[2025] 7 S.C.R. 2096 : 2025 INSC 973

The State of Andhra Pradesh
v.
N. Sanjay

(Criminal Appeal No. 3301 of 2025)

31 July 2025

[Ahsanuddin Amanullah and S.V.N. Bhatti JJ.]

Issue for Consideration

Whether the High Court erred in granting anticipatory bail to the respondent.

Headnotes†

Bharatiya Nagarik Suraksha Sanhita, 2023 – s.482 – Anticipatory bail – Grant of – When not proper – FIR was filed against the respondent who was Additional Director General of Police, CID, Andhra Pradesh and/or DG, Andhra Pradesh State Disaster Response and Fire Services at the relevant time, alleging misappropriation of funds and various other irrgeularities – Anticipatory bail granted by High Court – Challenge to:

Held: On facts, in view of the allegations made, the respondent is not entitled to the anticipatory bail – Impugned Order set aside – Anticipatory bail granted to the respondent is quashed. [Para 29]

Case Law Cited

Siddharam Satlingappa Mhetre v. State of Maharashtra **[2010] 15 SCR 201 : (2011) 1 SCC 694;** *Niranjan Singh v. Prabhakar Rajaram Kharote* **[1980] 3 SCR 15 : (1980) 2 SCC 559;** *Vilas Pandurang Pawar v. State of Maharashtra* **[2012] 8 SCR 270 : (2012) 8 SCC 795;** *Atulbhai Vithalbhai Bhanderi v. State of Gujarat* **[2023] 4 SCR 239 : (2023) 17 SCC 521;** *State of Haryana v. Dharamraj* **[2023] 11 SCR 705 : (2023) 17 SCC 510;** *Sumitha Pradeep v. Arun Kumar C K* **[2022] 14 SCR 1012 : (2022) 17 SCC 391;** *P Krishna Mohan Reddy v. State of Andhra Pradesh,* **2025 SCC OnLine SC 1157 – referred to.**

The State of Andhra Pradesh v. N. Sanjay

List of Acts

Bharatiya Nagarik Suraksha Sanhita, 2023.

List of Keywords

Anticipatory bail; Anticipatory bail quashed; Misappropriation of public funds; Additional Director General of Police, Criminal Investigation Department, Andhra Pradesh; Director General, Andhra Pradesh State Disaster Response and Fire Services; Custodial interrogation; Senior position in the Government.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3301 of 2025

From the Judgment and Order dated 30.01.2025 of the High Court of Andhra Pradesh at Amravati in CRLP No.58 of 2025

Appearances for Parties

Advs. for the Appellant:
S V Raju, A.S.G., Sidharth Luthra, Sr. Adv., Guntur Pramod Kumar, A Venkatesh, Ms. Rajni Gupta, Samarth Krishan Luthra, Hitarth Raja.

Advs. for the Respondent:
Kapil Sibal, Siddhartha Dave, Sr. Advs., Abhishek Singh, Talib Mustafa, Harsh Srivastava, Anmol Aggarwal, Ms. Rupali Samuel, Himanshu Tyagi, Dhiraj Abraham Philip.

Judgment / Order of the Supreme Court

Order

Leave granted.

2. Heard Mr. S.V. Raju, learned Additional Solicitor General ('ASG') along with Mr. Sidharth Luthra, learned Senior Counsel, for the appellant-State and Mr. Kapil Sibal, learned Senior Counsel, along with Mr. Siddhartha Dave, learned Senior Counsel, for the respondent.

3. The present appeal is directed against the Order dated 30.01.2025 passed by a learned Single Judge of the High Court of Andhra

Pradesh in Criminal Petition No.58 of 2025 filed under Section 482[1] of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') by the respondent, whereby he was granted anticipatory bail.

BRIEF FACTUAL OVERVIEW:

4. The respondent, an officer borne on the Indian Police Service, at the relevant point in time to which the First Information Report ('FIR') *viz*. Cr.No.05/RCO-CIU-ACB/2024[2] at PS ACB, CIU, Vijayawada is material, was posted as Additional Director General of Police, Criminal Investigation Department, Andhra Pradesh and/or Director General, Andhra Pradesh State Disaster Response and Fire Services. Various allegations are levelled against the respondent/accused no.1. It is alleged that the respondent, *inter alios*, manipulated tender(s) for Development and Maintenance of AGNI-NOC Web Portal, Mobile App and supply of hardware in violation of the prescribed procedures resulting in misappropriation of public funds, and; allegedly signed an Agreement ('Agreement') with a private party ('contractor') for holding awareness camps for Scheduled Caste and Scheduled Tribe community members in various District Headquarters in the State of

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1 '***482. Direction for grant of bail to person apprehending arrest***.—*(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.*

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including—

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person 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;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of Section 480, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under Section 65 and sub-section (2) of Section 70 of the Bharatiya Nyaya Sanhita, 2023.'

