the city factory in the said address. Since for the 29 years the accused No.4 is the Manager of the firm and his activity is limited only to sales, production and discussion with Excise Department.

4. It is further stated that the essence of the present complaint is with regarding to the entering into an agreement worded as IMFL Promotional Agreement purportedly entered into between the firm represented by the petitioner No.2 and Sri. Surabhi Enterprises, subsequent disbursal of the same of INR.17.73 Crores. It is on that premise, the complainant herein has filed the instant complaint.

5. It is contended that the accused No.1 and 2 along with partner K.L. Swamy and his son K.S. Brijmohan have ongoing disputes. Hence, the accused No.1 has filed the complaint inter alia against K.S. Brijmohan and his father K.L. Swamy before the Upparpet Police station, Bengaluru, it is registered as Crime No.26/2021 dated 05.02.2021 and the same is under investigation. It is for the first time on 27.02.2021 subsequent to the aforesaid crime initiated by the accused No.1, that as a counter blast, the instant complaint has been filed by the complainant purportedly representing the firm. In fact the firm has not passed any Board Resolution authorizing K.S. Brijmohan to file the complaint on its behalf.

6. It is stated that the jurisdiction Police issued a notice dated 08.08.2022 to accused No.4 for enquiry on 16.08.2022 and the accused No.4 appeared on 17.08.2022 and he learns that on 20.08.2022 that a charge sheet has already been filed and obtained the certified copy of the proceedings and learned about Non Bailable Warrant issued against him. In view NBW issued against him he was arrested by the Police on 24.08.2022 at about 10.30 PM in his residence. In view of NBW issued by this court, the complainant has prepared on WP No.16631/2022 before the Hon'ble High Court of Karnataka at Bengaluru for not executing arrest warrant against the accused and the Hon'ble High Court of Karnataka has passed orders on 23.08.2022 and 25.08.2022. Only after order passed by the Hon'ble High Court of Karnataka the jurisdictional Police have arrested the accused No.4 on 24.08.2011 at 10.30 PM in his residence. The accused No.4 has filed WP No.16991/2022 before the

Hon'ble High Court of Karnataka, Bengaluru, wherein the detail order passed on 25.08.2022.

7. It is specifically contended that there is a preexisting dispute between the other accused namely K.L. Swamy and his son K.S. Brijmohan who are the partners of the firm. In fact, according to other partners of the firm even as the recent January 2021 there were no disputes against the accused. It is specifically contended that the contract which is the subject matter of the complaint has been reflected in the financial records of the firm and the books of the complainant are audited and audit reports don't show any wrong doings.

8. It is further stated that all sales are by the complainant to Karnataka State Beverages Corporation Limited (KSBCL). The receipts from KSBCL is deposited in account number 0402201051020 at Canara Bank controlled by K.L. Swamy on his approving the bills of the firm, money is transferred to account number 0402201052375 at Canara Bank to pay vendors.

9. It is specifically contended that the Police had opportunity to examine the accused No.4 as and when they wanted. In fact, on 08.08.2022 also the accused No.4 was summoned by the Police to record the statement after filing the charge sheet. The Police have filing the final report on 08.07.2022 has issued notice to the accused for investigation.

10. It is further contended that the accused No.4 is resident of Bengaluru and there is no circumstance to suspect that the accused No.4 will abscond and he will participate in the investigation whenever they required. The accused No.4 is an innocent of the alleged offences and has got valid and tenable defence and the alleged offences are neither punishable with death nor imprisonment for life and the same are triable by the Magistrate and are not heinous in nature. The accused has got family with aged parents and children depending on him for financial, physical and moral aspects. The accused is the bread earning member of his family and has been contributing to the family. The accused is ready and willing to abide by any terms and conditions that may be imposed by this Hon'ble Court for his enlargement on bail. The accused further undertaken that he will not tamper or threaten the prosecution witnesses or documents in any manner and he undertakes to appear before the court on all hearing dates without fail and he is ready to furnish solvent surety to the satisfaction of this court. In view of these grounds the learned counsel for the accused requested to allow the bail application.

