THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.2510 OF 2018

ORDER:

This petition is filed under Section 438 of Criminal Procedure Code (for short "Cr.P.C.") by accused No.24, apprehending his arrest, in Crime No.151 of 2017 on the file of Bheemunipatnam Police Station, Visakhapatnam, registered for the offences punishable under Sections 420, 465, 466, 468, 471, 120 (b) read with 34 of Indian Penal Code (for short "I.P.C.") and Sections 74 of Information Technology Act, 2008, to direct the Station House Officer, Bheemunipatnam Police Station to release him on bail in the event of his arrest in connection with the above crime.

The Mandal Revenue Officer, Bheemunipatnam, lodged a report with the police alleging that pattedar passbooks have been issued illegally for 100 acres of land in Annavaram village of Bheemunipatnam Mandal by the then Tahsildar B.T.V.Ramarao. It is also alleged that the land to an extent of Ac.26.00 in Sy.No.94 of Annavaram Village, which stood registered in the name of MANSAS Trust, was mutated in the names of T.Surya Rao and P.Yella Rao by the then Tahsildar and by virtue of this, a loss of Rs.166.61 lakhs was caused to the Government towards Stamp Duty. It is also alleged that land admeasuring Ac.35.00 in Sy.No.184/6 of Chippada village, Bheemunipatnam Mandal, Visakhapatnam District has changed hands with wrong documents with collusion of revenue and registration authorities and that the entire land has been registered on the name of Suryachandra Estates Pvt Ltd without any link documents. Though the pattedar passbooks were issued in favour of Smt.K.Ramadevi and P.Venkata Seetharamaraju way back in 2002 in respect of an extent of Ac.35.00 in Sy.No.184/6 of Chippada Village, their names were not mutated, but in the month of June, 2016 B.T.V.Ramarao, the then Tahsildar, mutated the name of Ramadevi for the land in Sy.No.184/6 of Chippada Village and subsequently, it was transferred to the petitioner by way of agreement of sale – cum – GPA, who in turn transferred the same to M/s.Suryachandra Estates Pvt. Ltd through registered sale deed. Thus, the petitioner allegedly committed serious offences referred supra. On the strength of the same, police registered a crime initially against six persons and during the course of investigation other accused were added, and the petitioner herein is arrayed as accused No.24 in the above crime.

It is the contention of the petitioner that Maharaja of Vijayanagaram Sri P.V.G.Raju own huge extents of land and he donated 14 villages to Sri Lakshmi Narsimha Swamy Vari Temple, Simhachalam. He also donated lands to a trust by name MANSAS Trust by constituting the said Trust by way of Gift Deed for the purpose of educational institutions. At any rate, the property which is the subject matter of dispute does not form part of the same. The Maharaja had properties in his own name. In addition to the same, there were certain properties in which the ryots were in possession and enjoyment. Sy.No.184/6 is one such extent of land, wherein the ryots have been in possession for decades together. Incidentally, Sri Kaladindi Venkata Ramana Raju was in possession to an extent of Ac.35.14 cents. After his demise, his wife Smt.K.Ramadevi has been in possession and enjoyment of the said land. While so, after the demise of Raja, all his legal heirs have given No Objection Affidavits. On perusal of the same, it is clear that they had no objection for the ryots continuing to be in possession. So much so, the authorities manning the provisions of the A.P. Record of Rights in Land and Pattedar Passbooks Act have issued the Pattedar Passbooks and title deeds in the name of Smt.K.Ramadevi in the year 2002 to an extent of Ac.23.00 out of the total extent of Ac.35.14 cents. For the balance land of Ac.12.14 cents, books were issued in favour or Smt.K.Ramadevi in the year 2015 inasmuch as there was litigation which eventually culminated in favour of Smt.K.Ramadevi by the revenue authorities after a thorough enquiry. Subsequently, she entered into a GPA – cum – Agreement of sale with the petitioner and the said document is a registered one for which stamp duty and registration fee were paid. Since the petitioner herein was an agent and since M/S Suryachandra Estates Pvt. Ltd. was interested in purchasing the land, the property was sold under a registered sale deed in favour of M/s.Suryachandra Estates Pvt. Ltd and two others. Thus, the petitioner has not committed any offence and prayed to enlarge him on pre-arrest bail, in the event of his arrest, in view of reasonable apprehension about his arrest in connection with the above crime.