2 Under Sections 409, 420, 477A read with 120B of the Indian Penal Code, 1860 and 13(1)(a) read with 13(2) and 7 of the Prevention of Corruption Act, 1988.

Andhra Pradesh on the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. Be it noted, we have reproduced only a portion of the allegations, for illustrative purposes.

6. The State avers that the above amounted to impropriety/misconduct on the part of the respondent falling within the net of corruption and criminality.

SUBMISSIONS ON BEHALF OF THE STATE:

7. Learned ASG appearing for the appellant-State submitted that the respondent was the last/final authority for the approval in terms of the tender floated for holding the awareness camps. Pursuant to the process initiated, private parties were called to enter into an agreement, with the respondent signing the same on behalf of the State. Insofar as the Agreement is concerned, it is alleged that though the same was entered into between the parties on 30.01.2024, with the respondent as the signatory on behalf of the State, yet on the very same day, bills/invoices presented by a contractor/accused no.2 were approved for the entire amount, as per the Agreement, without any verification of work done.

8. It was further submitted that another allegation against the respondent is of certain laptops being purchased under an agreement dated 15.02.2023, without any tender *via* e-procurement. It is alleged that within a week, the payment for the said purchase was released. This is stated to be violative of a Memorandum dated 20.09.2013 issued by the Finance Department, mandating e-platform procurements alone for purchases exceeding Rs.1,00,000/- (Rupees One Lakh).

9. Insofar as the transaction concerning the awareness camps is concerned, it is alleged that the Agreement clearly stipulated that the awareness camps were to be held prospectively, for which there was a provision to make payments under various heads such as rent, furniture, videography, food and workshop materials. It was contended that, in reality, nothing was done by the contractor, since out of the 25 workshops purportedly conducted, 24 were held in Government premises without rent, and the one was held in a private premises, whose owner had given a statement that rent was neither charged nor received for

holding the awareness camp. It was further submitted that even the persons who conducted such workshops were departmental persons and no food was served, except in a few workshops, and refreshments were arranged departmentally.

10. Learned ASG submitted that under such circumstances, where payments were approved and permitted to be drawn without any verification/confirmation with regard to the actual execution of work, serious doubts are raised concerning the genuineness of the transaction and the *bona fides* of the persons involved.

11. It was submitted that it cannot be presumed that the respondent, who was holding a senior position in the Government, would have overlooked/forgotten the fact that he had signed the Agreement with the contractor on a particular day and on the very same day, he also approved the drawal of the entire amount, after having accepted that whatever was required to be done had already been performed.

12. Learned ASG also submitted that it was found, upon enquiry, that the number of persons stated to have attended the workshops, being uniformly 350 across all six districts, was not supported by any credible evidence.

13. It was further submitted that another surprising aspect in the matter was that though only 5% of the contract value was required to be furnished by way of a Bank Guarantee, amounting to approximately Rs.2,97,000/- (Rupees Two Lakhs Ninety-Seven Thousand), on the very same day, an application for waiver of the said requirement was moved which was also granted without any justification.

14. It was submitted that the State was pursuing the matter diligently, and the appeal deserved to be allowed so that the investigation could proceed without impediment. Learned ASG also submitted that a lengthy and detailed order being passed for granting anticipatory bail was not proper, as definite findings have been given on various aspects, which would ultimately prejudice the mind of both the Investigating Agency as also the Court before which, if at all, the trial eventually proceeds.

15. Summing up, learned ASG submitted that in the totality of the picture emerging, the respondent, being the most key factor and the highest official at whose level all official file processing stops, must be held accountable for his conduct. It was submitted that unless the respondent is subjected to custodial interrogation, his acts of

omissions or commissions could not be established. Prayer was made to allow the appeal.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

16. *Per contra*, Mr. Kapil Sibal, learned Senior Counsel for the respondent submitted that the respondent's role, due to him being the top-most official, was limited to taking a decision based on the material placed before him on file, and the respondent was not supposed to actually verify each and every aspect of the proposal(s) placed before him.

