

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.1836 OF 2017

ORDER:

This criminal petition is filed under Section 438 of Cr.P.C to enlarge the petitioners/Accused 3 & 2 respectively on bail in Crime No.83 of 2016 on the file of Railway Kodur Police Station, Kadapa, for the offences punishable under 147,148,188,448,427,386, 506 r/w 149 IPC seeking direction against the Station House Officer, Railway Kodur Police Station to release the petitioners on bail in the event of their arrest in connection with the above crime, apprehending their arrest.

The brief facts of the case are that the second petitioner herein who is the President of Sri Kavamma Educational and Rural Development Society who obtained loan of Rs.1,46,00,000/- from the Union Bank of India for construction of college building in the land admeasuring Ac.0-92 cents in Sy.Nos.947 & 948 situated at Anantharajupeta, Railwaykodur Mandal, Kadapa and the society has created an equitable mortgage in favour of the bank.

Similarly, the first petitioner who is the President of Visva Siva Sai Educational Society obtained loan of Rs.1,30,00,000/- from Union Bank of India and offered security of open land admeasuring Ac.0-35 cents in Sy.No.742/2 situated in Anantharajupeta, Railwaykodur Mandal, Kadapa. Further, the petitioners created an equitable mortgage in favour of the bank apart from the above mentioned properties and also offered security of residential site of Ac.0-54 cents in land in Sy.No.770/1

and Ac.0-30 cents in Sy.No.771 in Railwaykodur Town belonging to the second petitioner. It is submitted that after obtaining loan, the petitioners have repaid substantial amount, but, however due to Samaikya Andhra Agitation, permissions which were to be accorded to the college got delayed and admissions also got delayed because of the things beyond their control and thereby, the petitioners could not repay the loan installments within time. Therefore, the loan accounts of Kavamma Educational and Rural Development Society and Visva Siva Sai Educational Society are classed as 'Non Performing Accounts (NPA)' and the bank initiated action under SARFAESI Act and the bank has taken over the physical possession of the properties mortgaged as security to the loans in the bank.

It is submitted that the District Collector, Kadapa issued proceedings vide D Dis No.D1/2138/2015 dated 12.08.2015 instructing the Tahsildar, Railwaykodur to take possession of the land and college building in an extent of Ac.0-19 cents situated in Sy.Nos.947 & 948 near agricultural college Chennai-Kadapa Highway road, Anantharajupeta Village, Railwaykodur Mandal, standing in the name of Sri Kavamma Educational & Rural Development Society under registered sale deed bearing Document No.625/2011 dated 24.03.2011 within the specified boundaries. It is also submitted that the Tahsildar has illegally taken possession of the entire buildings of the college situated in Ac.2-37 cents instead of confining to Ac.0-92 cents in Sy.No.947 & 948 which are under mortgage to the bank. Thereupon, the second petitioner filed W.P.No.16838 of 2016 before this Court challenging the illegal

possession and the Division Bench of this Court disposed of the said writ petition vide order dated 10.06.2016 clearly stating that the bank shall not interfere with the possession and enjoyment of the Educational Society over any land or buildings which are not covered under the mortgage which extends to only Acs.0.92 cents of land along with the buildings situated thereon. It is stated in the affidavit that the Union Bank of India on coming to know about the disposal of the writ petition in favour of the college, gave false complaint to the police on 11.06.2016 alleging that the bank officials came to know that on 09.06.2016 at about 09:30 AM, the petitioners herein along with 10 other henchmen have forcibly entered into the college building and started to break open the college room locks which was sealed by the Revenue Officials and when the security guard tried to stop them, the petitioners and others threatened to kill him. Based on the said complaint, police registered Crime No.83 of 2016 and issued FIR.

It is the contention of the petitioners that though the investigating agency found no truth in the complaint, they did not take any action and the Sub-Inspector of Police who investigated matter ought to have closed the case, but did not close it for the reasons best known to him and in the meantime, he was transferred to some other place. It is contended that the present Sub-Inspector of Police, at the behest of the bank officers is harassing the petitioners under the guise of pending FIR No.83 of 2016 by frequently visiting the college and threatening to effect the arrest of the petitioners and therefore, prayed to enlarge the petitioners on bail in the event of their arrest in connection with

the above crime, as the petitioners hailed from respectable families and gained good image in the society.

Sri Ch. Srinivas, learned counsel appearing for the petitioners contended that they have no objection to sell the property mortgaged with the bank by auction and despite reporting no objection, the bank is unable to realize the debt and get the property in their possession without any further proceedings for the last two months and despite the order passed by the Division Bench of this High Court in W.P.No.16838 of 2016, the bank authorities are making efforts to interfere with the enjoyment of the property which is not mortgaged and foisted the false cases against the present petitioners based on untrue allegations and prayed to enlarge the petitioners on bail in the event of their arrest in connection with the above crime, as their arrest if any effected would cause incalculable damage to their reputation.

