2025 INSC 725

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. 7532 OF 2025

P KRISHNA MOHAN REDDY **…PETITIONER(S)**

VERSUS

THE STATE OF ANDHRA PRADESH **...RESPONDENT(S)**

WITH

SPECIAL LEAVE PETITION (CRIMINAL) NO.7533/2025

AND

SPECIAL LEAVE PETITION (CRIMINAL) NO.7534/2025

O R D E R

SPECIAL LEAVE PETITIONS (CRL.) NO. 7533-34 OF 2025

1. Since the issues involved in the two petitions i.e. SLP (Crl.) No. 7532 of 2025 and SLP (Crl.) No. 7533 of 2025 wherein anticipatory bail is being prayed for are same and the challenge is also to the self-same common impugned order passed by the High Court of Andhra Pradesh at Amaravati denying anticipatory to the petitioners, those were taken up for hearing analogously and are being disposed of by this common order.

2. The petitioners have been denied anticipatory bail by the High Court in connection with Crime No.21 of 2024 registered at CID Police Station, \angalagiri, Guntur District for the offence punishable under Sections 409, 420, 12-B read with Sections 34 & 37 of the Indian Penal Code, 1860 respectively (now Sections 316(5), 318(4), 61(2), 3(5) & 3(8) of the Bharatiya Nyaya Sanhita, 2023) & Sections 7, 7A, 8 and 13(1)(b) and 13(2) of the Prevention of Corruption Act, 1988.

3. We need not delve much into the case of the prosecution as put up, more particularly, when the High Court has reproduced the same exhaustively in its impugned order dated 7-5-2025 passed in Criminal Petition No.4837/2025 and Criminal Petition No.4838/2025 respectively.

4. However, with a view to give a fair idea as to the case of the prosecution as on date, we may just reproduce a portion of the First Information Report which reads thus: -

> *"12. The Committee after examining of records found the following:*
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> *1. Suppression of the established popular brands and unfair discrimination in allocation of OFS.over a period of time leading to almost disappearance of some brands from the market. 2. Favorable and preferential allocation of orders to certain new brands in violations of the existing norms giving them undue market share and competitive advantage. 3. The procurement system was shifted to manual process giving scope for manipulation in OFS against the previous system of automated OFS compromising the integrity or the process; 4. The MD, APSBCL reported that Committee has examined OFS (order for supply) data from 2018 onwards, detailed in annexures, but they could not ascertain the motive behind such discrimination and manipulations observed from the records and data related to the procurement process and other issues mentioned in the petitiorier, They recommended that an external specialized investigation agency may be advised to take up such action. 5. The MD, APSBCL on the basis of above committee reported that the matter may be examined and referred to a Specialized Agency for further necessary action. 6. The report has been examined and considering the seriousness of the matter as per the contents of the enquiry report of the Internal Committee mentioning suppression of brands, unfair discrimination preferential allocation OFS violation etc, the CID, Mangalagiri, AP is requested to take necessary action for investigation into the matter as recommended by the Internal Committee and the MD, APSBCL. MUKESH KUMAR MEENA PRINCIPAL SECRETARY TO GOVERNMENT TO The Criminal Investigation Department (CID), Mangalagiri, AP Sc/Sf. //FORWARDED :: BY ORDER// SECTION OFFICER. The complainant requested for necessary legal action in this regard. Copy of the complaint is enclosed herewith.*

> *13. Action Taken: On 23.09.2024 at 22:00 hrs received an English typed report of Sri Mukesh Kumar Meena, Principal Secretary to Government, Andhra Pradesh vide Memo No.Rev-01/CPE/20/2024-VIG-IV, dated, 20.09:2024 from O/o the Addl.DGP, CID, A.P., along with memo in C.No.7020/EOW C-14/CID-AP/2024, dated: 23.09.2024 with instructions to register a case. As per the instructions I registered the same as case in Cr.No.21/2024 U/S 420, 409, 120(B) IPC is registered at CID PS, A.P, Mangalagiri on 23.09.2024 át 22:00 hrs. The original FIR along with the complainant's report and enclosures submit to The Hon'ble Court of III Additional Chief Judicial Magistrate, Vijayawada and copy of FIR along with complainant's report and enclosures sent to the 1.0. Sri T.Daiva Prasad, DSP, CID, RO, Kurnool for investigation and copies to all concerned."*

5. We heard Dr. Abhishek Manu Singhvi, the learned Senior counsel appearing for the petitioner namely P. Krishna Mohan Reddy and Mr. Vikas Singh, the learned Senior counsel appearing for the petitioner namely K. Dhananjaya Reddy.

6. On the other hand, we heard Mr. Mukul Rohatgi, Mr. Siddharth Luthra and Mr. Siddharth Aggarwal, the learned Senior counsel appearing for the State of Andhra Pradesh.

7. The learned counsel appearing for the petitioners would vehemently submit that their clients at the relevant point of time were holding public office. They were public servants. They have retired from service. However, due to

political vendetta and bias, they have been arrayed in the alleged crime on the allegations that they are a part and parcel of a well-hatched criminal conspiracy.