State filed counter admitting the report lodged with the police by the Tahsildar, FAC, against such officials and non-officials and the registration of the same as a case in Crime No.151 of 2017 on the file of Bheemunipatnam Police Station registered for the offences punishable under Sections 420, 465, 466, 468, 471, 120 (b) read with 34 of I.P.C. and Section 74 of Information

Technology Act, 2008. The basis for lodging the report is the news items published in Saakshi Daily and Andhra Jyothi Telugu Editions in connection with eth illegal transfer of land in favour of Surya Chandra Estates Private Limited to an extent of Ac.35.00 cents, valued at Rs.35.00 crores, in Sy.184/2016 of Chippada Village, by colluding with the revenue and registration authorities, though there were no link documents and relevant entries in Web Land, and also tampered the photograph of original owner (Seetharama Raju), by pouring ink on the said photograph. One B.T.V.Ramarao, the then Tahsildar, Bheemunipatnam, illegally issued pattedar passbooks to an extent of Ac.1.50 cents in favour of his father-in-law. Later in the month of June, 2016, he mutated the names of K.Ramadevi for the land in Sy.No.184/6 of Chippada Village. Subsequently, the said land was transferred to M/s.Surya Chandra Estates Private Limited.

As the serious allegations were made in the news items, a report was called from the then Tahsildar, Bheemunipatnam and on receipt of report, two Deputy Collectors were appointed to enquire into the matter. Thereafter, Special Investigation Team was appointed to investigate the involvement of the persons in the land scam. Two Deputy Collectors, who conducted enquiry, submitted that in Sy.No.94/1 of Annavaram Village, the landed property to an extent of Ac.26.00 was existed in the name of MANSAS Trust. The said Tahsildar mutated the said land to Tantara Surya Rao for Ac.14.00 and Ac.12.00 to Pilli Yella Rao, basing on the No-objection certificates said to be issued by the legal heirs of late P.V.G.Raju. The passbooks of the said land were cancelled by the RDO, Visakhapatan, on 03.04.2017, due to the objection raised by the possessors of the said land, Thus, due to the said illegal activities, there is a huge loss to an amount of Rs.166.61 lakhs to the Government towards stamp duty and requested to initiate proceedings against the then Tahsildar, who is under suspension.

During investigation, statements of L.Ws.1 to 24 were recorded under Section 161 (3) of Cr.P.C. and basing on the said statements, the Investigating Officer added Section 13 (1) (c) (d) read with 13 (2) of Prevention of Corruption Act. Thereafter, investigating officer arrested the A.O.1 and remanded him to judicial custody. Later, investigating officer examined L.Ws.25 to 34 and recorded their statements. Basing on the said statements, the Investigating Officer added 16 persons as accused in addition to 7 accused persons, as accused Nos.8 to 23. Thereafter, the investigating officer examined other persons, who are the legal heirs of the late P.V.G.Raju and recorded their statements as L.Ws.35 to 46.

Investigating Officer arrested A.O.2 on 16.10.2017 and remanded him to judicial custody. On 11.11.2017, accused No.16 was arrested and on 15.02.2018, A.15 was arrested and remanded to judicial custody. Thereafter, accused Nos.1, 2 and 16 were enlarged on bail by the III Additional District Judge, Visakhapatnam. Basing on the material and witnesses, the petitioner herein was added as accused No.24. The remaining accused Nos.3 to 14 and 17 to 23 are absconding since the date of registering the crime and their whereabouts are not known, in spite of sincere efforts made by the police.

The specific contention raised by the State is that an extent of Ac.35.14 cents in Sy.No.184/6 of Chippada Village is the

Surplus land of Vizianagaram Estate, registered in the name of Sri P.V.G.Raju, erstwhile Raja of Vizianagaram Estate. Investigation revealed that accused No.8 colluded with the revenue and registration officials and obtained pattedar passbooks and title deeds to an extent of Ac.23.00 cents in Sy.No.184/6 of Chippada Village and the same were received by the accused No.8, as per register No.17 maintained by the office of the Mandal Revenue Officer, Bheemunipatnam. In pursuance of their conspiracy, to legalize their land grabbing, in the year 2011, accused No.8 allowed the petitioner herein into the said land grabbing activity and to create link documents through GPA – cum – Sale agreement dated 13.01.2011, executed between accused No.3, who is the mother-in-law of accused No.8 and the petitioner herein (accused No.24) and accused No.15, brother-in-law of accused No.8, in respect of the land to an extent of Ac.23.00 cents in Sy.No.184/6 of Chippada Village of Bheemunipatnam Mandal. The 2nd page of deed shows that the sale consideration was Rs.78.00 lakhs and the said transaction is hit by Section 40 A (3) (a) of the Income Tax Act, 1961. It is also contended that all the accused colluded with registration authorities and caused substantial loss to the State. Investigation *prima facie* establishes that there is material against the petitioner. It is also contended that in the event of enlarging the petitioner on pre-arrest bail, the chances of arrest of the other accused are bleak and there is every possibility of interfering with the investigation.