11. The learned Sr. APP has filed objections to oppose the bail application on the ground that the application is not maintainable either in law or on facts of the case and is liable to be rejected. It is specifically contended that the accused No.4 T. Ramachandra had appointed as an Accountant in the complainant's firm. As an Accountant since 10 years the accused No.4 was a receiving a sum of Rs.75,000/- as a salary and other miscellaneous expenses. It is alleged that the accused No.1 to 4 and 6 have created a company in the name and style as Surabhi Enterprises on 19.08.2017 till 07.08.2020 in the name of accused No.5 and created invoice summary, debit note, invoice, note invoice records in the name of accused No.3 on different dates and cause loss for a sum of Rs.17.73

crores to the complainant. Since the accused have absconded and furnished created xerox bills and destroyed originals, till today they have not appeared before the investigation officer. Therefore, the IO has filed charge sheet before the court without enquiry. The accused No.4 T. Ramachandra was looking after the transactions of Surabhi Enterprises and suppressed about the created bills and the account. It is further alleged that since the accused No.4 was serving so many years in the firm, and he knows all the transactions of the complainant. During the enquiry it is found that the invoice summary have been created and misappropriated amount of Rs.17.73 crores and the said sum has not been recovered till today because of non cooperation of the accused during the investigation. Therefore, if the accused No.4 is released on bail he may not appear before the court and he will destroy the evidence and threaten the prosecution witnesses. Apart from that the Hon'ble High Court of Karnataka was pleased to rejected the anticipatory bail application filed by the accused No.1, 2 and 4. In view of these grounds the learned Sr. APP requested to reject the bail application.

12. Heard the arguments on both sides.

13. The point that arises for the consideration of the court is as under;

Whether the accused No.4 has made out any grounds to allow the application?

14. Perused the records the above point is answered in **Negative** for the following:

REASONS

15. During the arguments the learned counsel for the accused No.4 has reiterated the contents of bail application and relied upon citations is mentioned as under;

> In the case of Siddharth Vs State of Uttar Pradesh and Another reported in (2022) 1 Supreme Court Cases 676, wherein it is held that - 5. In Court on its own motion v. Central Bureau of Investigation1, the Delhi High Court dealt with an argument similar to the contention of the respondent that Section 170 Cr.P.C. prevents the trial court from taking a charge sheet on record unless the accused is taken into custody. The relevant extracts are as under:
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> "Word "custody" appearing in this Section does not contemplate either police or judicial custody. It merely connotes the presentation of accused by the Investigating Officer before the Court at the time of filing of the charge sheet where after the role of the Court starts. Had it not been so the Investigating Officer would not have been vested with powers to release a person on bail in a bailable offence after finding that there was sufficient evidence to put the accused on trial and it would have been obligatory upon him to produce such an accused in custody

before the Magistrate for being released on bail by the Court”.

In a subsequent judgment the Division Bench of the Delhi High Court in Court on its own Motion v. State2 relied on these observations in Re Court on its own Motion (supra) and observed that it is not essential in every case involving a cognizable and non-bailable offence that an accused be taken into custody when the charge sheet/final report is filed.

We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 of the Cr.P.C. that it does not impose an obligation on the Officer-in-charge to arrest each and every accused at the time of filing of the charge sheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yet on the charge sheet being filed non-bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest the accused and produce him before the court. We are of the view that if the Investigating Officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word "custody" appearing in Section 170 of the Cr.P.C. does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the Investigating Officer before the court while filing the charge sheet.

In the case of Aman Preet Singh Vs CBI through Director decided in Crl.A.No.929 of 2021 (Arising out of SLP (Crl.) No.5234 of 2021 dated 02.09.2021, wherein it is held that A reading of the aforesaid shows that it is the guiding principle for a Magistrate while exercising powers under Section 170, Cr.P.C. which had been set out. The Magistrate or the Court empowered to take cognizance or try the accused has to accept the charge sheet forthwith and proceed in accordance with the procedure laid down under Section 173, Cr.P.C. It has been rightly observed that in such a case the Magistrate or the Court is required to invariably issue a process of summons and not warrant of arrest. In case he seeks to exercise the discretion of issuing warrants of arrest, he is required to record the reasons as contemplated under Section 87, Cr.P.C. that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him. In fact the observations in Sub-para (iii) above by the High Court are in the nature of caution.

Insofar as the present case is concerned and the general principles under Section 170 Cr.P.C., the most apposite observations are in sub-para (v) of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this.

In the case of Gurucharan Singh and others Vs State (Delhi Administration) reported in 1978 Supreme Court Cases (Crl.) 41, wherein it is held that 21 and 22. Section 437 Cr. P. C. is concerned only with the court of Magistrate. It expressly excludes the High Court and the court of session. The language of s. 437