8. It was further submitted that there is no *prima facie* case worth the name against the petitioners. In other words, there is no prima facie case worth the name at this point of time to deny anticipatory bail.

9. During the course of hearing, it was brought to our notice that both these petitioners have been cooperating with the investigating agency. Their statements have been recorded. They have been interrogated and they shall continue to cooperate with the investigating agency till the charge-sheet is filed.

10. It was also pointed out, that the investigating agency has been adopting dubious methods and tactics for the purpose of extracting confessional statements from different witnesses by adopting third degree methods. It was pointed out that a Writ Petition had to be filed in the High Court of Andhra Pradesh at Amaravati seeking necessary relief in this regard and the High Court has passed an order permitting a lawyer to remain present at the time of interrogation.

11. It was further pointed out that at one point of time, the entire issue was looked into by the Competition Commission and the Competition Commission did not find anything what is being alleged today by the State.

12. The learned counsel appearing for the petitioners would submit that it is a fit case for grant of anticipatory bail, more particularly, when the entire case put up by the State is actuated by political bias or *mala fides*.

13. On the other hand, the learned counsel appearing for the State vehemently submitted that no error not to speak of any error of law could be said to have been committed by the High Court in denying the anticipatory bail to the petitioners.

14. They would submit that there is more than a prima facie case against the petitioners. The investigation is at a very crucial stage. According to the State, there has been misappropriation of public exchequer to the tune to more than Rs.3,000 Crore. It was also submitted that the investigating agency may also deem fit to pray for custodial interrogation if need arises and if some good valid grounds are made out.

15. In short, the submission on behalf of the State is that at this point of time, this Court may not exercise its discretionary jurisdiction of grant of anticipatory

bail as it may have its own implications in the investigation which is in progress and is at a crucial stage.

16. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that we should not exercise our discretion for the purpose of grant of anticipatory bail. The High Court has looked into the matter in details and thereafter, declined to grant anticipatory bail as prayed for.

17. The High Court while reaching the conclusion that more than a *prima facie* case has been made out against the petitioners for the purpose of denying anticipatory bail to them, has observed thus: -

> *"22. According to the prosecution, the scheme in question favoured select liquor brands such as Adan and Leela, while sidelining well-established brands like Pernod Ricard and McDowell. As a result, several distilleries either shut down operations or diverted their products to other states Despite receiving consumer complaints regarding the quality of alcohol, no remedial measures were undertaken. The distilleries allegedly employed methods such as transferring funds to gold traders, procuring GST invoices, and remitting cash to the accused after deducting commissions. The investigation has revealed suspicious transactions amounting to approximately Rs 300-400 crores. In support of these allegations, the prosecution has produced records suspicious transactions involving Leela Agro and S.P.Y. Agro; bullion transactions entered into by Tilak Nagar Industries Limited: bullion invoices and ledger entries of Arham Bullion and Tiiak Nagar Industries Limited and details of entities that were found to be non-existent.*

25. The allegations against the petitioners are that they were responsible for the discontinuation of popular liquor brands and the promotion of favoured brands, collecting approximately Rs.3200 Crores in kickbacks for the liquor syndicate. The prosecution further claims that, on average, the accused received Rs.50-60 crores per month in kickbacks, with A.1 allegedly handing over these amounts to the petitioners in Crl.P.No.5009 of 2025 and Crl.P.No.4838 of 2025.

29. The learned Senior Counsel appearing for the Respondent-State argues that the proceedings before the Competition Commission of India (CCI) pertain to the period from 2019 to 2021, whereas the allegations against the accused persons cover the period from 2019 to 2024. Therefore, the findings recorded by the CCI cannot be afforded significant weight in this context. The prosecution has relied upon sale transactions presented in a tabular form, and the details contained therein, prima facie, support the prosecution's case.

Brand	***Quantity in 2018-19***	***Quantity in 2023-24***
McDowell's Brandy	*22,73,086*	*5*
Imperial Blue Whisky	*20,21,955*	*7*
Kingfisher Beer	*1,02,47,566*	*11,82,388*
Budweiser Beer	*22,52,195*	*0*

Brand	***Market share in 2018-19***	***Market share in 2023-24***
McDowell's Brandy	*23.41%*	*2.15%*
Kingfisher Beer	*29.5%*	*3.21%*
Budweiser Beer	*11.43%*	*1.25%*

S.No.	***Name of the Brand***	***Quantity Intended***
1	*Ocean Blue Whiskey*	*2,76,706*
2	*Daru House Whiskey*	*68,83,420*
3	*Supreme Blend Whiskey*	*77,35,400*
4	*Brilliant Blend Whiskey*	*37,30,800*
5	*9 Sea Horse Whiskey*	*46,07,733*
6	*Andhra Gold Whiskey*	*20,61,711*
7	*Good Friend Whiskey*	*27,72,050*
8	*HD Whiskey*	*22,02,555*

32 This Court views that the investigating officer deserves a free hand to take the investigation to its logical conclusion in a case containing severe allegations. With regard to the

Prosecution's case, the Investigation remains incomplete. Granting anticipatory bail to the Petitioners could potentially hinder the ongoing investigation. The allegations are severe, and the investigating agency has not yet been able to interrogate the Accused/Petitioners. The established legal principle is that anticipatory bail is not granted as a matter of routine; it should only be provided when the Court is convinced that exceptional circumstances warrant such an extraordinary remedy.

