

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JULY, 2022

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL PETITION NO.5753/2022

BETWEEN:

G.S. SHIVKUMAR
S/O LATE SIDDANANJAIAH
AGED ABOUT 58 YEARS
OCC: EX. PRSIDENT OF SOCIETY
R/AT GULURU VILLAGE
GULURU HOBLI
TUMAKURU TALUK – 571201. ... PETITIONER

(BY SRI DINESHKUMAR RAO K., AND
MS.POOJA KATTIMANI, ADVOCATES)

AND:

THE STATE OF KARNATAKA
BY TOWN POLICE STATION
TUMAKURU- 571201
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDINGS
BENGALURU – 560001. ... RESPONDENT

(BY SRI H.S.SHANKAR, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 438 OF CR.P.C. PRAYING TO ENLARGE THE PETITIONER ON BAIL IN THE EVENT OF HIS ARREST IN CR.NO.31/2021 OF TUMAKURU TOWN POLICE STATION, TUMAKURU DISTRICT, FOR THE OFFENCES P/U/S. 415, 416, 417, 418, 419, 420 R/W. SECTION 34 OF IPC.

THIS CRIMINAL PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed under Section 438 of Cr.P.C. praying to enlarge the petitioner/accused on bail, in the event of his arrest in respect of Crime No.31/2021 registered by Tumakuru Town Police Station, Tumakuru, for the offence punishable under Sections 415, 416, 417, 418, 419 and 420 read with Section 34 of IPC.

2. Heard the learned counsel for the petitioner and the learned High Court Government Pleader appearing for the respondent-State.

3. The factual matrix of the case of the prosecution based on the private complaint is that the complainant is the retired official of the Court and he invested an amount of Rs.1 lakh on 14.11.2018 in the name of his daughter and the same is due for maturity on 14.11.2021. However, he was in need of money and hence, requested to refund the amount, but they did not refund the amount. Hence, committed the offence of fraud

and therefore the police have invoked the offence under Sections 415, 416, 417, 418, 419 and 420 read with Section 34 of IPC.

4. Learned counsel for the petitioner would submit that this petitioner was not the President at the time of investing the money on 14.11.2018 and he had resigned on 06.08.2018 itself and the question of fraud at the inception does not arise. The allegation is also that though the amount invested is due for maturity on 14.11.2021, prior to the same, made an attempt to withdraw the money.

5. Per contra, learned High Court Government Pleader for the respondent-State would submit that the amount of Rs.1 lakh was invested by the retired official of the Court and the amount of the investor was not repaid and it amounts to a fraud against the investor and accused No.1 is already arrested and this petitioner is accused No.2.

6. Having heard the respective counsel and also on perusal of the material available on record, the very contention of the learned counsel for the petitioner is that, on the date of

depositing the amount, this petitioner was not the President and he tendered his resignation on 06.08.2018 itself and having taken note of the said submission and also considering the gravity of the offence and accusation made in the complaint and investment is also made to the tune of Rs.1 lakh and complaint discloses that, once they have paid an amount of Rs.3,000/- as interest and thereafter not paid the interest of the FD amount, it is a fit case to exercise the powers under Section 438 of Cr.P.C. in favour of the petitioner directing the petitioner to co-operate with the Investigating Officer for investigation, subject to imposing certain conditions to protect and safeguard the interest of the prosecution. Hence, I pass the following:-

ORDER

The petition is allowed. Consequently, the petitioner shall be released on bail, in the event of his arrest in connection with Crime No.31/2021 registered by Tumakuru Town Police Station, Tumakuru, for the offence punishable under Sections 415, 416, 417, 418, 419 and 420 read with Section 34 of IPC, subject to the following conditions:-

- (i) The petitioner shall surrender himself before the Investigating Officer within ten days from the date of receipt of a certified copy of this order and shall execute a personal bond for a sum of Rs.2,00,000/- (Rupees Two Lakhs only) with two sureties for the like-sum to the satisfaction of the concerned Investigating Officer.
- (ii) The petitioner shall not indulge in hampering the investigation or tampering the prosecution witnesses.
- (iii) The petitioner shall co-operate with the Investigating Officer to complete the investigation and he shall appear before the Investigating Officer, as and when called for.
- (iv) The petitioner shall not leave the jurisdiction of the Investigating Officer without prior permission till the charge sheet is filed or for a period of three months, whichever is earlier.
- (v) The petitioner shall mark his attendance once in a month i.e., on 30th of every month between 10.00 am and 5.00 pm., before the Investigating Officer for a period of three

months or till the charge sheet is filed,
whichever is earlier.

**Sd/-
JUDGE**

ST