17. It was further contended that at the relevant point, there was no record of any complaint being received from any quarter that there had been any deficiency in service and/or violation of the contractual terms which could indicate serious lapse or criminality being attached to the respondent's conduct. Learned Senior Counsel drew the attention of the Court to various documents to indicate that later on, verification had been done and ultimately, the payments were released only thereafter, on 04.06.2024.

18. Learned Senior Counsel submitted that the respondent is presently under suspension and is being targeted because of the position he held during the previous regime after the change of Government, and there is a clear-cut bias against him. It was further contended that whatever has transpired or alleged to have transpired, the entire records thereto are in the custody of the authorities. It was urged that the respondent has always expressed his willingness to cooperate in the investigation, and there is no allegation that he has been called upon yet refused to cooperate. Thus, it was canvassed that custodial interrogation is absolutely not required and not justified in the facts and circumstances. Replying to the learned ASG's contention of the Impugned Order being lengthy, learned Senior Counsel submitted that the same cannot be used as a ground to assail it. He argued that it was in the public interest for the learned Single Judge to disclose reasons, enabling the aggrieved party to decide whether to avail remedies available under the Constitution or law. Thus, the learned Single Judge, who has threadbare given his mind and reasoning, on such score cannot be faulted. It was urged that the prosecution has not been able to meet the standards required to rebut the observations made in the Order impugned.

19. It was also submitted that if the State was actually serious, it should proceed to conclude the investigation/enquiry at its end and then trust the Court to bring matters to their logical conclusion. However, instead of doing so, the State appears intent on securing the respondent's custody by any means, which would be unjustified looking at the background of the factual position. It was advanced that the instant appeal merited dismissal.

DECISION:

20. We have bestowed anxious consideration to the entire controversy.

21. To be fair to Mr. Sibal, learned Senior Counsel for the respondent, it is true that custodial interrogation is considered a last resort, to be adopted when the investigation is impeded by deliberate lack of cooperation or by factors which militate against upholding the law, or against public interest. However, for this Court, and in the emerging factual background, the consideration is not limited to whether a person is merely required for custodial interrogation. The larger issue that comes to the fore is whether any person, no matter how high the office he holds, is to be treated on an equal footing by law, like a common citizen.

22. However, that being said, to clarify the position in law, interference in a matter where a person comes before the Court seeking anticipatory bail does not, and should not, automatically lead to the presumption that custody would be required and he/she would be arrested. That is the discretion of the Investigating Agency, depending on the circumstances and the conduct of the accused. The Investigating Agency is obliged to take an objective view on the requirement of custody of an accused without any bias, ill-will, or any other extraneous consideration and purely based on material.

23. We may pause here and note the response of Mr. Sibal, learned Senior Counsel, at this stage, that, practically speaking, all these high ideals and notions of justice are not adhered to and the stark reality is that the Investigating Agency would go on to effect arrest. We refrain from commenting thereon in this matter and reserve our opinion for an appropriate case.

24. The High Court has premised its analysis as under:

'***17.*** *…Merely because there are certain procedural violations, the petitioner cannot be made liable therefor. … Merely because the amounts have been released in favour of companies for the works completed by them, it would not come within the purview of the offence punishable under Section 409 IPC.*

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20. *…On a perusal of the entire material on record, this Court is of the opinion that there are certain procedural violations in respect of monies that have been released in favour of the companies by verifying the progress of work done by the companies. It is for those officers concerned to look into the aspects and submit a report to the Head of the Institution. The Head of the Institution, being the Supervisory Authority, would not in any way go into each and every aspect in detail in order to release funds in favour of the companies.*

21. *… The onus is on the prosecution to prove that the accused, being a public servant or a banker, was entrusted with the property which he is duty bound to account for, and that he committed criminal breach of trust.*

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26. *… The petitioner is under suspension since June, 2024 and question of tampering with the evidence by him would not arise at all. When the entire material pertaining to the alleged transactions has been seized, question of custodial interrogation to elicit more information, would not arise. It is pertinent to mention here that if the petitioner is arrested and if the prosecution is not able to prove the accusation of misappropriation and funds that were converted for his personal use, as alleged, reputation of the petitioner will be mollified.*

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28. *… question of he fleeing away is remote. There is absolutely no flight risk. He has got fixed abode. He is aged about 57 years. The material filed along with the petition*

shows that petitioner is a 45 cardiac patient, diagnosed with coronary artery disease, specifically triple vessel disease, and he underwent a coronary artery bypass graft (CABG) in July, 2023, and considering the severity, he requires continuous follow up with his physician to monitor his recovery and overall health. …'

25. The High Court also relied on the judgment in ***Siddharam Satlingappa Mhetre v State of Maharashtra*, (2011) 1 SCC 694** and examined whether the ingredients of the offences alleged were made out or not. The High Court has further proceeded to discuss and hold that the ingredients of the offences alleged do not appear to have been made out.

