

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.3379 OF 2018

ORDER:

This Criminal Petition, under Section 438 of Cr.P.C., is filed by the petitioner, who is arrayed as accused No.1 in C.P. Case No.1234 of 2017 on the file of Judicial Magistrate of I Class, Dhanbad, Dhanbad District, Jharkhand for grant of anticipatory bail in connection with Case No.46 of 2016 of Govindpur Police Station, Dhanbad District, registered for the offences punishable under Sections 406 and 417 of I.P.C.

2. Heard, the learned counsel for the petitioner, learned Public Prosecutor (T.S.) appearing for the respondents-State, and perused the record.

3. The case of the prosecution, in brief, is that the 3rd respondent herein filed a private complaint *i.e.*, Complaint Petition Case No.3546 of 2015 on the file of Chief Judicial Magistrate, Dhanbad, stating that he is one of the Directors of M/s.Ginni Iron and Steel Industries Private Limited situated at Amaghata, Govindpur, Dhanbad and accused Nos.1 and 2 therein are the partners of M/s.P.R.J. Industries situated at Govindpur, Dhanbad, entered into an oral agreement for purchase of lands admeasuring 21 decimals situated in Mouza Kangalo, Mouz No.128, Khata No.18, Plot Nos.473 and 476 and, on 04.07.2012, he paid Rs.11,50,000/- through a cheque of Bank of India, which was received by the Chief Accountant of accused firm and the Accountant concerned issued appropriate money receipt and since then the complainant is using the said lands as rasta of his company. Subsequently, when the complainant requested the accused to execute registered sale deed in favour of the complainant's firm, they evaded to execute and, on

14.11.2015, the complainant sent a legal notice to the accused to execute proper sale deed in respect of the above lands, to which, on 14.12.2015, the accused gave a reply flatly refusing to take full and final consideration against the sale of said lands. Thereafter, the complainant sent a legal notice to the Chief Accountant of accused firm *i.e.*, Harkhu Prasad Yada, who in his reply notice clearly accepted about his depositing of Rs.11,50,000/- in the account of the accused firm and mentioning of a corresponding entry in the account of accused firm. The learned Chief Judicial Magistrate, Dhanbad, referred the private complaint to Govindpur Police Station, under Section 156(3) of Cr.P.C. for investigation and report, which was registered as a Case No.46 of 2016, on 04.02.2016. Thereafter, the petitioner received a notice under Section 41-A Cr.P.C. in Case No.46 of 2016 and sent a detailed reply *vide* his letter dated 28.03.2016 and also obtained anticipatory bail being ABP No.730 of 2016 on the file of Additional Sessions Judge–VI, Dhanbad. Subsequently, the petitioner filed Quash Petition being Cr.M.P. No.898 of 2016 before the Hon'ble High Court of Jharkhand at Ranchi, wherein the High Court directed the Judicial Magistrate of I Class, Dhanbad, that no coercive steps be taken against the petitioners/accused Nos.1 and 2 until further orders. At that stage, 2nd respondent herein filed final report closing the private complaint being civil in nature. Aggrieved by which, the complainant filed Protest Petition and the learned Judicial Magistrate of I Class, Dhanbad, took cognizance for the offences under Sections 406 and 417 of I.P.C. being Case No.1234 of 2017 against the accused and also issued Non Bailable Warrants against them. The daughter-in-law of the petitioner, who is arrayed as accused No.2, filed anticipatory bail in A.B.P. No.355 of 2016 before the Sessions Judge, Dhanbad, apprehending arrest in Case No.1234 of 2017 on the file of Judicial Magistrate of I Class, Dhanbad, wherein the learned Sessions Judge, Dhanbad, was pleased to

enlarge her on bail. On 09.02.2018, the Banjara Hills Police tried to execute the N.B.W. pending against the petitioner/accused No.1 but due to ill-health of the petitioner/accused No.1 who is aged 72 years, N.B.W could not be executed.

4. Learned counsel for the petitioner submits that the petitioner is aged 72 years, suffering from respective age old ailments and has undergone treatment for Tuberculosis and Hemoptysis with Domiciliary treatment. Learned counsel further submits that, as per the advice of the doctor, the petitioner is advised to have absolute bed rest with home oxygenation and, in case, the petitioner need be produced before the learned Judicial Magistrate of I Class, Dhanbad, by executing the N.B.W. issued under the Protest Petition, it is not practically possible as the petitioner needs continuous bed rest and he need to avoid straining at stool, mobilization and, finally, prayed to release the petitioner on pre-arrest bail in the event of his arrest in connection with the above crime.

5. As seen from the material available on record, the alleged transaction between the parties appears to be civil in nature, the initial private complaint *i.e.*, Case No.46 of 2016 was also closed by the Govindpur Police Station observing that the transaction is purely civil in nature and, subsequently, accused No.2, who is the sister-in-law of the petitioner herein was enlarged on bail by the learned Sessions Judge, Dhanbad, and the complainant also filed a Title Suit No.199 of 2016 on the file Senior Civil Judge at Dhanbad. Despite closure of the Case No.46 of 2016 by the Govindpur Police Station, which was referred by Chief Judicial Magistrate, Dhanbad under Section 156(3) of Cr.P.C., being civil in nature, the complainant filed the Protest Petition, wherein the learned Magistrate without issuing any summons to this petitioner in the Protest

Petition, straight away issued N.B.W against the petitioner and, at this stage, the petitioner is not in a position to move from his bed.

6. Hence, in view of the facts and circumstances and taking into consideration the age of the petitioner and his health condition, this Court opines that this is a fit case to grant *interim* pre-arrest bail to the petitioner so as to enable him to approach the competent Court and file appropriate application under Section 438 Cr.P.C. Accordingly, the Station House Officer, Banjara Hills Police Station, Hyderabad, is directed to release the petitioner/accused No.1 on interim pre-arrest bail for a period of one month from today, in the event of his arrest in connection with Case No.1234 of 2017, on condition of his executing a personal bond for a sum of Rs.20,000/- with two sureties for a like sum each to his satisfaction. Further, on such release, the petitioner/accused No.1 shall abide by the conditions mentioned under Section 438(2) Cr.P.C., as under:

- 1) The petitioner shall make himself available for interrogation by a police officer as and when required;
- 2) The petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and
- 3) The petitioner shall not leave India without the previous permission of the Court.

7. Accordingly, the Criminal Petition is disposed of. In consequence, miscellaneous petitions, if any, pending in this Petition shall stand closed.

M.SATYANARAYANA MURTHY, J

Date: 06.04.2018.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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CRIMINAL PETITION No. 3379 OF 2018

Date. 06.04.2018

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