

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.861 of 2019

ORDER :

Petitioners are accused 2 and 3 among the 4 accused in Crime No.761 of 2018 registered for the offences punishable under Sections 420, 504 and 506 IPC.

2. Petitioners are seeking anticipatory bail. They went unsuccessful along with A4 in CrI.M.P.No.5782 of 2018 before the III Additional District & Sessions Judge, Cyberabad, L.B.Nagar, R.R.District by order dated 07.01.2018 and later to it by another order dated 30.01.2019 in CrI.M.P.No.310 of 2019.

3. Heard learned counsel for the petitioners and learned Public Prosecutor, representing the State, and perused the grounds in the anticipatory bail applications and said orders of dismissal and the First Information Report.

4. From the report of the defacto complainant, agreement for construction of house dated 17.09.2016, affidavit dated 13.04.2017 and letter of cancellation dated 16.04.2017, the contentions in the anticipatory bail applications are that so called agreement was already cancelled and payments were already paid and the agreement consequent to it and cancellation letter was also obtained which are referred supra and it is purely civil transaction and there is no intention to cheat to attract the offences under Section 420 IPC and the other two Sections 504 and 506 are concerned, those are allegations engineered for the purpose of creating a cause with criminal flavour and thereby it is a false accusation.

5. Petitioners are entitled for anticipatory bail and the learned Sessions Judge twice without going into the merits wrongly dismissed the applications.

6. Whereas it is the submissions of the learned Public Prosecutor opposing the same that there is prima facie accusation and the investigation is in progress and the petitioners are not entitled to concession of anticipatory bail.

7. Leave about the fact that the documents filed shows the original document executed by M/s.Mansani Constructions Proprietor concerned (A1) shown the Proprietor M.Krishna Kishore (A2) and A4 is the agent in collection of the amounts in the Real Estate business in sale of the plots/flats as the case may be.

8. So far as A3 is concerned, she is only, wife of A2 and the affidavit given by defacto complainant and the letter of cancellation of the defacto complainant, no doubt substantiate the said contention. However, from perusal of the very report running in four pages particularly at page 3, there are serious allegations so far as the A2 concerned viz., having promised to clear the balance including on 08.09.2018 by 10.10.2018, it was not done and when asked on 08.10.2018, A2 abused in unparliamentary words the defacto complainant. Not only that, he planned to murder the defacto complainant by setting ablaze using kerosene and the same is recorded by phone conversations dated 08.10.2018

10. Having regard to the above, A2 is not entitled for concession of anticipatory bail but for A3.

11. Accordingly, while dismissing the anticipatory bail application of 1st petitioner/A2, anticipatory bail is granted to 2nd petitioner/A3 subject to following conditions:

[1] 2nd petitioner-A.3 shall within fifteen (15) days from today submit before the S.H.O. concerned and execute self-bond for Rs.50,000/- [Rupees fifty thousand only] with two sureties for like sum each to the satisfaction of the arresting authority, otherwise giving liberty to the 2nd petitioner/A.3 to submit within said 15 days from now before the Judicial Magistrate of First Class having the jurisdiction, for taking to custody and to enlarge as above. The bond to be obtained is not only to appear before the Court pending investigation and after filing of final report in the form of charge sheet or the like for enquiry or pre-committal enquiry before said Court, but also thereafter on committal before the Court of Sessions or by virtue of any transfer of proceedings for want of jurisdiction or otherwise before any other Court and even after trial before such Court to appear before provisional or appellate Court or other superior Court - vide decision - **Pre-Legal Aid Committee, Jamshedpur vs State of Delhi 1982[2]APLJ 43(SC)**; so that at stage of committal or other proceedings obtaining of fresh bond from accused and even affidavits of sureties of bonds and solvency earlier produced are ratifying and in existence and enforceable, without even insisting **their** further presence, serves the purpose. Such recourse quickens the proceedings at such committal or other stages without loss of time and it also to some extent complies with the requirement of Section 437A Cr.P.C.

[2] 2nd petitioner-A.3 shall report before the Station House Officer concerned on every Sunday between 10.00 a.m. and 11.00 a.m. till filing of the charge sheet and thereafter once in a month on 1st Sunday till completion of trial/enquiry between 10.00 and 11.00 AM for assurance of **his** availability and non-interference in any manner with the witnesses.

[3] 2nd petitioner-A.3 shall not enter the area where the victim and witnesses reside, until further orders being passed

by the learned Magistrate relaxing the same empowering him by virtue of this order.

[4] 2nd petitioners-A.3 shall attend before the Court of law regularly in enquiry and trial without fail, if not his bail shall be cancelled forthwith, without any further order so that, the Magistrate can also issue NBW by cancelling the bail from the power under section 439 [2] Cr.P.C. delegated to the learned Magistrate by this order during pendency of proceedings before the Magistrate.

[5] 2nd petitioners-A.3 shall not leave the State pending enquiry/trial without prior permission of the Court of concerned Magistrate/trial Judge.

[6] 2nd petitioners-A.3 shall furnish his full address with property and Bank Account particulars and submit his passport if any, after enlargement of bail on the next hearing date before the Magistrate Court concerned (for collecting by police as part of their duty to investigate-also the means of accused and to furnish the same in the final report of investigation to enable the trial court in the event of considering the need of awarding compensation under section 357 Cr.P.C. So to award from such material and evidence, apart from securing presence and obtaining of bond with sureties under section 437A Cr.P.C. etc.), failing which it is open to the learned Magistrate concerned by virtue of the power conferred by this order to cancel the bail.

[7] In the event of the police making out a case for police custody for the purpose of interrogation, the 2nd petitioner/A.3 shall be liable to be taken in police custody for facilitating the further investigation remained if any, with the permission of the Magistrate concerned who can grant such police custody within 15 days from today, not exceeding 12 hours in the presence of a male member, subject to necessary precautions and instructions as per the constitutional bench expression of the Apex Court in guideline No.iv in **Gurbaksh Singh Sibbia Vs. State of Punjab**¹.

¹ (1980)2 SCC 565

[8] The bail now granted is since a regular one till end of trial (without prejudice to the right to cancel meanwhile in case of need and/or for non-compliance of conditions supra) any absence of petitioner as A.3 for hearing/enquiry or trial, issuance of nonailable warrant-NBW (unless cancelled before execution) and even its execution and production of accused as per the NBW; that does not tantamount to cancellation of bail including from the wording of Sec.439(2) Cr.P.C. and as such in such event no fresh bail application can be entertained. As it tantamounts to only cancellation of bail bonds earlier executed, (leave about the power of the court to issue surety notices by forfeiting bonds and for imposing penalty on the bonds forfeited); the proper course is to direct the accused to work out the remedy to pay penalty on the previous forfeited bonds as per Section 441 to 446 Cr.P.C. and to submit fresh solvency with self bond for enlarging him by release from custody on payment of penalty of the earlier bonds forfeited without need of enforcing against earlier sureties again.

Accordingly, this Criminal Petition is partly allowed.
Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

20th February 2019

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