36. The statements provided by several witnesses have underscored the petitioners' prima facie involvement in the criminal conspiracy associated with e Excise Policy. It cannot lose sight of serious allegations leveled by the prosecution and the evidences collected during the course of investigation and presented before this Court, which prima facie reveal the petitioners 'role in the offence in question. The material placed on record, its face, suggests the petitioners involvement in the offence in question. Given these circumstances, custodial interrogation is deemed essential to confront the petitioners with the gathered evidence and to unravel a broader conspiracy implicating the accused in the implementation of the Excise Policy."

18. In view of the aforesaid, it cannot be said that the High Court failed to exercise its discretion in a judicious manner while declining to grant anticipatory bail to the petitioners as prayed for.

19. Custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438. In corruption cases concerning influential persons, effective interrogation of the suspect is of tremendous advantage in disinterring many useful information and also materials which are likely to be concealed.

Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such condition would reduce to a mere ritual. The High Court remained alive and very rightly to the apprehension of the investigating agency that the petitioners would influence the witnesses, considering particularly the high position they all held at one point of time.

20. Anticipatory bail to accused in cases of the present nature would greatly harm the investigation and would impede the prospects of unearthing of the ramifications involved in the conspiracy. Public interest also would suffer as a consequence.

21. It was sought to be argued that the petitioners have already joined the investigation and are fully cooperating with the investigating agency and therefore, there is no need for custodial interrogation.

22. The petitioners might have been cooperating with the investigation and they might have been interrogated also by the investigating agency so far but, at the same time, we should not overlook the fact that by grant of anticipatory bail, we may come in the way of the investigating agency if at all it wants custodial interrogation.

23. As held by this Court in ***Sumitha Pradeep vs. Arun Kumar C.K. & Anr.*** reported in **(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.

26. At this stage, we would like to observe something important.

27. To some extent, the petitioners could be said to have made out a *prima facie* case of political bias or *mala fides* but that by itself is not sufficient to grant anticipatory bail overlooking the other prima facie materials on record. Political vendetta or bias if any is one of the relevant considerations while

considering the plea of anticipatory bail. The courts should keep one thing in mind, more particularly, while considering the plea of anticipatory bail that when two groups of rival political parties are at war which may ultimately lead to litigations, more particularly, criminal prosecutions there is bound to be some element of political bias or vendetta involved in the same. However, political vendetta by itself is not sufficient for the grant of anticipatory bail. The courts should not just look into the aspect of political vendetta and ignore the other materials on record constituting a *prima facie* case as alleged by the State. It is only when the court is convinced more than prima facie that the allegations are frivolous and baseless, that the court may bring into the element of political vendetta into consideration for the purpose of considering the plea of anticipatory bail. The frivolity in the entire case that the court may look into should be attributed to political bias or vendetta.

Section 30 of the Evidence Act

28. It appears from the impugned order that the High Court looked into few disclosure statements made by co-accused and according to the High Court, as such disclosure statements are admissible during trial under Section 30 of the Indian Evidence Act, 1872 (for short, the "**Evidence Act**") those can also be looked into at the stage of considering the plea of anticipatory bail or even regular bail.

29.The High Court in its impugned order has observed as under:

> *"20. The prosecution has also relied upon the confessional statements of co-accused persons to establish the petitioners' involvement in the commission of the offence. However, the learned Senior Counsel appearing for the petitioners have strongly opposed the reliance on such confessional statements, contending that they are inadmissible in evidence. In contrast, the learned Senior Counsel for the Respondent/State submits that the statements made by co-accused persons are subject to evaluation during trial, and it would be incorrect to contend that confessional statements made by an accused during interrogation cannot be considered for the purpose of connecting other accused persons. This Court is of the view that such disclosure statements made by co-accused can indeed be taken into consideration as investigative leads and, further, may be admissible during trial under Section 30 of the Indian Evidence Act.*
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> *21. It is erroneous to say that confessional statement made by the accused during interrogation cannot be considered or looked into to connect the other co-accused. Such disclosure statement of co-accused can certainly be taken into consideration for providing lead in investigation and even during trial it is admissible under Section 30 of the Indian Evidence Act."*
>
> (Emphasis supplied)

30.Since the High Court has touched Section 30 of the Evidence Act, we would like to say something in this regard. The said provision reads thus: -

> *"When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession."*

31. As per Section 5 of Evidence Act, only those facts or facts in issue which are considered relevant under Chapter II of the Act would be admissible as evidence. Section(s) 24 to 30 of the Evidence Act, deals with the relevancy and admissibility of ‘confessions’ as evidence. Section 24 of the Evidence Act provides when a confession would be relevant by laying down a negative rule of relevancy and prescribing the general parameters when a confession would be considered irrelevant; namely when such confession is caused by either threat, inducement or promise.

