

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NO. 8208 OF 2021

ORDER :

This petition is filed under Section 438 Cr.P.C. seeking bail to petitioner - Accused in the event of his arrest in connection with Crime No. 807 of 2020 of P.S. Vanasthalipuram registered for the offences punishable under Sections 420 and 406 IPC.

2. Heard Sri D.Y.N.L.N. Charyulu, learned counsel for petitioner and learned Assistant Public Prosecutor for respondent-State.

3. On the last occasion, when the Application came up for hearing, learned counsel for petitioner has brought to the notice of this Court the fact that in the order dated 01.11.2021 in Criminal Petition No. 4615 of 2021, while rejecting bail to petitioner / accused, the learned XIV Additional Metropolitan Sessions Judge, Ranga Reddy District at L.B. Nagar recorded altogether a new set of facts. Hence, this Court directed the Registrar (Judicial) to call for a report from the learned Judge. In the meanwhile, as already police issued notice under Section 41-A Cr.P.C., it was directed that police cannot arrest petitioner without obtaining permission from the Magistrate concerned and following the procedure laid down under the said provision and also the guidelines issued by the Hon'ble Apex Court in the judgment reported in ***Arnesh Kumar v. State of Bihar***¹

4. As per the complaint dated 17.02.2018, the de facto-complainant purchased one plot admeasuring 150 yards, situated at Uppal Bhagayath for a consideration of Rs.16,50,000/- and paid Rs.13,00,000/- through cheque and balance amount of

¹ 2014(8) SCC 273

Rs. 3,50,000/- by way of cash to petitioner at his residence in the presence of Sri Krishna Reddy, who is a mediator. However, in the order dated 01.11.2021, the learned Sessions Judge recorded as under:

“ As per the case of the prosecution, the de facto complainant in order to purchase a plot from the accused for Rs. 39,00,000/- had paid a sum of Rs. 13,00,000/- through 4 cheques and Rs.3,50,000/- in cash in the presence of a witness. Later, Rs. 3,50,000/- was paid by the de facto complainant to the accused in 2 installments. Thus a total sum of Rs.20 lakhs was paid by the de facto complainant. It was agreed that the remaining amount of Rs.19 lakhs will be paid within 3 months for the registration of the said plot. An agreement of sale dated 17.02.2018 was entered between them. Later though the de facto complainant was ready to pay the balance amount, the registration of the plot was dodged by the accused from time to time. Having lost confidence in the accused the de facto complainant demanded for refund of the amount paid by him. Though the accused agreed to refund the same, later he became unresponsive to the phone calls. When the de facto complainant went to his house, the wife of the accused stated about existence of disputes in their family and further complained against him to the police dialing 100.

The petitioner alleged falsity of the case of the prosecution and his false implication in the case.

It is seen from the record that the accused as the GPA Holder of the vendors, had entered into an agreement of sale dated 17.02.2018 with the de facto complainant for sale of a plot for Rs.39,75,000/-, Rs.10 lakhs being paid under the said agreement. Rs. 10 lakhs was agreed to be paid on or before 10.03.2018 and the remaining Rs. 19,75,000/- on or before 31.05.2018 or at the time of registration. The de facto complainant having paid a total sum of Rs. 20 lakhs, Rs. 19 lakhs to be paid. Though the de facto complainant approached the accused for payment of balance sale and registration of the plot, the same was avoided by the accused and he became unresponsive. Though the facts appear to be a case of specific performance of agreement of sale in outlines, the subsequent conduct of the accused shows that he had intentionally cheated and committed criminal breach of trust against the de facto complainant. Simply because the accused is aged 67 years, the same by itself cannot be a ground for grant of relief to him. Only L.Ws.1 and 2 having been examined by the police, the case requires to be thoroughly investigated by the police. In case of grant of

anticipatory bail to the accused, there is likelihood of repetition of similar offences by him against others. Therefore, the petitioner does not merit.”

4. Today, when the matter came up for hearing, Registrar (Judicial) has placed before this Court the report filed by the learned Judge, dated 24.11.2021, wherein it is stated that,

“..... It is further stated that this Court by itself did not introduce any new figures in its order 3rd referred above and all the figures referred by this Court in the said order find place in the record made available to this court from both sides only. To submit simply, the de facto complainant (LW1) in his complaint has stated some figures and himself stated some additional figures, which are elaborate or explanatory, in his statement under Section 161 of Cr.P.C. and the recitals in the copy of agreement of sale dated 17.02.2018 filed by the accused himself. The Photostat copies of the statement of LW1 P. Ashok Reddy recorded under Section 161 Cr.P.C. and agreement of sale dated 17.02.2018 are enclosed herewith.”

5. In view of the above-said report, as this Court has already, in its order dated 19.11.2021, observed that *‘as already police issued notice under Section 41-A Cr.P.C, they cannot arrest the petitioner without obtaining permission from the Magistrate concerned and following the procedure laid down under the said provision and the guidelines issued by the Apex Court in **Arnesh Kumar’s case (supra)**’*, no further orders need be passed in this Criminal Petition.

6. The Criminal Petition is accordingly, closed.

LALITHA KANNEGANTI, J

26th November 2021

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