(1) may be contrasted with s. 437 (7) to which we have already made a reference. While under sub-sec. (1) of s. 437 Cr. P. C. the words are : "If there appear to be reasonable grounds for believing that he has been guilty". Sub-s. (7) says : "that there are reasonable grounds for believing that the accused is not guilty of such an offence". This difference in language occurs on account of the stage at which the two sub--sections operate. During the initial investigation of a case in order to confine a person in detention, there should only appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. Whereas after submission of charge- sheet or during trial for such an offence the court has an opportunity to form some-what clear opinion as to whether there are reasonable grounds for believing that the accused is not guilty of such an offence. At that stage the degree of certainty of opinion in that behalf is more after the trial is over and judgment is deferred than at a pre-trial stage even after the charge sheet. There is a noticeable trend in the above provisions of law that even in case of such non-bailable offences a person need not be detained in custody for any period more than it is absolutely necessary, if there are no reasonable grounds for

believing that he is guilty of such an offence. There will be,, however, certain overriding considerations to which we shall refer hereafter. Whenever a person is arrested by the police for such an offence, there should be materials produced before the court to come to a conclusion as to the nature of the case lie is involved in or he is suspected of. If at that stage from the materials available there appear reasonable grounds for believing that the person has been guilty of an offence punishable with death or imprisonment for life, the court has no other option than to commit him to custody. At that stag&, the court is concerned with the existence of the materials against the accused and not as to whether those materials are credible or not on the merits. In other non-bailable cases the court will exercise the judicial discretion in favour of granting bail subject to sub s. 3 of s. 437 Cr. P.C. if it deems necessary to act under it. Unless exceptional circumstances are brought to the notice of the court which may defeat proper investigation and a fair trial, the court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life. It is also clear that when an accused is brought before the court of a Magistrate with the allegation against him of an. offence punishable with death or imprisonment for life, he has ordinarily no option in the matter but to refuse bail subject, however, to the first proviso to s. 437(1) Cr. P. C. and in a case where the Magistrate entertains a reasonable belief on the materials that the accused has not been guilty of such an offence. This will, however, be an extra ordinary occasion since there will be some materials at the stage of initial arrest, for the accusation or for strong suspicion of commission by the person of such an offence.

The offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the 28 question of jail. So also the heinousness of the crime. Even so, the record of the petitioner in this case is that, while he has been on bail throughout in the trial court and he was released after the judgment of the High Court, there is nothing to suggest that he has abused the trust placed in him by the court; his social circumstances also are not so unfavourable in the sense of his being a desperate character or unsocial element who is likely to betray the confidence that the court may place in him to turn up to take justice at the hands of the court. He is stated to be a young man of 27 years with a family to maintain. The circumstances and the social milieu do not militate against the petitioner being granted bail at this stage. At the same time any possibility of the absconsion or evasion or other abuse can be taken care of by a direction that the petitioner will report himself before the police station at Baren once every fortnight.

In the case of Sanjay Chandra Vs CBI in Crl.A.No.2178 of 2011 (Arising out of SLP(Crl.) No.5650/2011), wherein it is held that in Babu Singh v. State of U.P., (1978) 1 SCC 579, this Court opined: "8. The Code is cryptic on this topic and the Court prefers to be tacit, be the order custodial or not. And yet, the issue is one of liberty, justice, public safety and burden on the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. As Chamber Judge 36 in this summit Court I had to deal with this uncanalised case-flow, ad hoc response to the docket being the flickering candle light. So it is desirable that the subject is disposed of on basic principle, not improvised brevity draped as discretion. Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognised under Article 21 that the curial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. To glamorise impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of"procedure established by law".The last four words of Article 21are the life of that human right....16. Thus the legal principle and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record--particularly are cord which suggests that he is 37 likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that at houghtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.17. The significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Article 19.Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonable nesspostulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bi-focal interests of justice—to the individual involved and society affected.18. We must weigh the contrary factors to answer the test of reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare or present his case than one remanded in custody. And if public justice is to be promoted, mechanical detention should be demoted. In 38the United States, which has a constitutional perspective close to ours, the function of bail is limited, "community roots" of the applicant are stressed and, after the Vera Foundation's Manhattan Bail Project, monetary surety shipis losing ground. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on the inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration make srefusal of bail unreasonable and a policy favouring release justly sensible.20. Viewed from this perspective, we gain a better insight into the rules of the game. When a person, charged with a grave offence, has been acquitted at a stage, has the intermediate acquittal pertinence to a bail plea when the appeal before this Court pends? Yes, it has. The panic which might prompt the accused to jump the gauntlet of justice is less, having enjoyed the confidence of the Court’s erdict once. Concurrent holdings of guilt have the opposite effect. Again, the ground for denial of provisional release becomes weaker when the fact stares us in the face that a fair finding -- if that be so -- of innocence has been recorded by one Court. It may be conclusive, for the judgment of 39 acquittal may be ex facie wrong, the likelihood of desperate reprisal, it enlarged, may be a deterrent and his own safety may be more in prison than in the vengeful village where feuds have provoked the violent offence. It depends. Antecedents of the man and socio-geographical circumstances have a bearing only from this angle. Police exaggerations of prospective misconduct of the accused, if enlarged, must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad record and police prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the Court into a complacent refusal."20) In Moti Ram v. State of M.P.,

In the case of Satender Kumar Antil Vs Central Bureau of Investigation in Crl.Mis.App.No.1849 of 2021 in Special Leave Petition (Crl) 5191 of 2021, wherein it is held that Section 437 of the Code is a provision dealing with bail in case of non-bailable offenses by a court other than the High Court or a Court of Sessions. Here again, bail is the rule but the exception would come when the court is satisfied that there are reasonable grounds that the accused has been guilty of the offense punishable either with death or imprisonment for life. Similarly, if the said person is previously convicted of an offense punishable with death or imprisonment for life or imprisonment for seven years or more or convicted previously on two or more occasions, the accused shall not be released on bail by the magistrate.