The learned Public Prosecutor for the State of Andhra Pradesh would contend that there is substantial material on record to establish that the possession of the property was taken by the District Collector & Executive Magistrate. Despite it, the petitioners along with other henchmen entered into the property by threatening the security guard to kill. That itself is suffice to conclude that they committed serious offence. If, really, the petitioners have come from respectable families, they are not supposed to stoop to such an extent, having approached the Courts. If really, the petitioners are aggrieved by the act of the police or bank authorities, they could have taken recourse of law by approaching the Court and take possession of the property,

instead of resorting to such acts. The petitioners along with other henchmen highhandedly trespassed into the property causing damage and committed a serious offence and they deserve no sympathy and they are disentitled to claim pre-arrest bail in the above crime.

As seen from the material produced by the petitioners, it is evident that as the petitioners have failed to repay the loan obtained from the bank, their loan accounts were declared as 'Non Performing Accounts (NPA)' and subsequently proceedings were initiated under SARFAESI Act. Thereupon, the bank took possession of the mortgaged properties by issuing possession notice under Rule-8(1) of SARFAESI Act. W.P.No.16868 of 2016 which was filed by the petitioners before this Court was disposed of, directing the bank not to interfere with the possession and enjoyment of the educational society over any land or buildings which are not covered under the mortgage which extends to only Acs.0-92 cents of land along with the buildings situated thereon.

The Collector and District Magistrate vide proceedings dated 12.08.2015 took possession of Ac.0-19 cents land and college building thereon in Sy.No.947 & 948 in Chennai – Kadapa highway which was acquired by Kavamma Educational Rural Development Society under registered sale deed No.625/2011 dated 24.03.2011. Taking possession of the property is not disputed by the petitioners and in fact, the petitioners attempted to take possession of the property which was mortgaged with the Union Bank of India, when their loan accounts were declared as Non Performing Accounts (NPA) through the District Collector-cum-District Magistrate. When

possession was taken by the bank as per the procedure prescribed under SARFAESI Act, and appointed a watchman to watch the property till it is sold to the third parties in auction or re-delivered to the petitioners, it is deemed that the property is in possession of the bank, in view of the provisions of SARFAESI Act. The Union Bank of India made a sincere attempt to sell the property by e-auction sale notice dated 31.07.2015. But, the property could not be sold and admittedly, the property i.e building in Sy.Nos.947 & 948 belonging to Kavamma Educational and Rural Development Society is a mortgaged property, in view of the admission in the petition and in view of the order passed by this Court in W.P.No.16868 of 2013. But, the complaint lodged by the bank clearly disclosed that the possession of the building in Sy.Nos.947 & 948 near Agricultural College, Anantahrajupeeta was taken in pursuance of the proceedings D Dis.No.D1/2138/2015 dated 12.08.2015 issued by the District Collector, Kadapa. Though the property is in possession of the bank, the petitioners allegedly trespassed into the property and these petitioners along with 10 others forcibly entered into the building and broke open the locks and when it was questioned by the Security Guard Narsimhulu, they threatened to kill him if he obstruct them and one Subramanyam S/o Sivayya cut the lock with a machine and the other 9 persons aided him to cut the lock. Thus the alleged act of the petitioners is highhanded and if the petitioners are really hailed from respectable families, they are not expected to stoop and resort to such act of breaking the lock, which is kept under lock and key of the bank and sealed thereon. The petitioners being

the Member and President respectively of the educational institution are not expected to stoop to such extent of taking forcible possession. The material on record *prima facie* is sufficient to conclude that the petitioners committed an offence punishable under Sections 147,148,188,448,427,386, 506 r/w 149 IPC. Moreover, the investigation is not yet completed and it appears from the allegations made in the complaint that the petitioners are highly influential and on account of their influence, one of the Sub-Inspector of Police was transferred and the present Sub-Inspector of Police is bound to complete the investigation in the crime and file final report before the competent court. If these petitioners are granted anticipatory bail, it would be difficult for the present Sub-Inspector of Police to complete his investigation due to their influencing capacity. The possibility of interfering with further investigation and threatening witnesses cannot be ruled out, because of their control in the locality.

In the present facts of the case, being the Member and President respectively of the Educational Institution, the offence committed by the petitioners is serious in nature and taking possession of the property highhandedly, which is admittedly taken possession in pursuance of the proceedings under SARFAESI Act through the Collector-cum-District Magistrate and the bank, the present petitioners do not deserve any sympathy and they cannot be released on bail in the event of their arrest, for the reason that the petitioners have got transferred the Sub-Inspector of Police with their influence and also the fact that since there is every possibility of the petitioners interfering with further

investigation.

Taking into consideration, the seriousness of the crime and the status of the petitioners, it can reasonably be inferred that there is every possibility of the petitioners interfering with further investigation. Hence, I find that it is not a fit case to direct the Station House Officer, Railway Kodur Police Station to release the petitioners in the event of their arrest in connection with the above crime.

The criminal petition is devoid of merits and it is liable to be dismissed.

In the result, the criminal petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Dated: 23.03.2017

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