

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.16465 OF 2016

ORDER:

This Criminal Petition, under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to grant pre-arrest bail to the petitioner/A.1 in Crime No.369 of 2015 of Langerhouse Police Station, Hyderabad, who allegedly committed offences punishable under Sections 420, 465, 468, 471 and 120-B of Indian Penal Code, 1860 (for short, 'I.P.C.').

The case of the petitioner, in brief, is that he admittedly executed sale deeds bearing Nos.9554 and 9555 of 2013 dated 13.02.2014 and the same were cancelled by executing registered cancellation deeds bearing Nos.5402 and 5405 dated 15.09.2014 and 15.09.2015 respectively, and refunded the amount to the vendees. Therefore, as on 15.09.2014 the purchasers, viz., G.Sudarshan Reddy, G.Janardhan Reddy, G.Goverdhan Reddy, G.Madhusudhan Reddy, T.Chandrabhanu Reddy, V.Sudharshan Reddy and Sunil Reddy are in possession in the entire extent of Ac.7.10 guntas of land in Sy.No.447 of Raichur Village, Raichur City, Karnataka State. Thus, he committed no offence in view of cancellation of the registered sale deeds.

The learned Public Prosecutor for the State of Telangana would contend that the petitioner himself admitted about execution of the sale deeds and their cancellation, though he had no title to the property, which amounts to admission of commission of the offence and there exists no ground to grant pre-arrest bail. Therefore, prayed to dismiss the petition.

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Learned counsel for the petitioner would contend that the petitioner is apprehending his arrest in connection with the above crime and in case he is arrested, he will be put to serious loss.

The petition is filed for grant of pre arrest bail, which is purely discretionary in nature and grant of pre-arrest bail is not a matter of course, it is a matter of exception. Admittedly, the petitioner executed sale deeds and their cancellation referred above. The copies of the said documents are filed before this Court, but those documents do not disclose any reason for cancellation of registered sale deeds. Mere cancellation of registered sale deeds is not a ground to grant pre-arrest bail. Grant of pre-arrest bail is not a matter of course, but it is a matter of exception. Unless some exceptional circumstances are shown, a pre-arrest bail can not be granted as a matter of routine.

In **STATE OF MAHARASHTRA VS. MOHD. SAJID HUSAIN**¹, the Apex Court laid down the following guidelines for grant of anticipatory bail:

- 1.The nature and gravity or seriousness of accusation as apprehended by the applicant;
- 2.The antecedents of the applicant including the fact as to whether he has, on conviction by a Court, previously undergone imprisonment for a term in respect of any cognizable offence;
- 3.The likely object of the accusation to humiliate or malign the reputation of the applicant by having him so arrested; and
- 4.The possibility of the appellant, if granted anticipatory bail, fleeing from justice.

¹ AIR 2008 SC 155

Similarly, in **SIDDHARAM SATLINGAPPA MHETRE VS. STATE OF MAHARASHTRA AND OTHERS**², the Apex Court held as follows:

The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii) The antecedents of the applicant including the facts as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii) The possibility of the applicant to flee from justice;
- iv) The possibility of the accuser's likelihood to repeat similar or the other offences;
- v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
- vi) Impact of grant of anticipatory bail particularly in case of large magnitude affecting a very large number of people;
- vii) The Courts must evaluate the entire available material against the accused very carefully. The Court must also clearly comprehend the exact role of the accused in the case. The case in which accused is implicated with the help of Section 34 and 149 of IPC, the Court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- ix) The Court to consider reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant;

² 2011 Cri.L.J. 3905

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- (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

In the present facts of the case, the petitioner admitted about the execution of registered sale deeds and their cancellation, though he is not properly authorized by the persons, who allegedly executed power of attorney in his favour. The material on record, *prima-facie*, discloses direct involvement of the petitioner in the commission of offences punishable under Sections 420 and 468 of I.P.C.

Keeping in mind the guidelines laid down by the Apex Court in the judgments referred above, it is difficult to grant pre-arrest bail, at this stage, since there are no changed circumstances after dismissal of the earlier bail application by the II Additional Metropolitan Sessions Judge in CrI.P.No.2444 of 2016 dated 03.09.2014 and hence, the criminal petition deserves to be dismissed

In the result, the criminal petition is dismissed.

M. SATYANARAYANA MURTHY, J

Date:17.01.2017
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