32. Section(s) 28 and 29 of the Evidence Act respectively are an exception to the aforesaid general rule of relevancy of confessions. Section 28 provides that where although any threat, inducement or promise was made to cause a confession, yet if such confession was made after the cessation, removal or eradication of such improper influence or impression, then such confession would be relevant. Section 29 on the other hand, expands the test of relevancy by prescribing a positive rule of when a confession would continue to be relevant and provides that a confession made under one particular type of promise i.e., a promise of secrecy or made as a result of any deception, intoxication or by one’s own volition in response to any question, would not render such confession irrelevant.

33. Section 25 of the Evidence Act, goes one step further, by providing that even if such confession is not hit by Section 24 i.e., it is not the result of any threat, inducement or promise and thus, considered relevant, still such confession would be inadmissible if it was made to a police officer. Section 26 and 27 of the Evidence Act, however, carves out an exception to this. Section 26 provides that, a confession made by the accused to persons other than police officers would be inadmissible, if it was made whilst he was in police custody, unless such confession was made in the presence of a magistrate. Whereas, Section 27 only permits limited use of such statement only to the extent that a fact is discovered pursuant to disclosure statement which would connect the accused with the crime with authorship of concealment.

34. Section 30 of the Evidence Act, provides that a confession made by a person admitting his own guilt and at the same time implicating another person, such confession "may be taken into consideration" by the court against the maker as-well as against the person it is being made, if both of them are being "tried jointly".

35. The Privy Council in ***Bhuboni Sahu* v. *R*** reported in **1949 SCC OnLine PC 12** explained the significance of the expression "*may take into consideration*" used in Section 30. It observed that a "confession" does not come within the definition of "Evidence" under Section 3 of the Evidence Act, as it is neither

required to be given on oath, nor in the presence of the co-accused, and the same cannot be tested by cross-examination. Thus, although a confession against a co-accused, is not an evidence, yet as per Section 30, a court may take it into consideration and act upon it. However, the courts must be mindful that such confessions do not amount to proof, it is only one of the elements in the consideration of all other facts proved in a particular case, and therefore, there must be other evidence before such confession is taken into consideration. [See also: ***K. Hashim* v. *State of T.N.*, (2005) 1 SCC 237; *State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600**]

36. This Court in ***Kashmira Singh* v. *State of M.P*** reported in **(1952) 1 SCC 275** further explained as to when such confession may be taken into consideration against another co-accused. Placing reliance on the decision of ***Periyaswami Moopan, In re.*** reported in **1930 SCC OnLine Mad 86** it was held that, "*where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into the scale as an additional reason for believing that evidence*" and "*the proper way is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act*

on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept". Thus, such a confession can only be pressed into consideration by the court as a rule of prudence, to lend assurance to the other evidence against such co-accused.

37. The ingredients or conditions required under Section 30 of the Evidence Act, before any confession is made to operate against a co-accused are as under: -

(i) there must be joint trial for the same offence;
(ii) it must be a confession;
(iii) the confession must inculpate or implicate the maker and to the same extent the other accused
(iv) the confession of guilt must be duly proved.

The aforesaid four conditions have to be strictly established. Such confession cannot be taken into consideration under Section 30 where the confession itself was not relevant or inadmissible or where a co-accused was not being tried jointly with the accused person who made the confession or where he did not make a statement incriminating himself along with the co-accused. [See ***Mohd. Khalid v. State of W.B.*, (2002) 7 SCC 334; *Govt. of NCT of Delhi v. Navjot Sandhu*, (2003) 10 SCC 586**]

38. In ***Suresh Budharmal Kalani v. State of Maharashtra*** reported in **(1998) 7 SCC 337**, this Court held that under Section 30 of the Evidence Act a confession of an accused is relevant and admissible against a co-accused if both are jointly facing trial for the same offence. However, such confessional statements of an accused cannot be used against a co-accused in terms of Section 30 of Evidence Act, for the purpose of framing charges in the absence of any other evidence to do so. Similarly, where one of the accused has been discharged, confessional statement of such accused persons cannot be used against a co-accused, as the pre-condition under Section 30 of the Evidence Act, namely of there being a joint trial for the same offence is not fulfilled.

