

Crl.O.P.No.18649 of 2015**R.SUBBIAH, J.**

This is the second anticipatory bail petition filed by the petitioners/accused. The earlier anticipatory bail petition in Crl.O.P.No.15163 of 2015 was dismissed by this Court on 09.07.2015.

2.Apprehending arrest at the hands of the respondent-police, in respect of the alleged commission of offences punishable under Sections 120(b), 419, 465, 468, 471 & 420 IPC, in Crime No.58 of 2012, the petitioners have approached this Court seeking the relief of anticipatory bail under Section 438 of the Code of Criminal Procedure.

3.The brief case of the prosecution is as follows_

The complaint was lodged by one Malaisamy, who is the Manager in ABC (India) International Company. In the complaint, it has been stated that the said ABC (India) International Company is the owner of the land in Survey Nos.243 & 252 to an extent of 11 acres and 99 cents situated at Kanchipuram District, Tiruporur Taluk, Pudupakkam Village and the said land was purchased by the said company from M/s.SSS Company, one Rajam and Vedachalam Naicker, in the year 1979. The complainant-

company viz., M/s.ABC (India) International Company is in possession and enjoyment of the said land from the year 1979. The subject properties were originally owned by one Dorthy Dare and the said Dorthy Dare had sold the subject properties in favour of one Krishnammal vide two sale deeds viz., i)Doc.No.6033/1961, dated 21.12.1961, S.No.243- 7 Acres. SRO (Dist.Reg) – North CNI; ii)Doc.No.2259/1961, dated 26.12.1961, S.No.243 – 2 Acres, SRO – Thiruporur. Subsequently, the said properties were sold to one Thiruvenkatam in the year 1962 by the said Krishnammal. Thereafter, in the year 1975 the said property was sold by the said Thiruvenkatam in favour of one R.R.Parthasarathy, who in turn sold the property in the year 1978 in favour of one J.Mohana, from whom the said properties was purchased by M/s.SSS Company in the year 1979 and during the same year, the said M/s.SSS Company sold the property to the complainant viz., M/s.ABC (India) International Company. From the date of purchase, the complainant-company is in possession and enjoyment of the property. While so, the 9th accused in this case by impersonating the original owner Krishnammal has given a General Power of Attorney in favour of the 4th accused in this case. Based on the said General Power of Attorney, the 4th accused executed a sale deed in favour of the A1 & A2. Hence, the complaint has been lodged as against the accused persons.

4.The learned counsel for the petitioners submitted that the petitioner herein have been arrayed as A10 & A11 in this case and that in the complaint lodged by the defacto-complainant, absolute there was no reference with regard to the petitioners herein. But, this fact was not brought before this Court while dismissing the earlier anticipatory bail petition.

5.But, the learned Government Advocate (Crl.Side) opposed the grant of anticipatory bail to the petitioners, stating that the petitioners herein only made arrangements for the impersonation of Krishnammal, who is aged 80 years and created forged General Power of Attorney. In fact, in the confession statement given by A1, the names of the petitioners herein have been mentioned. Further, the investigation is at initial stage and if anticipatory bail is granted to the petitioners, it will hamper the investigation. Thus, the learned Government Advocate (Crl.Side) sought for dismissal of the petition.

6. I have heard the submissions made on either side and perused the materials available on record

7.On perusal of the materials on record, I find that though the name

of the petitioners were not referred to in the FIR, in the confession statement of the 1st accused the names of the petitioners were mentioned. Further, this Court has dismissed the earlier petition filed by the petitioners for anticipatory bail only on 09.07.2013. The second anticipatory bail petition is maintainable only when there is any change of circumstances. At this juncture, it would be appropriate to refer the decision rendered by the Hon'ble Supreme Court in the case of KALYAN CHANDRA SARKAR, ETC. .vs. RAJESH RANJAN @ PAPPU YADAV AND ANOTHER (2005(1) CTC 783) and the relevant paragraphs are extracted hereunder:

"

18. In that process a person whose application for enlargement on bail once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing requires that such persons to be released on bail, in spite of his earlier applications being rejected, the Court can do so.

19. The principles of *res judicata* and such analogous principles although are not applicable in a criminal proceedings, still the Courts are bound by the doctrine of judicial discipline having regarding to the hierarchical system prevailing in our country. The findings of a higher Court or a coordinate Bench must receive serious consideration at the hands of the Court entertaining a bail

application at a large stage when the same had been rejected earlier. In such an event, the Courts must give due weight to the grounds which weighed with the former or higher Court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be re-agitated on the same grounds, as the same it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

20. The decisions given by a superior forum, undoubtedly, is binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view the guaranty conferred on a person under Article 21 of the Constitution of India, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by Courts earlier including the Apex Court of the country".

The principles laid down in the said judgment are squarely applicable to the facts of the case on hand. Unless there is any material change in the factual situation or in law subsequent to the dismissal of the earlier bail application, the present application cannot be considered. In the instant case, the only submission of the learned counsel for the petitioners is that certain relevant facts were not brought before this Court while arguing the earlier anticipatory bail application, which resulted in dismissal of the same. Hence, by considering the factual aspects of the case, which was omitted to be brought to the knowledge of this Court on the earlier occasion, the present application has to be allowed. But I am not inclined to appreciate this submission. In my considered opinion, such contentions cannot serve as a ground for grant of bail since there is no change in circumstances. The actual test for entertaining the second anticipatory bail application is that whether there is any change in factual situation or in law which requires the earlier view being interfered with. It is not the test to be applied that had certain facts which were already available at the time of hearing the earlier bail application been brought to the knowledge of this Court, the bail could have been granted on the earlier occasion itself. Therefore, in my considered opinion, if a fact, which was not in existence at the time of dismissing the earlier application subsequently comes into existence, then such a fact can alone be considered as "change in circumstances".

8. Having regard to the facts and circumstances of the case, I am of the view that there is no change in circumstances and the arguments advanced by the learned counsel for the petitioners cannot serve as a ground for maintaining the second anticipatory bail petition and hence, the same is liable to be dismissed.

Accordingly, the petition for anticipatory bail stands dismissed.

31.07.2015

SSV

R.SUBBIAH, J.

SSV

Pre-delivery order

in

Crl.O.P.No.18649 of 2015

31.07.2015