

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.1059 OF 2017

ORDER:

This Criminal Petition is filed by the petitioners under Section 438 of Cr.P.C. to enlarge them on bail in the event of their arrest in Crime No.259 of 2016 of Chaitanyapuri Police Station, Cyberabad District, registered for the alleged offences punishable under Sections 420 and 406 read with 34 of I.P.C., apprehending their arrest in the above crime.

Petitioners herein are accused and defacto complainants herein are fourteen in number in the above crime.

The case of the prosecution, in brief, is as follows:

The defacto complainants lodged a complaint against the petitioners with specific allegations that the petitioners and others offered to sell plots and believing the said offer, defacto complainants agreed to purchase plot No.210 admeasuring 150 square yards situated at Yadagiripally, Datharpally, Yadagiri Gutta, Nalgonda District, for a total consideration of Rs.1,44,000/- and it is agreed that the amount is payable on instalment basis and also induced the complainant to ask their relatives friends to purchase the plots and due to which one K.Lalitha also agreed to purchase plot No.206, admeasuring 150 square yards for total consideration of Rs.1,44,000/- and some other people also purchased the plots and later they paid the instalments regularly to said persons till date and thereafter, the petitioners closed their office and changed their firm

name. When all of the defacto complainants questioned about their closure of office, the petitioners assured them that they will execute registered sale deed and thereafter they postponed the same on one pretext or the other. The payment details of the defacto complainants are as follows:

Name	Rs.
Narasimha	1,20,000/-
Lalitha	90,000/-
P.Hymavathi	80,000/-
Pavan	74,500/-
Rohit	75,000/-
Nagaraj	75,000/-
Devamani	75,000/-
Shivam	74,500/-
Nagamani	75,000/-
Sunil	74,500/-
Vijayalakshmi	54,000/-
Manu Yadav	54,000/-
Charmi	69,000/-

After collection of above amount, petitioners and others did not execute any registered sale deed in favour of the purchasers of plots and when they approached the petitioners and others while expressing their willingness to pay balance amount, defacto complainants came to know that venture was transferred to Rajya Rajeswari Hills and thus, they cheated the defacto complainant making false representation to part with huge amount. Thus, the petitioners cheated the defacto complaints. Basing on the complaint given by the defacto complainants, police registered the same as a case in Crime No.259 of 2016 for the offences referred supra.

The main contention of the petitioners is that the amount payable for each plot is Rs.1,80,000/- in scheme 'C' and defacto complainants paid meager amount and did not comply the promise and condition of sale annexed to the passbook issued to the purchases and thereby, they are not entitled to demand for execution of registered sale deed.

It is also contended that wife of A.2 (A.3) filed O.P. and obtained an order not to alienate or change the nature of the petition schedule property therein in favour of third parties, until further orders and on account of restraint order, petitioners could not register the sale deed, finally, it is contended that Ac.8.00 of land in S.No.134 was acquired by the Government and also proposed to acquire part of the other land for road widening, thereupon, petitioners filed writ petition challenging the proceedings initiated by the Government of Telangana for acquisition of land. Therefore, they were prevented by a cause which is beyond their reasonable control and that the petitioners never intended to avoid execution of sale deed in favour of the defacto complainants and prayed to enlarge the petitioner on anticipatory bail.

One of the terms and conditions is that company is not responsible for acquisition of land by the Government.

Taking advantage of the terms and conditions, petitioners contended that they are not responsible for failure to execute their sale deeds in favour of the defacto complainants.

Learned Public Prosecutor contended that since the petitioners transferred the venture to one Raja Rajeswari Hills after collection of huge amount from the defacto complainants, the act of petitioners would amount to the offences punishable under Sections 420 and 406 of I.P.C. and they are not entitled to claim pre-arrest bail and prayed for dismissal of the petition.

Though the petitioners contended that the defacto complainants paid meager amount, it is evident from the total amount mentioned above, most of them paid major part of consideration out of agreed sale consideration but conveniently, petitioners transferred entire venture to Raja Rajeswari Hills and A.3 filed I.A.No.845 of 2015 in Arb.O.P.No.446 of 2015 against her husband and others and obtained order. It is not known whether the order was effected and result of the petition is also not placed before this court. However, it is not a ground to deny execution of registered sale deeds. Moreover, Government also allegedly acquired part of the property, in such a case, the question of transfer of entire venture to Raja Rajeswari Hills does not arise. When the petitioners transferred the entire venture to Raja Rajeswarri Hills, they are no more owners of the property and the other proceedings i.e., arbitration proceedings and acquisition proceedings will have no effect on it and such transfer itself suffice to conclude that the petitioners fraudulently avoided to execute registered sale deeds in favour of the defacto complainants and therefore, petitioners who avoided to execution of registered sale deed receiving balance of sale

consideration, approached this court though transferred the entire venture to Raja Rajeswari Hills, would constitute the offences prima facie, punishable under sections referred supra and as such they are not entitled to claim any pre-arrest bail.

Grant of pre-arrest bail is not a matter of course, it is a matter of exception. Unless the petitioners have shown exceptional circumstances, the court cannot grant pre-arrest bail and such discretion is only in exceptional circumstances as per the law declared by the Apex Court in *STATE OF MAHARASHTRA VS. MOHD. SAJID HUSAIN* ⁽¹⁾. wherein 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.*

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

- i) *The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is*

¹ AIR 2008 SC 155

² 2011 Crl.L.J. 3905

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;*
- (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.

But, herein, the guise of arbitration proceedings pending before the court and in the guise of acquisition proceedings, they avoided but conveniently transferred venture long prior to the acquisition and arbitration proceedings, in favour of Raja Rajeswari Hills which itself says that petitioners, prima facie, with malafide intention, avoided to execute the registered sale deeds in favour of the defacto complainants and therefore, the petitioners are not entitled to claim discretionary relief of anticipatory bail and as such, this petition is liable to be dismissed.

In the result, this Criminal Petition is dismissed.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Dated 15-2-2017.

Dvs.

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



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