39. The High Court has its own understanding of Section 30 of the Evidence Act. It says that what is admissible under Section 30 can also be looked into at the stage of considering the plea of anticipatory bail or even regular bail. However, we are not impressed with the view expressed by the High Court. We are of the considered opinion that such a confession if any cannot be looked into at the stage of anticipatory bail or even regular bail for the following reasons: -

(i) Before a confession is taken into consideration against a co-accused, the said confession has to be duly proved against the maker. It has to be clearly established that such confession is not vitiated either by Section 24 of the Evidence Act nor rendered inadmissible by Section 25 thereof,

which can only be ascertained in the course of trial. It must be clearly established by leading cogent evidence in the course of the trial before the case for the prosecution comes to an end. [See: ***Dipak Bhai Jagdishchandra Patel v. State of Gujarat & Anr.*, (2019) 16 SCC 547**]. When confession is made before police official, the same cannot be proved in evidence at all. Statement contemplated under section 30 should be relevant and admissible, and that is the foremost requirement of section and *sine qua non*.

(ii) Section 30 of Evidence Act postulates that such a confession can be taken into consideration only where the accused persons are jointly tried. The said provision does not merely require that the persons must be accused of the same offence, but rather requires that they must be being tried jointly for the said offence. [See: ***Queen Empress v. Jagat Chandra Mali, ILR (1894) 22 Cal 50; Naresh v. R, AIR 1938 Cal 479***]. Joint trial here refers to the one provided under Section 223 of the Code of Criminal Procedure, 1973 (for short, the "**Cr.P.C.**"). Thus, where the accused persons are either not being tried jointly, or are yet to be charged for the same offence and thereafter tried together, Section 30 of the Evidence Act would be inapplicable. [See: ***Badri Prasad Prajapati v. State of M.P., (2005) Cr.L.J. 1856***]. Thus, Section 30 of the Evidence Act, would not spring into action when the charges are yet to be framed and the accused persons are yet to be committed to trial,

and any confession admissible thereunder cannot be taken into consideration by the courts.

(iii) Assuming for a moment that such a confession can be looked into at the stage of anticipatory bail or even regular bail, as per ***Kashmira Singh*** (supra), such a confession can only be pressed into consideration by the court as a rule of prudence, to lend assurance to the other evidence against such co-accused. Thus, there must exist other evidence on record, before the court looks into such confession.

40. Where a confessional statement is otherwise excluded or inadmissible by virtue of Section(s) 25 or 26 of the Evidence Act, respectively, there can be no question of such confessional statements being made admissible against another co-accused by stretching it with the help of Section 30 of the Evidence Act. Section 25 places a complete ban on the making of such confession by that person whether he is in custody or not. Section 26 lays down that a confession made by a person while he is in the custody of a police officer shall not be proved against him unless it is made in the immediate presence of a Magistrate. [See: ***Sahib Singh v. State of Haryana, (1997) 7 SCC 231***] Confessional statement contemplated under Section 30 of the Evidence Act, must be both relevant and admissible in terms of the Evidence Act.

41. At this stage, we may clarify, with a view to obviate any possibility of confusion, whether a confession statement of an accused person implicating another co-accused be taken into consideration against such co-accused in terms of Section 161 of the Cr.P.C.

42. It is no more *res integra* that a person who is accused of an offence or named in the first information report, can be examined by the police and his statement may be recorded under Section 161 of the Cr.P.C., in this regard reliance may be placed on the decision of this Court in ***Nandini Satpathy v. P.L. Dani & Anr.*** reported in **AIR 1978 SC 1025**. However, the question as to whether such statement of the accused is admissible in law and in what manner can the same be looked into was explained by this Court in ***Mahabir Mandal & Ors. v. State of Bihar*** reported in **AIR 1972 1331**, wherein it was held that as per Section 162 of the Cr.P.C. no statement made by any person to a police officer in the course of an investigation shall be signed by the person making it or used for any purpose at any enquiry or trial in respect of any offence under investigation at the time when such statement was made. The only instance where such statements may be considered or looked into has been provided in the Proviso to sub-section (1) of Section 162, which permits the use of such statement or any part thereof, to contradict **such witness** in the manner provided by Section 145 of Evidence Act or in the re-examination of **such**

witness for the purpose only of explaining any matter referred to in his cross-examination.

43. A statement given by an accused to the police under Section 161 of the Cr.P.C. may be either in the form of a confession or an admission. The Privy Council in ***Pakala Narayana Swami v. Emperor*** reported in **(1939) PC 47** explained that a confession is a statement admitting the offence or at any rate substantially all the facts which constitute the offence, whereas an admission is only in respect of a gravely incriminating fact. Even a conclusively incriminating fact is not of itself a confession. Where such statement is a confessional statement, the rigour of Section(s) 25 and 26 will apply in full force, and the said confession would be completely inadmissible as held in ***Sahib Singh*** (supra) and a catena of other decisions of this Court. Where, however, such statement amounts to an admission, the statement being one under Section 161, would immediately attract the bar under Section 162 of the Cr.PC., and the same may be used only for the very limited purpose provided in the Proviso as held in ***Mahabir Mandal*** (supra).