In the case of Parameshkumar Vs State of Bihar, in the case of Hussain and Another Vs Union of India.

16. Per contra, the learned Sr. APP has also reiterated the contents and of objections and learned counsel for the complainant also assisted the learned Sr. APP.

17. Considering the rival submissions, I have gone through the materials available on record. On 27.02.2021, one Sri. K.S. Brijmohan claiming to be the parter and authorized representative of M/s. Khoday RCA Industries (M/s. Khoday Eshwarsa and Sons (Firm) lodged complainant against the K.P. Ghanshyam, K. L. A Padmanabhasa, Dharmendra A N, Rmachandra Singri T and Surabhi Enterprises and others stating that he is one of the partner in M/s. Khoday Eshwarsa and Sons, under the trade name of M/s. Khoday RCA Industries (KRCAI) having its registered office of the said firm is into business of manufacturing and sell of Indian made foreign liquor (IMFL) since about 60 years. It is further stated that during the month of August 2020 the firm has received several complaints from retailers about non supplying complainant's products and they are being no promotional activities conducted. However, the verification made and found that since the month of June 2017 up to August 2020 an amount about Rs.17.73 crores has been shown as expenses incurred towards promotional and marketing activities of firm around in the State of Karntaka as per the invoice raised by one Surabhi Enterprises claiming commission, TA and DA expenses and vendor/supplier incentives. The firm observed that these bills had no signature, except a stamp and there was not a single supporting document or any detail mentioned by way of retailers details, receipts, acknowledgments, name and other details of sales executives, dates, retailers visited travel bills, advertisement, gifts or any other promotional activities etc.

18. According to the complainant, the accused No.4 T. Ramachandra Singri was working as a Manager in the said complainant's firm. In the complaint it is alleged that the accused No.4 T. Ramachandra Singri and others accused persons have committed several offences willfully financial irregularities within the firm to defraud the firm and the partners for their personal gain and after auditing Khoday Industries it is found that a sum of Rs.17.73 crores have been misappropriated by the accused persons.

19. No doubt, the Assistant Commissioner of Police has filed charge sheet against the accused persons alleging that the accused have committed offences punishable under Section 120-B, 406, 408, 465, 468, 471 and 420 R/w 34 of IPC. But in the charge sheet specifically alleged that the accused No.1, 2, 4 and 6 have absconded. So, during the investigation the accused persons have not cooperated for investigation. No doubt, the IO has submitted voluminous charge sheet but all the receipts are not original and according to prosecution the accused persons have not cooperated with IO and they were absconding, so the original receipts and misappropriated amount of Rs.17.73 crores have not been recovered.

20. No doubt, the offences alleged against accused persons are triable by this court and not punishable either with death or imprisonment for life. But as per the prosecution papers the accused No.1, 2, 4 and 6 were absconded and after enquiry of said accused persons they created invoices, summaries, debit note (commission), invoices, debit note invoices, debit note incentive invoices, debit note (TA – DA expenses) invoices. In the charge sheet the IO has stated that since the accused were absconding, so after enquiry of accused and recovered the said invoices and misappropriated amount of Rs.17.73 crores he will file additional charge sheet under Section 173(8) of Cr.P.C. As stated above the alleged misappropriation amount of Rs.17.73 crores has not been recovered and other accused persons are also absconding from the case. Therefore, the citations relied on behalf of accused No.4 are not applicable to the present facts on hand. Considering the facts and circumstances of the case and the heavy amount involved in the case, this court is of the considered opinion that if the accused No.4 is released on bail it will cause more hardship and injustice to the prosecution rather than accused No.4. Since it is specifically alleged that the accused No.1, 2, 4 and 6 were absconded, so if the accused No.4 is released on bail he may be abscond from the case and in turn it may not possible to secure him doing the trial. In view of these reasons the above point is answered in the **Negative** and I proceed to pass the following:

ORDER

Bail application filed on behalf of accused No.4 u/s. 437 of Cr.P.C. is hereby rejected.

(Dictated to the stenographer, transcribed by him on computer, corrected, signed and then pronounced by me in the open court on this the 13th day of September 2022).

(Parashuram F. Doddamani)
III ACMM, Bengaluru.