

**HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
MONDAY, THE FOURTH DAY OF DECEMBER
TWO THOUSAND AND SEVENTEEN**

:PRESENT:
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRL. P. NO:10957 of 2017

Between:

- 1 Narayana Swain S/o. B.C. Swain, aged about 39 years, Business, R/o. D.No.43-123-9, Krishna Hotel Centre, Ajithsing Nagar, Vijayawada-15
 - 2 Reeta Devi W/o. Narayana Swain, aged about 35 years, Business, R/o. D.No.43-123-9, Krishna Hotel Centre, Ajithsing Nagar, Vijayawada-15
- Petitioners/Accused No.1 & 2

AND

The State of Andhra Pradesh, Rep. by its Public Prosecutor for Andhra Pradesh, High Court at Hyderabad.

.....Respondent/Complainant

Petition under Section 438 of Cr.P.C., praying that in the circumstances stated in the petition and the grounds filed herein, the High Court may be pleased to grant Anticipatory Bail to the petitioners/accused 1 & 2 in Crime No.193/2017 on the file of Ajitsinghnagar PS, Krishna District in the event of their arrest;

Counsel for the Petitioners : SMT. AKELLA PADMA

Counsel for the Respondent : ADDL. PUBLIC PROSECUTOR (AP)

The Court made the following ORDER:

“This Criminal Petition is filed under Section 438 of Cr.P.C. for grant of anticipatory bail to the petitioners-A.1 and A.2 in Crime No.193 of 2017 of Ajitsinghnagar Police Station, Vijayawada, Krishna District, registered for the offences punishable under Sections 406, 420, 467, 471, 120-B, 323, 506 r/w Section 34 I.P.C.

2. Heard the learned counsel for the petitioners-A.1 and A.2 and the learned Additional Public Prosecutor appearing for the respondent-State, apart from perusing the material available on record.

3. The learned counsel for the petitioners-A.1 and A.2 would submit that the petitioners-A.1 and A.2 are innocent persons; they never received any amount from the *de facto* complainant; the prosecution case is utterly false; the petitioner-A.2 has no role to play; the petitioners have not cheated the *de facto* complainant; the

petitioners hail from respectable family; the dispute between the parties is civil in nature; in case of dishonour of cheque, the *de facto* complainant has to proceed under the Negotiable Instruments Act; and ultimately, prayed to grant bail to the petitioners-A.1 and A.2 under Section 438 Cr.P.C.

4. Learned Additional Public Prosecutor opposed the grant of bail to the petitioners-A.1 and A.2 under Section 438 Cr.P.C.

5. The material on record reveals that the petitioners are husband and wife. A.3 is the friend of the petitioner-A.1. In the course of business transactions, the petitioner-A.1 developed good relations with the *de facto* complainant and when the *de facto* complainant expressed his desire to start a school, the petitioner-A.1 made to believe the *de facto* complainant that he is a much influenced person, he has got influence with the CBSE authorities and he is capable of getting foreign funds from Japan and he can easily procure permissions, etc. In due course, the petitioner-A.1 collected an amount of Rs.94,00,000/- from the *de facto* complainant as detailed below:

- On 18.05.2016, he paid an amount of Rs.3,00,000/- through Cash.
- On 21.12.2015, he paid an amount of Rs.4,00,000/- through Cash, obtained by pledging golden ornaments.
- On 03.01.2016, he paid an amount of Rs.10,00,000/- through Cash on the guise of expenses for obtaining school permission and he shown a letter to the wife of the de-facto complainant on 13.01.2016 as school permission.
- On 21.01.2016, he paid an amount of Rs.12,00,000/- to A2, wife of A1, through Cash, by sending a message on 20.01.2016 from his mobile phone with regard to the approval of foreign aid.
- On 10.02.2016, he paid an amount of Rs.13,00,000/- to A2, through Cash, obtained by pledging golden ornaments.
- On 18.03.2016, he paid an amount of Rs.4,90,000/- through transfer, in A/c. No.6007068356, IFSC Code IDBI000M040 belongs to A3.
- On 20.03.2016, he paid an amount of Rs.15,00,000/- through cash to A1.

- On 05.05.2016, he paid an amount of Rs.15,00,000/- through cash to A1.

6. Thereafter, neither the petitioner-A.1 obtained permission nor returned the money. A cheque for Rs.35,00,000/- was given in favour of the *de facto* complainant. There are also other allegations, the manner how the petitioner-A.1 received the amount of Rs.94,00,000/-. The specific allegation against the petitioner-A.2 is that on one occasion, an amount of Rs.25,00,000/- was handed over her. The petitioner-A.2 is not a signatory to the partnership deed. There is no specific mention of this petitioner-A.2 promising or seeking money from the *de facto* complainant. The petitioner-A.2 is a woman. In view of the nature of allegations leveled against the petitioner-A.2, she can be granted bail under Section 438 Cr.P.C. As far as the petitioner-A.1 is concerned, there are specific and grave allegations of collecting money to the tune of Rs.94,00,000/- on a false promise to establish CBSE syllabus and to foreign aid. The matter requires examination. There is possibility of the petitioner-A.1 causing disappearance of the material evidence, in the event granting bail to him under Section 438 Cr.P.C. Under these circumstances, the petitioner-A.1 is not entitled to bail under Section 438 Cr.P.C.

7. In the result, the petitioner-A.2 is directed to surrender before the Station House Officer, Ajitsinghnagar Police Station, Vijayawada, Krishna District, within a period of 15 days from today. On such surrender, the Station House Officer, Ajitsinghnagar Police Station, shall release the petitioner-A.2 on bail on petitioner-A.2 executing a personal bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties each for a like sum to the satisfaction of the said S.H.O. On release, the petitioner-A.2 shall abide by the conditions mentioned in Section 438(2) Cr.P.C. and cooperate with the investigating officer. The petitioner-A.2 shall also attend before the Station House Officer, Ajitsinghnagar Police Station, Vijayawada, Krishna District, on every Sunday between 8-00 a.m. and 9-00 a.m. till filing of the charge sheet.

8. Accordingly, this Criminal Petition is partly allowed. As a sequel, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.”

ASSISTANT REGISTRAR

//TRUE COPY//

For ASSISTANT REGISTRAR

To

1. The VII Addl. District and Sessions Judge, Vijayawada, Krishna District.
2. The Metropolitan Magistrate, Vijayawada, Krishna District.
3. The Station House Officer, Ajitsinghnagar Police Station, Vijayawada, Krishna District.
4. Two CCs to Public Prosecutor (AP), High Court of Judicature at Hyderabad (OUT)
5. one CC to Smt. Akella Padma, Advocate (OPUC)
6. One Spare Copy



HIGH COURT

**AB
DRAFTED ON 6-12-2017**

DR.SA,J

DATE: 04-12-2017



ORDER

CRL.P. NO. 10957 OF 2017

DIRECTION