44. We are conscious of a handful of decisions of this Court wherein it has been held that statements under Section 161 of the Cr.P.C. ought to be looked into by the courts in deciding the question of grant of bail. ***Indresh Kumar* v. *State of Uttar Pradesh & Anr.***, reported in **2022 SCC OnLine SC 2411** observed

that "s*tatements under Section 161 of Cr. P.C. may not be admissible in evidence, but are relevant in considering the prima facie case against an accused in an application for grant of bail in case of grave offence*". Similarly, in ***Salim Khan v. Sanjai Singh*** reported in **(2002) 9 SCC 670**, it was held that the court is "*duty-bound to consider all the statements recorded under Section 161 CrPC, examine the gravity of the offence and also examine the question of possibility of the accused tampering with the evidence and possibility of getting the attendance of the accused during trial and then would be entitled to grant bail to an accused*".

45. However, the aforesaid observations cannot be singled out and construed devoid of its context. While it is permissible for the courts to examine the statements recorded under Section 161 of the Cr.P.C. for the purpose of ascertaining whether a *prima-facie* case has been made out against the accused and the nature or gravity of the allegations, the same applies only insofar as such police statements are of witnesses and not accused persons.

46. Both ***Indresh Kumar*** (supra) and ***Salim Khan*** (supra) have held that in deciding the question of grant of bail, it is the statements of witness under Section 161 of the Cr.P.C. that has to be looked into. Nowhere has this Court held that even the police statements of the accused person under Section 161

of the Cr.P.C. must also be looked into at the stage of grant of anticipatory or regular bail.

47. This is because a statement of an accused under Section 161 of the Cr.P.C stands on a different footing from a police statement of any ordinary witness. Statements of an accused person under Section 161 of the Cr.P.C. by virtue of ordinarily being in the form of either an admission or a confession cannot be looked into *qua* another co-accused, as to say otherwise would be to ignore the substantive provisions of Section(s) 17, 21, 25 and 26 of the Evidence Act and the well settled cannons of law of evidence. However, the aforesaid does not apply, where the statement of an accused under Section 161 of the Cr.P.C is exculpatory in nature, which we shall discuss later.

48. As per Section(s) 17 read with 21 of the Evidence Act, the general principle is that an admission may be given as evidence against the maker only and cannot be used against any other person. The only two exceptions to the aforesaid rule are in the context of civil disputes, i.e., where a party having a joint interest with others makes an admission relating to a subject-matter, it can be used against others or where such admission is sought to be used against any heir or persons claiming interest through or under the makers of such admission.

49. As explained in ***Pakala Narayana Swami*** (supra), a confession is one specie of an admission, this flows from the logic that every confession is an admission but not every admission is a confession, while admissions in itself is a specie or type of a statement. As a natural corollary to the aforesaid, any statement of the accused under Section 161 of the Cr.P.C. which is in the form of an admission that admits any incriminating fact or implicates another person by such statement, would be governed by the provisions of Section 17 of Evidence Act, more particularly the prohibition of usage of such admissions against third-persons. An admission by one accused cannot be used against another co-accused. [See: ***Chintamani Das v. State, AIR 1970 Ori 100; Sohar Singh v. State of Bihar, AIR 1960 Pat 448***]. The aforesaid may be looked at from one another angle, since the Evidence Act, more particularly, Section(s) 17 and 30 clearly stipulate in well-defined terms, when an admission or a confession, respectively, may be used against another person, the logical sequitur of the aforesaid is that, except for the manner laid down under the said provisions, no admission or confession may be used against another person. Since, Section 17 of the Evidence Act does not postulate the use of an admission by one accused against another, any statement of the accused under Section 161 of the Cr.P.C., implicating such co-accused cannot be looked into by the courts.

50. Even where the police statement of an accused person under Section 161 of the Cr.P.C is neither an admission nor a confession, i.e., it is exculpatory in nature and not inculpatory, such statements can be looked into by the courts only for the limited purpose of culling out the stance of the accused person *qua* the allegations. An exculpatory police statement of an accused person under Section 161 of the Cr.P.C which at the same time implicates another co-accused, cannot be relied upon, merely because such statement is not hit by the safeguards and rigours that apply in respect of inculpatory statements in the form of an admissions or confessions under the Evidence Act. The fundamental cannon of criminal jurisprudence is that a statement of one accused person cannot be used against another co-accused person. The limited exception to this aforesaid general principle are inculpatory confessions, where the accused person in his confessional statement not only admits his own guilt but also implicates another co-accused. The *rationale* behind this limited exception as explained in ***Bhuboni Sahu*** (supra), is that an admission by an accused person of his own guilt affords some sort of credibility or sanction in support of the truth of his confession against others as-well as himself. An exculpatory statement is an affront to the aforesaid principle. Thus, an exculpatory statement of an accused person under Section 161 of the Cr.P.C. can only be looked into for the limited purpose of either culling out the stance of the accused person *qua* the allegations or for contradicting the accused, if the accused chooses to be examined as a witness in terms of Section

315 of the Cr.P.C. However, such exculpatory statement insofar as it implicates another co-accused person can in no manner be relied upon by the courts as against such co-accused as such statements by their nature cannot be tested by cross-examination if such accused person declines to be a witness in the trial in terms of Section 315 of the Cr.P.C., and because such exculpatory statement has no credibility.

