

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.5349 of 2017

ORDER:

1 This criminal petition is filed, by the petitioners/accused Nos.1 and 2, under Section 438 Cr.P.C., seeking anticipatory bail in Crime No.212 of 2017 on the file of the Station House Officer, Narayanaguda Police Station, Hyderabad city registered for the offences punishable under Sections 406 and 420 r/w 34 of IPC.

2 The learned counsel for the petitioners strenuously submitted that even if the allegations made in the complaint are ex facie taken to be true and correct, no case is made out against the petitioners for the offences punishable under sections 406 and 420 of IPC. He further submitted that the lis involved between the parties is purely civil in nature, without any element of criminality, therefore, it is a fit case to grant pre arrest bail to the petitioners.

3 ***Per contra***, the learned Additional Public Prosecutor representing the State submitted that the petitioners are habitual offenders and committed similar type of offences. He further submitted that the petitioners cheated number of persons. He further submitted that the allegations made in the complaint, *prima facie*, constitute the offences alleged to have been committed by the petitioners, therefore, it is not a fit case to grant anticipatory bail to the petitioners.

4 The facts leading to filing of the present petition, briefly, are as follows:

5 One Rajender Kumar Jain is the de-facto complainant in this case. As per the allegations made in the compliant, the de-facto

complainant herein along with four others entered into an agreement with the petitioners for construction of flats and paid Rs.20.00 lakhs each. As per the terms and conditions of the agreement, the petitioners have to complete the entire construction work within 30 months from the date of the agreement. It is the further case of the de-facto complainant that the petitioners handed over the construction work to some other person without the knowledge and consent of the de-facto complainant. It is further alleged that when the de-facto complainant and others questioned the petitioners, they replied that they are not interested to complete the construction work.

6 The learned counsel for the petitioners submitted that the Court can grant anticipatory bail even after filing of the charge sheet. To substantiate the same, the learned counsel for the petitioners has drawn the attention of this court to the ratio laid down by the Hon'ble apex Court in ***Ravindra Saxena vs. State of Rajasthan***¹. In the case on hand, the police have not filed the charge sheet. It is needless to say that while granting anticipatory bail, the Court has to take into consideration whether the lis involved is purely civil in nature, or partly civil in nature or partly criminal in nature. In the instant case the petitioners have received money from four persons viz., Basanth Samdariya, Naishanth Samdariya, Mahaveer Chand Chain and Smt. Sulcha Jain. The fact remains that, even after lapse of five years, the petitioners have not completed the construction work.

7 A perusal of the record reveals that the petitioners are involved in Cr.Nos.262 of 2016 and Cr.No.388 of 2016 both on the file of Station House Officer, Narayanaguda Police Station, registered for the

¹ AIR 2010 SC 1225

offences punishable under sections 420 and 506 r/w 34 of IPC and 406 and 420 of IPC respectively. A perusal of the record clearly reveals that the petitioners involved in similar type of cases. A perusal of the record prima facie reveals the role played by the petitioners in commission of the alleged offences.

8 Having regard to the facts and circumstances of the case and also the nature of the offences alleged to have been committed by the petitioners, this Court is of the considered view that this is not a fit case to grant anticipatory bail to the petitioners at this stage.

9 In the result, the petition is dismissed.

Date: 9th August 2017
Kvsn

T.SUNIL CHOWDARY, J