26. In a litany of pronouncements, from ***Niranjan Singh v Prabhakar Rajaram Kharote*, (1980) 2 SCC 559** and ***Vilas Pandurang Pawar v State of Maharashtra*, (2012) 8 SCC 795** to ***Atulbhai Vithalbhai Bhanderi v State of Gujarat*, (2023) 17 SCC 521**, the Court cautioned against elaborately discussing/detailing the evidence or rendering findings basis the same when seized with the question of considering whether or not to grant bail. Indeed, as held by us in ***State of Haryana v Dharamraj*, (2023) 17 SCC 510**:

'***11.*** *Yet, much like bail, the grant of anticipatory bail is to be exercised with judicial discretion. The factors illustrated by this Court through its pronouncements are illustrative, and not exhaustive. Undoubtedly, the fate of each case turns on its own facts and merits. …*'

(emphasis supplied)

27. In ***Sumitha Pradeep v Arun Kumar C K*, (2022) 17 SCC 391**, it was held:

'***12.*** *We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like Pocso and, therefore, the order passed by the High Court granting anticipatory bail*

to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.'

(emphasis supplied)

28. In ***P Krishna Mohan Reddy v State of Andhra Pradesh*, 2025 SCC OnLine SC 1157**, it was stated:

'***23.*** *As held by this Court in Sumitha Pradeep v. Arun Kumar C.K., (2022) 17 SCC 391 that it would be preposterous as a proposition of law to say that if custodial interrogation is not required that by itself is sufficient to grant anticipatory bail. Even in cases where custodial interrogation may not be required the court is obliged to consider the entire case put up by the State, more particularly, the nature of the offence, the punishment provided in law for such offence etc.*

24. *It is needless to say that for the purpose of custodial interrogation, the investigating agency has to make out a*

> *prima facie case at the time when remand is prayed for. Whether any case for police remand is made out or not, it is for the Court concerned to look into.*
>
> ***25.*** *In such circumstances, referred to above, we are of the view that we should not come in the way of the investigating agency at this point of time and the investigation should be permitted to proceed further.*'
>
> (emphasis supplied)

29. As such, on an overall conspectus and in the fitness of things, while refraining from making detailed observations, lest the same prejudice either side, at this *prima facie* stage, the Court is *ad idem* with the learned ASG that the facts and allegations are not such which would enable the grant of anticipatory bail to the respondent as has been done by the High Court. Therefore, we are persuaded to interfere in the matter. The appeal, accordingly, stands allowed; the Impugned Order is set aside, and the anticipatory bail granted to the respondent stands quashed. For completeness, we may note that in ***P Krishna Mohan Reddy*** (*supra*), the Court also commented on political bias/ vendetta but ultimately, in the facts obtaining therein, did not grant relief on this count.

30. We would observe that the Investigating Agency should act in a non-partisan manner, focusing on the actual merits of the case based on proper factual aspects and records, and conclude the investigation at the earliest. Needless to indicate, the present Order will have absolutely no bearing on the merits of the case, which we have not delved into. Consequently, everything is left open to be argued both on law and facts before the appropriate forum.

31. After the Order was dictated, learned Senior Counsel for the respondent submitted that the respondent, being a senior and respectable citizen, should not be unceremoniously arrested, and towards this, the Court may show indulgence and grant some time to surrender.

32. The Court accedes to such request. In the event the respondent surrenders before the Court concerned within four weeks from today and prays for bail, the same shall be considered on its own merits and in accordance with law, without being prejudiced by observations, if any, in the present Order. At the request of the learned ASG, we clarify that it shall also be open for the prosecution to pray for custody for

interrogation of the respondent before the Trial Court. The Trial Court will consider the prayers made by either side as per law, uninfluenced by the instant Order. As an added measure, it is made clear that if the respondent be in custody, due and appropriate care will be accorded to him by the State, regard being had to his medical condition.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Divya Pandey