51. Such statements at best could be said to be helpful to the investigating authorities for the purpose of ascertaining that the investigation is proceeding in the right direction or not, as ordinarily, once the investigation is over, these statements are neither supplied to the accused along with chargesheet nor placed on record.

52. Thus, Section 30 itself makes it clear that the whole legal exercise by virtue of which this provision of law can be made applicable, depends upon the proving of confession before a court which makes it into an admissible one in order to implicate the other accused provided the confession given by such person is established with full strength on the basis of other materials pertaining to the attendant circumstances. It would necessarily mean that mere confession alone will not be adequate or sufficient to implicate other persons. It is incumbent that there are other materials also which would render support or substantiate the case of the confession. However, it is subject to the standard

of proving as contemplated by law. If this is the position, the court should look into the statements alleged to have been given by the co-accused and that too before a police officer during the course of investigation with great care and circumspection. The said statements are directly hit by Section 161 of the Code of Criminal Procedure. Particularly, the statement given by any one of the accused persons and recorded by the police officer during the course of investigation cannot be relied upon by the prosecution, except subject to the limitations provided by Section 145 of the Indian Evidence Act. The statement given by an accused involving himself in the crime and also implicating third person cannot be proved legally in the court. It will be in direct conflict with Sections 25 and 26 respectively of the Evidence Act. If such evidence or confession cannot be proved, then the occasion for utilizing such statement against another person would not arise.

53. From the above exposition of law, the following emerges: -

(i) A person who is accused of an offence or named in the first information report, can be examined by the police and his statement may be recorded under Section 161 of the Cr.P.C., as held in ***Nandini Satpathy*** (supra).

(ii) A statement of an accused under Section 161 of the Cr.P.C, would ordinarily be of two kinds, it may be inculpatory in nature or may be exculpatory in nature.

(iii) An inculpatory statement again may be in the form of an admission or a confession. If such statement admits either a gravely incriminating fact or substantially all the facts which constitute the offence, respectively, as held in ***Pakala Narayana Swami*** (supra), then it amounts to confession.

(iv) Where such police statement of an accused is confessional statement, the rigour of Section(s) 25 and 26 respectively will apply with all its vigour. A confessional statement of an accused will only be admissible if it is not hit by Section(s) 24 or 25 respectively and is in tune with the provisions of Section(s) 26, 28 and 29 of the Evidence Act respectively. In other words, a police statement of an accused which is in the form of a confession is *per se* inadmissible and no reliance whatsoever can be placed on such statements either at the stage of bail or during trial. Since such confessional statements are rendered inadmissible by virtue of Section 25 of the Evidence Act, the provision of Section 30 would be of no avail, and no reliance can be placed on such confessional statement of an accused to implicate another co-accused.

(v) A confessional statement of one accused implicating another co-accused may be taken into consideration by the court against such co-accused in terms of Section 30 of the Evidence Act, only at the stage of trial, where **(1)** the confession itself was relevant and admissible in terms of the Evidence Act; **(2)** was duly proved against the maker; **(3)**

such confessional statement incriminates the maker along with the co-accused and; **(4)** both the accused persons in question are in a joint trial for the same offence.

(vi) Furthermore, because such confessional statements are not "evidence" in terms of Section 3 of the Evidence Act as held in ***Bhuboni Sahu*** (supra), such a confession as held in ***Kashmira Singh*** (supra) can only be pressed into consideration by the court as a rule of prudence, to lend assurance to the other evidence against such co-accused, provided that aforesaid ingredients or conditions of Section 30 read with Section(s) 24 to 29 of the Evidence Act, are fulfilled.

(vii) Where the police statement of an accused is in the form of an admission, such inculpatory statement even if it implicates another co-accused cannot be taken into consideration against such co-accused in terms of Section(s) 17 read with 21 of the Evidence Act, as doing so would militate against the general principle, that an admission may be given as evidence against the maker alone. The exceptions to the aforesaid general principle carved out under the Evidence Act, do not permit the usage of such admission against a co-accused in any scenario whatsoever.

(viii) Where the police statement of the accused is an exculpatory statement i.e., it is neither a confession nor an admission, the statement being one under Section 161, would immediately attract the bar under Section 162

of the Cr.PC., and the same may be used only for the very limited purpose provided in the Proviso for the purpose of contradiction or re-examination of such accused person alone, as held in ***Mahabir Mandal*** (supra). Even if such exculpatory statement of one accused, implicates another co-accused, the same cannot be taken into consideration against such co-accused, as there can be no credibility attached to an exculpatory statement of an accused implicating another co-accused, more particularly because it is neither required to be given on oath, nor in the presence of the co-accused, the same cannot be tested by cross-examination and the exculpatory nature of such statement militates against the foundational principle that permits taking into consideration a statement of one accused person against another co-accused as explained in ***Bhuboni Sahu*** (supra), i.e., '*when a person admits guilt to its fullest extent either to a certain incriminating fact or substantially all the facts which constitute the offence, and in doing so exposes himself and in the process other co-accused persons to the pain and penalties provided for the guilt, there exists a sincerity and semblance of sanction for the truthfulness of such statement*'.