Sri Chandra Reddy, Additional Public Prosecutor, contended that the material collected so far, directly pointing out the complicity of the petitioner *prima facie* and that creation of such documents and transfer of property in favour of M/s.Suryachandra Estates Private Limited though it is exclusive property of Government, and that the alienation of government land after its surrender under the land ceiling proceedings is a serious offence and prayed for dismissal of the petition.

Considering rival contentions and perusing the material on record, the point that arises for consideration is:

> ***Whether the investigating Officer collected prima facie evidence against the petitioner herein to establish his complicity, if so, the petitioner is entitled for pre-arrest bail?***

P O I N T:

It is an undisputed fact that the Tahsildar issued pattedar passbooks and title deeds in the name of Smt. K.Ramadevi in the year 2002 to an extent of Ac.23.00 out of the total extent of Ac.35.14 cents and for the balance land of Ac.12.14 cents, books were issued in favour of Smt.K.Ramadevi in the year 2015 inasmuch as there was litigation which eventually culminated in favour of Smt.K.Ramadevi by the revenue authorities after a thorough enquiry. Subsequently, she entered into a GPA – cum – agreement of sale with the petitioner and the said document is a registered one for which stamp duty and registration fee were paid. The petitioner herein was an agent and since M/s Suryachandra Estates Private Limited was interested in purchasing the land, the property was sold under a registered sale deed in favour of M/s.Suryachandra Estates Private Limited and two others.

The petitioner is claiming right over the land in Sy.No.184/6, which is classified as land belonging to Government in the revenue records. As the land is surplus land of late Sri P.V.G.Raju, who surrendered the same under A.P.Land Reforms Act. When the property is vested on the Government, the sale of property by making necessary alterations in the revenue records etc., is a serious offence and the material collected by the investigating officer till date *prima facie* pointing out the complicity of the petitioner for the offence punishable under sections referred above.

The contention of the petitioner is that the Order passed by the Tahsildar was challenged before the Revenue Divisional Officer by raising objections by one Pusapati Venkata Sitarama Raju and by Order dated 03.08.2013 in Appeal No.4987/2010/C the Revenue Divisional Officer held that the respondent therein by name Smt.Kalidindi Ramadevi is eligible to claim appropriate pattedar passbook and title deeds. As per the contention of the State, the pattedear passbooks of disputed land were cancelled by order dated 03.04.2017, but the copy of the order is not placed on record. In any view of the matter, it is evident that the land in dispute is classified as Government land and by making necessary alterations by defacing the photograph of person by pouting ink and transferred the property in favour of third parties and caused substantial loss to the Government to an amount of Rs.166.61 lakhs towards stamp duty. Therefore, there is a clear conspiracy between the parties to grab the property *prima facie* belonging to the Government and the petitioner is an agent, who purchased the property under agreement of sale – cum – GPA and conveniently transferred the property to M/s Suryachandra Estates Private

Limited. Therefore, the petitioner, who committed such serious offence, is not entitled to claim pre-arrest bail since he successfully avoided his arrest for more than one year.

One of the major contentions raised before this Court is that when no objection affidavits were issued by the legal heirs of late Sri PVG Raju, the question of committing any offence does not arise. No doubt, legal heirs of late Sri P.V.G. Raju issued '7' no objection affidavits informing that they have no right over the land in dispute. When the property was surrendered under the land reform proceedings, the legal heirs of late Sri P.V.G.Raju will have no right and giving such affidavits would not take away the right of the Government in the surplus holding of late Sri P.V.G.Raju and even assuming that it belongs to public Trust, mere reporting no objection would not confer any right on the person, who obtained pattedar passbook. Therefore, this contention is without any substance. Even the adangals produced before the Court discloses that Smt.Ramadevi is in possession of the property and that the adangal is only an account maintained in the revenue department, and the same would not create any title over the property.

Therefore, mere recording the name of the Smt.K.Ramadevi or the petitioner would not serve any purpose and apart from that the affidavit allegedly obtained by Deevan of Vizianagaram Estate by making misrepresentation and in collusion with the petitioner and others created the alleged transaction. Hence, I find *prima facie* material against the petitioner to conclude that the petitioner is also involved in the above crime and apart from that the report of Special Investigating Team is not yet received by the State and if for any reason the petitioner is enlarged on pre-arrest bail, there is every possibility of interfering with the further investigation.

