

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.10006 OF 2018

ORDER:

This Criminal Petition, under Section 439(2) of the Code of Criminal Procedure, 1973, is filed by the petitioner/*de facto* complainant to cancel the bail granted to the respondents/A-1 to A-5 *vide* order, dated 27.08.2018, in CrI.M.P.No.871 of 2018 passed by the learned Principal District and Sessions Judge at Nalgonda in Crime No.116 of 2018 of Narketpally Police Station.

2. Heard the learned counsel for the petitioner/*de facto* complainant, the learned counsel for respondent Nos.1 to 5/A-1 to A-5, the learned Additional Public Prosecutor for respondent No.6/State and perused the material on record.

3. Learned counsel for the petitioner/*de facto* complainant would contend that the mother of the petitioner/*de facto* complainant - Maila Devamma died on 23.12.2007. However, respondent Nos.1 to 5/A-1 to A-5 fabricated a registered sale deed purported to have been executed by her mother on 23.10.2013, which is subsequent to the death of her mother, and got it registered *vide* document No.14297/2013, dated 23.10.2013 in the office of the Sub Registrar, Nalgonda; that the Court of Session, without taking this into consideration, erroneously granted bail to respondent Nos.1 to 5/A-1 to A-5; that the *de facto* complainant had filed the copy of the death certificate of her mother, which discloses that her mother died on 23.12.2007; that the death was registered in the office of Tahsildar on 31.12.2007 and a copy of the death certificate, dated 28.01.2009, is obtained and a xerox

copy of the same is filed before this Court; that the copy of the death certificate filed before this Court demonstrates that the death of Maila Devamma occurred on 23.12.2007 and that the document in question was executed and registered on 23.10.2013 i.e., after the death of the executant Maila Devamma.

4. Learned counsel for respondent Nos.1 to 5/A-1 to A-5 would contend that the learned Sessions Judge observed that the case is based on documentary evidence and as the investigation was completed, learned Sessions Judge granted anticipatory bail to respondent Nos.1 to 5/A-1 to A-5; that the learned Sessions Judge had rightly granted anticipatory bail and there is nothing wrong in doing so and ultimately, prayed to dismiss the petition.

5. Learned Additional Public Prosecutor contends that as per the investigation, Maila Devamma died on 23.12.2007, but the subject sale deed was registered on 23.10.2013 i.e., much after the death of Maila Devamma and ultimately, supported the case of the *de facto* complainant.

6. In view of the circumstances narrated by the learned counsel on both sides, the point that arises for determination is:

“Whether the grant of bail to respondent Nos.1 to 5/A-1 to A-5 vide order, dated 27.08.2018, in Crl.M.P.No.871 of 2018 in Crime No.116 of 2018 of Narketpally Police Station, passed by the learned Principal District and Sessions Judge at Nalgonda is liable to be cancelled?”

7. **POINT:-**

As per the record placed before this Court, Maila Devamma died on 23.12.2007. The death was registered in the office of

Tahsildar, Narketpally Mandal, Nalgonda District on 31.12.2007. The Tahsildar issued the death certificate of Maila Devamma on 28.01.2009 and a copy of the same is placed before this Court. The allegation of the *de facto* complainant is that A-1, in connivance with other accused, had brought into existence a forged sale deed, dated 23.10.2013, and is claiming property covered by the said document i.e., land admeasuring Ac.1.05 guntas and Ac.0.07 guntas in Sy.Nos.22 and 23 respectively situated at Narketpally Village and Mandal. Learned counsel for the respondent Nos.1 to 5/A-1 to A-5 would contend that Maila Devamma was alive on the date of execution of sale deed, dated 23.10.2013 and she died subsequent to the execution of the said sale deed. The manner how the death of Maila Devamma was registered in the office of the Tahsildar concerned and a copy of the death certificate was obtained and filed before the Court cannot be doubted at this juncture. There is *prima facie* record to show that Maila Devamma died on 23.12.2007. In such event, Maila Devamma executing and registering sale deed *vide* document No.14297/2013, dated 23.10.2013, would not arise. The registered document bearing No.14297/2013, dated 23.10.2013, appears to be a forged and fabricated document in order to knock away the property belonging to the *de facto* complainant and her family members. In such event, it can be safely concluded that there is a *prima facie* case against respondent No.1/A-1, who is the claimant under document, dated 23.10.2013, and respondent No.3/A-3, who is a witness in that document. There are specific allegations against respondent Nos.1 to 5/A-1 to A-5 in bringing into existence a forged and fabricated document, dated

23.10.2013. Therefore, they are not entitled for bail under Section 438 Cr.P.C.

8. As far as the other respondents/A-2, A-4 and A-5 are concerned, it is early to say anything against them. Therefore, the impugned order passed in their favour is sustained. The grant of bail to respondent Nos.1 and 3/A-1 and A-3 in the order dated 27.08.2018, in CrI.M.P.No.871 of 2018 in Crime No.116 of 2018 of Narketpally Police Station, passed by the learned Principal District and Sessions Judge at Nalgonda is liable to be set aside.

9. In the result, the bail granted to respondent Nos.1 and 3/A-1 and A-3 in the order, dated 27.08.2018, in CrI.M.P.No.871 of 2018 in Crime No.116 of 2018 of Narketpally Police Station, passed by the learned Principal District and Sessions Judge at Nalgonda is cancelled. As far as the other respondents/A-2, A-4 and A-5 are concerned, this application is dismissed.

10. Accordingly, the Criminal Petition is allowed in part. Respondent Nos.1 and 3/A-1 and A-3 are directed to surrender before the Station House Officer, Narketpally Police Station within three (3) days from the date of this order failing which, the said Station House Officer shall take necessary steps to arrest and remand A-1 and A-3 to judicial custody in the subject criminal case.

11. Miscellaneous petitions pending, if any, in this Criminal Petition shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 05.11.2018
AMD

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