(ix) Although a handful of decisions of this Court such as ***Indresh Kumar*** (supra) and ***Salim Khan*** (supra) have held that statements under Section 161 of the Cr.P.C. ought to be looked into by the courts at the stage of anticipatory or regular bail for the purpose of ascertaining whether a

prima-facie case has been made out against the accused and the nature and gravity of the allegations, yet the aforesaid rule only applies insofar as such statements under Section 161 were made by witnesses and not accused persons. A statement of an accused under Section 161 of the Cr.P.C. stands on a completely different footing from a police statement of a witness. As already discussed in the foregoing paragraphs, if the police statement of an accused is inculpatory in nature, its more in the form of a confession or admission rather than a statement, and the relevant provisions of Section(s) 17 to 30 of the Evidence Act, will apply with all its vigour. Where such statement of the accused is exculpatory in nature, the same can be looked into by the courts only for the limited purpose of either culling out the stance of the accused person *qua* the allegations or for contradicting the accused, if the accused chooses to be examined as a witness in terms of Section 315 of the Cr.P.C.. However, such exculpatory statement insofar as it implicates another accused person cannot be looked into by the courts, as such statements by their nature cannot be tested by cross-examination if such accused person declines to be a witness in the trial in terms of Section 315 of the Cr.P.C., and because such exculpatory statement has no credibility as explained in ***Bhuboni Sahu*** (supra).

(x) Before the court looks into the police statement of any person under Section 161 of the Cr.P.C for the purpose of anticipatory or regular bail,

the court must first ascertain whether such person is actually a witness or an accused person, or likely to be an accused person in respect of the offence(s) alleged. This is because, there may be situations where a person while giving his statement under Section 161 of the Cr.P.C may not be an accused, but later arrayed as one. In such a scenario the courts must be mindful of the fact that because the investigation is still ongoing, a person who was originally a witness may happen to be later arrayed as an accused person. If the court was to blindly place reliance on statement of such a person merely because he is not named in the first information report, without first seeing whether such person is likely to be arrayed as an accused or not, it would lead to an absurd situation where the statement of such a person may be relied upon up until such person is arrayed as an accused. We also caution the courts, where it emerges from the material on record, that such a person is likely to be arrayed as an accused, the courts should refrain from expressing any such opinion so that the investigation is not prejudiced in any manner.

Allegations of third-degree methods

54. Besides the above, we would also like to make ourselves very clear that the investigating agency shall not adopt any third-degree methods or shall not

coerce or exert any undue pressure or bring any undue influence on any of the witnesses or any of the co-accused to make statements that may suit the State. Tomorrow, if any complaint is made before the court in this context with some cogent material, be it the trial Court or the High Court or the Supreme Court, the same shall be viewed very seriously. It is expected of the investigating agency to carry out a fair, impartial and transparent investigation, more particularly, in accordance with law.

55. Before we close this matter, we make it further clear that if the petitioners are ultimately arrested, remanded and thereafter sent to judicial custody and if any regular bail application is filed, the same shall be considered on its own merits in accordance with law. It is needless to say that the principles of grant of anticipatory bail substantially differ from the principles of grant of regular bail. It is for the Court concerned to apply the correct principles of law so far as the grant of regular bail is concerned and decide the same accordingly.

56. With the aforesaid, these Special Leave Petitions are disposed of.

57. If the petitioners have any further apprehension that they may be ill-treated, they can approach the High Court and obtain the very same relief that the High Court has granted in favour of the other witnesses.

SPECIAL LEAVE PETITION (CRL.) NO. 7534 OF 2025

1. This petitioner has already been arrested in connection with Crime No.21 of 2024 registered at CID Police Station, Mangalagiri, Guntur District, State of Andhra Pradesh.

2. We are informed that the petitioner was arrested and remanded to judicial custody. While reminding him to judicial custody, the investigating officer did not pray for any police remand. After being remanded to judicial custody, according to the State, the investigating officer has now moved an application seeking police remand of the petitioner.

3. We do not say anything in this regard because it will be for the Court concerned to consider whether once an accused is remanded to judicial custody whether thereafter the Investigating Officer can pray for police remand or not.

4. Be that as it may, if any application for regular bail is filed by the petitioner, the same shall be looked into by the Court concerned on its own merits by applying the well-settled principles of grant of regular bail in accordance with law.

5. With the aforesaid, the Special Leave Petition is disposed of.

6. Pending applications, if any, shall also stand disposed of.

..... J.
(J.B. Pardiwala)

..... J.
(R. Mahadevan)

New Delhi;
16th May, 2025