

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.12383 OF 2017

ORDER:

This Criminal Petition is filed by the petitioners/A.1 and A.2 under Section 438 Cr.P.C. for grant of anticipatory bail to them in Crime No.226 of 2017 of Dwaraka Police Station, Visakhapatnam District, registered for the offence punishable under Section 420 r/w 34 I.P.C.

2. Heard the learned counsel for the petitioners/A.1 and A.2, learned Additional Public Prosecutor representing the respondent-State and perused the record.

3. The learned counsel for the petitioners/A.1 and A.2 would submit that the petitioners are innocent persons and falsely implicated in this case. The *de facto* complainant was allotted Plot No.42 and there is an agreement to that effect, but no other plot was allotted to the *de facto* complainant. The petitioners are ready to register the Plot No.43 in favour of the *de facto* complainant subject to release of mortgage by VUDA, Visakhapatnam, and ultimately prayed to allow the application.

4. The learned Additional Public Prosecutor opposed for grant of bail to the petitioners/A.1 and A.2 and contended that the petitioners initially allotted Plot No.26 to the *de facto* complainant and thereafter, they have changed it to Plot Nos.15 and 16. In that process, they have received substantial money from the *de facto* complainant as sale consideration and ultimately failed to register the document and thereby cheated the *de facto* complainant. There are no justifiable grounds to allow the application.

5. The material placed on record reveals that the petitioners/A.1 and A.2 are husband and wife. The petitioner/A.1 is the Managing Director of

Dream Homes Projects and Developers and the petitioner/A.2 is the Director of the said firm. As per the proceedings dated 28.02.2015, the *de facto* complainant was allotted Plot No.26 with passbook No.9015, in the venture of "Sai Sampath Nivas" and there are also terms and conditions of payment of sale consideration in that agreement. In that process, the petitioners have collected Rs.3,20,000/- towards advance money and have to collect the balance sale consideration within 90 days and register the said plot. But they did not do so. On 03.03.2016, an amount of Rs.3,62,000/- and Rs.1,38,000/- were received by the petitioners herein and the receipts were also passed to that effect. Even then, the Plot No.26 was not registered in favour of the *de facto* complainant.

6. During the course of negotiations, these petitioners have offered Plot Nos.15 and 16 admeasuring 180 Sq. yards and the said plots are valued at Rs.13,50,000/-. The *de facto* complainant paid the balance sale consideration of Rs.5,30,000/- to the petitioners on 24.03.2016 and a receipt was also obtained to that effect. The *de facto* complainant also paid Rs.50,000/- towards stamp duty and expenses to the petitioners. Even then, the petitioners did not register the Plot Nos.15 and 16 in favour of the *de facto* complainant. In total, an amount of Rs.14.00 lakhs was said to have been taken by the petitioners from the *de facto* complainant for the sale of the plots as mentioned above.

7. The manner in which the petitioners made to enter into the agreement for the sale of Plot No.26 admeasuring 167 Sq. yards, thereafter changing the sale of Plot Nos.15 and 16 and the manner in which the petitioners received Rs.14.00 lakhs from the *de facto* complainant, constitutes the requirements of 'cheating' and 'dishonest intention' on the part of the petitioners. In view of the nature of the

allegations levelled against the petitioners/A.1 and A.2, it cannot be said that the petitioners are innocent persons and falsely implicated in this case. There are number of documents to show the proposed sale and receipt of money from the *de facto* complainant. The matter requires thorough investigation. Therefore, the petitioners/A.1 and A.2 are not entitled to bail under Section 438 Cr.P.C.

8. Accordingly, this Criminal Petition is dismissed.

Dr. SHAMEEM AKTHER, J

Date: 20-12-2017.

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