Learned counsel for the petitioner also drawn the attention of this Court to the Judgment of the Apex Court in "***Gurbaksh Singh Sibbia and Others v. State Of Punjab***[1]**"** wherein the Apex Court highlighted the legislative intention in incorporating Section 438 CrPC enabling the courts to direct the station house officer to release the alleged accused persons on bail in the event of their arrest. According to the Constitutional Bench Judgment of the Apex Court, no one can accuse the police of possessing a healing touch nor indeed does anyone have misgivings in regard to constraints consequent upon confinement in police custody. But, society has come to accept and acquiesce in all, that follows upon a police arrest with a certain amount of sangfroid, insofar as the ordinary rut of criminal investigation is concerned. It is the normal day-to-day business of the police to investigate into charges brought before them and, broadly and generally, they have nothing to gain, not favours at any rate, by subjecting ordinary criminal to needless harassment. But the crimes, the criminals and even the complaints can occasionally possess extraordinary features. When the even flow of life becomes turbid, the police can be called upon to inquire into charges arising out of political antagonism. The powerful processes of criminal law can then be perverted for achieving extraneous ends. Attendant upon such investigations, when the police are not free agents within their sphere of duty, is a great amount of inconvenience, harassment and humiliation. That can even take the form of the parading of a respectable person in

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[1] 1980 AIR 1632

hand-cuffs, apparently on way to a court of justice. The foul deed is done when an adversary is exposed to social ridicule and obloquy, no matter when and whether a conviction is secured or is at all possible. It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced in the Code of 1973.

At paragraph 31, the Apex Court further observed that the Bill introduces a provision for the grant of anticipatory bail. This is substantially in accordance with the recommendation made by the previous Commission. We agree that this would be a useful addition, though we must add that it is in very exceptional cases that such a power should be exercised. Thus the reason for incorporation of this provision is to protect the persons against their arrest unnecessarily.

In "***Siddharam Satlingappa Mhetre v State Of Maharashtra***[2]" the Apex Court laid down the following guidelines

"(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

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[2] (2011) 1 SCC 694

(g) 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 cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;

(h) 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 free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) 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 in entitled to an order of bail." (vide ***Sidharam Sattilingappa Mhetre*** *case referred supra)*

Power under Section 438 CrPC is purely discretionary and the Court has to exercise its power judicially based on settled principles, but the circumstances may vary from case to case and the law regarding grant of bail is literally discussed by the Constitutional Bench in **Gurbaksh Singh Sibbia** case as the power of granting 'anticipatory bail' is somewhat extraordinary in character and it is only in exceptional cases where it appears that a person might be falsely implicated, or a frivolous case might be launched against him, or "there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail" that such power is to be exercised.

No hard and fast rule can be laid down in discretionary matters like the grant or refusal of bail, whether anticipatory or regular bail. The Apex Court further held that, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; told, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. Therefore, anticipatory bail can be granted even in serious cases like economic offences and States should have no consideration for grant or refusal of grant of anticipatory bail, as there can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it. Therefore, while dealing with the application for grant of pre-arrest bail or anticipatory bail, the

Court must take into consideration the guidelines issued in **Gurbaksh Singh Sibbia** case. Though, according to the judgment of the Apex Court, even in economic offences, the Court can grant anticipatory bail, subject to satisfaction of other grounds.

In "***Satish Jaggi V. State of Chhatishgarh***[3]**"** the Apex Court made it clear that at the stage of granting bail, the Court can go only into the question of the prima facie case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial. In the latter judgment in "***Gobarbhai Naranbhai Singala vs State Of Gujarat***[4]**"** the Apex Court held as follows:

> "This Court in Amarmani Tripathi case (supra) had held that while considering the application for bail, what is required to be looked is,
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> *(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
> *(ii) nature and gravity of the charge;*
> *(iii) severity of the punishment in the event of conviction;*
> *(iv) danger of accused absconding or fleeing if released on bail;*
> *(v) character, behaviour, means, position and standing of the accused;*
> *(vi) likelihood of the offence being repeated;*
> *(vii) reasonable apprehension of the witnesses being tampered with; and*
> *(viii) danger, of course, of justice being thwarted by grant of bail."*

Since the investigation is not completed, there is possibility of interference with further investigation, and the petitioner being Deewan, who is well acquainted with the department and other

[3] ((2008) 1 SCC (Cri) 660)
[4] (2008) 3 SCC 775

persons who got names of A.8 and others mutated in the records by submitting false affidavits of no objection.

One of the contentions raised by the learned counsel for the petitioner is that the petitioner herein cannot be tried along with government servant as the provisions of Prevention of Corruption Act are not applicable to the petitioner herein. But this contention cannot be accepted in view of the law laid down by the Apex Court in "***P. Nallammal and another v. State, represented by Inspector of Police*[5]**".

By applying the principles laid down by the Apex Court, taking into consideration of the seriousness of the offence and impact on the society, I find no ground to issue a direction to the Station House Officer, Bheemunipatnam Police Station to release the petitioner on bail in the event of his arrest in connection with the above crime.

In the result, the criminal petition is dismissed.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

19.04.2018
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[5] (1999) 6 Supreme Court Cases 559