

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.592 of 2016

ORDER:

In this petition filed under Section 482 Cr.P.C, petitioners/A.4 and A.5 are seeking anticipatory bail.

2 a) One V.Madhusudhana Rao, filed a private complaint on the file of III Additional Judicial Magistrate of First Class, Tirupati against petitioners and 4 others alleging that A.2 and A.4 projecting as owners of Ac.1-38 ½ cents of land in S.No.572/2 in Peruru Gram Panchayat, offered to sell the same to the complainant and 2 others namely M. Mallikikarjuna Reddy and M.Muneendra Rao and other accused in conspiracy with A.2 and A.4 induced the complainant and the aforesaid two others to purchase the property and accordingly an agreement to sell dt:23.11.2011 was entered into between the three purchasers and A.2 and A.4 for a sale consideration of Rs.2,36,07,000/- and the complainant and 2 other purchasers paid an advance of Rs.60,00,000/- and later they paid another Rs.40,00,000/-. The vendors agreed to execute the registered sale deed in favour of purchasers within 6 months. However, the accused failed to clear the encumbrances over the property and furnish the documents to perform their part of the contract. The complainant and 2 other purchasers were always ready and willing to perform their part of contract. It is further averred that the accused had no right over the

property and they fraudulently executed the agreement to sell to cheat the complainant and other purchasers. The accused had deceitful intention to cheat the purchasers as on the date of agreement and they suppressed the fact of pending litigation between the accused and the original owners. The private complaint was forwarded to M.R. Palli P.S and the police registered a case in Crime No.196/2015 against A.1 to A.6 for the offence under Sec.420, 468, 471, 384, 506 r/w 34 IPC and investigation is said to be pending.

At this stage, A.4 and A.5 filed the instant application for anticipatory bail.

3) Heard arguments of Sri O.Kailashnath Reddy, learned senior counsel appearing for Sri Suresh Kumar Reddy Kalava, learned counsel for petitioners; Sri A.Hari Prasad Reddy, learned counsel for respondent No.2/*defacto* complainant and learned Public Prosecutor for the State (A.P).

4) Denying the FIR allegations, learned counsel submitted that despite the condition in the agreement that the purchasers have to pay the balance amount within 6 months failing which the advance amount will be forfeited, the *defacto* complainant and other purchasers have not paid the amount and on the other hand, they kept silent for more than 4 years and all of a sudden filed the private complaint only to harass the accused and extract amount from them.

Learned counsel submitted that the accused had no intention to cheat the complainant and 2 others and they were the rightful owners of the subject property and subsequent to the agreement to sell, some persons claiming to be having right in the subject property and other property filed a false suit in O.S.No.30 of 2012 on the file of III Additional District Court, Tirupati against the accused and their vendors and the said suit is pending. Learned counsel submitted that the first petitioner is a lady and second petitioner is her husband and a practicing Advocate in Tirupati and they are respectable persons in the society and there is no question of their absconding or interfering with the investigation and therefore, bail may be granted to them.

5) Per contra, learned counsel for respondent No.2 argued that all the accused had deceitful intention since the inception of agreement as they suppressed the factum of litigation between their vendors and co-sharers and entered into an agreement to sell and made the purchasers to part with hard cash of Rs.1 Crore and thus cheated the purchasers.

6) Learned Public Prosecutor submitted that the investigation is pending and so far three witnesses were examined and the petitioners have also filed CrI.P.No.584 of 2015 to quash the FIR No.196 of 2015 of M.R.Palli P.S and the same is pending wherein they sought for stay of arrest and the said petition is also pending and they suppressed

the said fact in the instant petition and as the investigation is in crucial stage, bail may not be granted.

7) The point for determination in this petition is:

Whether the petitioners deserve anticipatory bail?

8) **POINT:** Admittedly, A.2 and A.4 entered into a sale agreement dt:23.11.2011 with the *defacto* complainant and 2 others and obtained an advance amount of Rs.60,00,000/- and it appears, further amount of Rs.40,00,000/- was paid by the purchasers. Be that it may, subsequently O.S.No.30 of 2012 was filed by some of the opponents of the vendors of the accused on the file of III Additional District Judge, Tirupati and the said suit is pending. Whether the petitioners and other accused have deceitful intention since the inception of agreement to sell or suit O.S.No.30 of 2012 was filed by some of the third parties to intimidate and extract money from the vendors of the accused has to be decided after full-fledged investigation. Be that it may, the fact that first petitioner is a lady and the second petitioner who is her husband is a practicing Advocate is not in dispute and the Public Prosecutor and the *defacto* complainant have not made a strong assertion that in case bail is granted, they will either abscond or meddle with the investigation. As such and having regard to the civil nature of the matter, I am inclined to grant bail to the petitioners.

9) In the result, this petition is allowed and ordered as follows:

- (i) The petitioners/A.4 and A.5 are directed to surrender before III Additional Judicial First Class Magistrate, Tirupati on or before **03.03.2016** and on such surrender they shall be enlarged on bail on each of them executing a bond for Rs.50,000/- (Rupees Fifty Thousand only) with two(2) sureties each for like sum to the satisfaction of the said Court.
- (ii) The petitioners shall not leave Chittoor District pending investigation without prior permission of the III Additional Judicial First Class Magistrate, Tirupathi.
- (iii) The petitioners shall not meddle with the investigation, cause threat or inducement to any witnesses.
- (iv) The petitioners are directed to cooperate with the investigating agency for smooth completion of investigation.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 25.02.2016.

Note: Issue C.C by tomorrow.

(b/o)

SCS