

16.06.2022.
97
Ct. No.28
as/PA
(Rejected)

C.R.M. (A) 643 of 2022

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Hare Street P.S. Case No.201 of 2021 dated 16.09.2021 under Sections 418/419/465/467/468/471/474/477/120B of the Indian Penal Code

In the matter of : Kumar Vikram & Anr.

... Petitioners.

Mr. Ayan Bhattacharyya,
Mr. Suman Majumder.

...for the Petitioners.

Mr. Prasun Kumar Dutta, Id. A.P.P.,
Mr. Subrato Roy.

.....for the State.

Mr. Indranil Nandi,
Mr. Sayak Konar.

...for the de-facto complainant.

Heard the learned Advocates appearing for the parties.

Learned Advocate for the petitioner submits they are bona fide purchasers for value of the property. Order was passed by Anchal Office, Madhupur in a revenue proceeding in October, 2019 declaring that jamabandi in the name of official trustee of West Bengal be stayed and giving approval for recording the name of legal heirs of Hari Chander Dutta in the land records pertaining to the property in question. It is contended relying on such entry, petitioners had purchased the property from the legal heirs of Hari Chander Dutta, who is on regular bail. Hence, petitioners pray for anticipatory bail.

Learned Advocate for the de-facto complainant-official trustee submits petitioners were fully aware that the original trustee i.e. Hari Chander Dutta and his legal heirs had no right to convey the trust property and management of the trust was in the hands of the official trustee. In fact, this Court in Suit No.2249 of 1948 had appointed the official trustee to manage the trust property in place of Hari Chander Dutta and his legal heirs. By suppressing the aforesaid fact, Anchal Officer was misled to make corrections in the land records. However, such correction does not affect title in the property. In 2015, co-accused Sudhangsu Sekhar Dutta and others had executed general power of attorney in favour of petitioner no.1 to manage the said property. Petitioners have been dealing with the said property since then on behalf of the co-accused and were fully aware the latter had no title in the property.

Learned lawyer for the State opposes the prayer for bail. He submits the offence relates to illegal conversion of public assets of substantial value. Custodial interrogation is necessary for progress of investigation.

We have considered the materials on record. In Suit No.2249 of 1948, this Court had appointed the official trustee to manage the property and co-accused Sudhangsu Sekhar Dutta and other heirs of Hari Charan Dutta did not have any right to transfer the property. In 2015 Sudhangsu Sekhar and other heirs had executed a general power of attorney in favour

of petitioner no.1 to manage the property. Since then, petitioners were dealing in the property on behalf of the legal heirs of Hari Chandra and were aware of the fact they had no legal right to sell the property. Subsequently in 2019, pursuant to conspiracy, order was obtained from the Anchal Office recording the name of Sudhangsu Sekhar Dutta in the land records by suppression of material facts particularly the order of this Court in Suit No. 2249 of 1948. Under the ruse of the aforesaid order, petitioners got the property transferred in their names at a throwaway price. Hence, it cannot be said that the petitioners were innocent purchasers for value and had been persuaded by the so-called correction of land records at the Anchal Office to enter into the sale transaction. On the other hand, correction of records at the Anchal Officer *prima facie* appears to be a sham one to give a colour of legitimacy to the fraudulent transfer. That apart, it is trite law entry in the record of rights does not create title in the property.

It has been strenuously contended official trustee was represented in the proceedings before the Anchal Officer. Learned Advocate for the official trustee has produced records wherefrom it appears no copy of such order is available in the office records of his client. This gives rise to serious doubt whether the representation before the Anchal Officer on behalf of the official trustee was a bona fide one or not.

The petitioners had relied on ***Mohammed Ibrahim & Ors. Vs. State of Bihar & Anr.***¹ in support of their submission that an innocent purchaser for value cannot be prosecuted for cheating and fraud. The said case is wholly inapplicable to the peculiar facts of the present one. In this case one of the purchasers, that is, petitioner no.1 was the general power of attorney holder of the seller himself and petitioner no. 2 was his associate. Both of them were fully aware of the legal status of the property. All of them entered into unholy conspiracy to illegally convey public property and cause wrongful loss to public exchequer.

The aforesaid materials on record shows a deep rooted conspiracy between the heirs of Hari Chander Dutta and the petitioners, one of whom was the power of attorney holder of the said heirs, to illegally convey public property in their favour at a throwaway price and thereby cause wrong gain to themselves and wrongful loss to the State.

In view of gravity of the offence which relates illegal conversion of public property valued over ₹1 crore and as investigation is in progress and custodial interrogation of the petitioners may reveal further evidence, we are of the opinion that this is not a fit case to grant anticipatory bail to the petitioners.

¹ (2009) 8 SCC 751

Accordingly, the prayer for anticipatory bail of the petitioners is rejected.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)