

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.11340 OF 2017

ORDER:

This Criminal Petition, under Section 439(2) Cr.P.C. r/w Section 482 Cr.P.C., is filed by the *de facto* complainant in Crime No.273 of 2017 of Langer House Police Station, Hyderabad, to cancel the anticipatory bail granted to the respondents-A.1 to A.3 in CrI.M.P. No.3118 of 2017 *vide* order dated 06.10.2017 on the file of the IV Additional Metropolitan Sessions Judge, Hyderabad (for short, 'the Sessions Court'), in the above crime registered for the offences under Sections 465, 468, 471 I.P.C. r/w Section 34 I.P.C.

2. Heard Sri J. Prabhakar, learned counsel for the petitioner-*de facto* complainant, learned Additional Public Prosecutor for respondent No.1-State and Sri T. Nagarjuna Reddy, learned counsel for respondent Nos.2 to 4/A.1 to A.3, apart from perusing the material available on record.

3. Learned Standing Counsel for the petitioner-*de facto* complainant would submit that the Sessions Court has not seen the seriousness of the offence and erred in granting anticipatory bail to the respondents-A.1 to A.3; the order of bail granted in favour of the respondents-A.1 to A.3 runs contra to the finding rendered in an order dated 25.04.2017 passed in W.P. No.766 of 2011 by this Court and in W.A.M.P. No.1311 of 2017 in W.A. No.656 of 2017 and batch, which was confirmed by the Supreme Court of India; the respondents-A.1 to A.3 filed fabricated documents and on the strength of those documents, sought favourable order; in spite of filing a detailed counter by the prosecution, the Sessions Court granted anticipatory bail to the respondents-A.1 to A.3 without imposing any conditions; and ultimately, prayed to cancel the anticipatory bail granted to the respondents-A.1 to A.3, *vide* order dated 06.10.2017 in CrI.M.P. No.3118 of 2017, by the Sessions Court.

4. On the other hand, learned counsel for the respondents-A.1 to A.3 opposed the application stating that the respondents-A.1 to A.3 are falsely implicated in this case; there is no truth in the allegations leveled against the respondents-A.1 to A.3; the order dated 25.04.2017 passed in W.P. No.766 of 2011 by this Court and the order passed in W.A.M.P. No.1311 of 2017 in W.A. No.656 of 2017 and batch by the Supreme Court of India are distinct and it has no application to the provisions under Section 438 Cr.P.C.; the Sessions Court rightly granted anticipatory bail to the respondents-A.1 to A.3; and ultimately, prayed to dismiss the application.

5. The material on record reveals that the petitioner herein, viz., Shanti Agarwal (*de facto* complainant) filed W.P. No.766 of 2011 challenging the no objection certificate issued by the District Collector, alleging that the respondents-A.1 to A.3 filed fabricated documents and obtained no objection certificate. In the above Writ Petition, this Court gave direction to register a criminal case. The said direction was challenged before a Division Bench of this Court in W.A. No.656 of 2017. An application to seek interim relief was dismissed by the Division Bench in W.A. No.656 of 2017. The S.L.P. preferred by the respondents-A.1 to A.3 before the Hon'ble Supreme Court was dismissed on 28.07.2017. The Sessions Court while dealing with the subject matter of anticipatory bail of the respondents-A.1 to A.3 under Section 438 Cr.P.C., observed that the *de facto* complainant did not file any civil suit but initiated proceedings under Section 145 Cr.P.C.

6. It is apt to refer the decision rendered by the Hon'ble Supreme Court in **Dolat Ram and others v. State of Haryana**¹, wherein it is observed that the order of bail can be cancelled on existence of cogent

¹ (1995) 1 SCC 349

and overwhelming circumstances but not on re-appreciation of evidence. Generally, grounds for cancellation of bail are distinct from the grounds for granting bail. As per the record produced before the Court, there is nothing to demonstrate that the respondents-A.1 to A.3 interfered or attempted to interfere with the due course of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. It is a settled legal position that once the bail is granted, it should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. The circumstances to grant anticipatory bail under Section 438 Cr.P.C. are distinct. The Hon'ble Supreme Court not granting relief to the respondents-A.1 to A.3 in Special Leave Petition and dismissing the same on 28.07.2017 is not a bar to grant relief to the respondents-A.1 to A.3 under Section 438 Cr.P.C. The dispute between the parties is a civil dispute relating to immovable property. The genuineness or otherwise of the documents said to have been filed by the respondents-A.1 to A.3 is required to be determined after due trial. There was no possibility of the respondents-A.1 to A.3 absconding. While granting bail, the Court of Session has taken the gravity of the offence and nature of allegations into account and there is nothing to take a different view. Under these circumstances, the bail granted in favour of the respondents-A.1 to A.3 is not liable to be cancelled.

7. Accordingly, this Criminal Petition is dismissed.

Dr. SHAMEEM AKTHER, J

Date: 19-01-2018
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