

THE HONOURABLE DR.JUSTICE G.RADHA RANI

CRIMINAL PETITION No.4181 OF 2024

ORDER:

This Criminal Petition is filed by the petitioner – Accused under Section 438 of Code of Criminal Procedure, 1973 (for short “Cr.P.C”), for grant of anticipatory bail in the event of his arrest in Crime No.105 of 2024 on the file of Shankarpally Police Station, Cyberabad District, registered for the offences punishable under Sections 420, 406, 467, 471 of Indian Penal Code, 1860 (for short, ‘IPC’).

2. The case of the prosecution in brief was that on 12.03.2024, the *de facto* complainant lodged a report before the police station stating that he along with nine other persons had purchased certain plots in Green Avenue-I, Ramanthapur Village of Shankarpally between the years 2011 to 2013. The said plots were sold by the petitioner herein who was the vendor and the person responsible for further development of the venture. The venture was a HMDA approved layout. Relevant permissions for layout, development, sale and conversion from Agricultural land to Non-Agricultural land (NALA) has been sought from the appropriate authorities in Survey Numbers 54, 55, 56, 57 and 63. Recently, when he along with other plot owners (members) visited

the venture, they found some other persons illegally encroached the plots in survey Nos.56 and 57 and when they requested the said persons to vacate the land and show their plot documents, they threatened to kill them. On their enquiry with the neighboring land owner, they came to know that the petitioner cheated them by selling the plots which were mortgaged with HMDA and also cheated them in developing the venture. They further came to know that the encroachers had entered the venture through documents registered in Dharani Portal in 2017 which was illegal. They also came to know that the other partners of the petitioner having knowledge that the land was converted into non agricultural land and plotted, sold the same to individual persons by forging the documents as agricultural land and entered the same into Dharani Portal and sold the land to K.Rajender, Shashidhar Reddy and Narasimhulu. Basing on the said report, the above crime was registered.

3. Heard Sri V.R. Avula, learned Senior Counsel representing Sri Rama Rao Kochiri, learned counsel for the petitioner-Accused on record and the learned Additional Public Prosecutor for the respondent-State.

4. Learned Senior Counsel for the petitioner-accused reported that the petitioner firm was a lawful owner and possessor of the land admeasuring Ac.21.23 guntas. By the time the firm purchased the said land itself, the land was got converted by the vendors of the firm from agriculture use to non agriculture use vide proceedings dated 18.11.2010 and 13.10.2012 respectively. The accused No.2 purchased the land to an extent of Ac.3.35 guntas in survey No.54/E and accused No.3 purchased the land to an extent of Ac.0.35 guntas in survey No.56/Part and accused No.4 purchased the land to an extent of Ac.1.10 guntas in survey No.56/Part and accused No.5 purchased the land to an extent of Ac.1.00 guntas in survey No.56/Part. The said lands were converted from agriculture to non-agriculture by the competent authority i.e., Revenue Divisional Officer, Chevella, Ranga Reddy District and after due enquiry, the R.D.O issued proceedings dated 18.11.2010. The firm with a view to develop the land, entered into an understanding with accused Nos.3 to 5 and along with their vendors, submitted a joint application before the HMDA, in the year 2011 in respect of land to an extent of Ac.18.18 guntas out of Ac.21.23 guntas and HMDA after due enquiry approved the layout on 03.02.2011 subject to the conditions mentioned therein. The firm of the accused Nos.1 and 3 to 5 also executed mortgage deeds

infavour of HMDA in respect of plots 56 to 69, 70 to 76, 81 to 87 to an extent of 8267.0 square yards. The firm also had an understanding with accused No.2 who was the absolute owner of Ac.3-35 guntas. Accused No.2 and its vendors filed joint layout application for development of land to an extent of Ac.7.30 guntas in survey No.54/Part and 55/Part to HMDA for necessary approval. The firm as well as accused Nos.2 to 5 developed the land in accordance with the approved layout by the HMDA by laying roads etc and sold the plots to different purchasers through registered sale deeds. There was no complaint from any plot owners or purchasers from 2012 till date.

5. Learned Senior Counsel for the petitioner further submitted that the *de facto* complainant and others named in the complaint admittedly purchased plot Nos.260, 27, 51, 52, 276, 55, 40, 44, 45, 281 and 160 from the firm and others. Admittedly the mortgaged plots were not sold out to them and they were still under mortgage of HMDA. The allegations of forgery and cheating would not attract to the petitioner herein and relied upon the judgment of the Hon'ble Apex Court in ***Jay Shri and another Vs. State of Rajasthan***¹ wherein it was held that the dishonest intention should be right from the beginning of the transaction.

¹ SLP(Crl.) No.14423 of 2023

6. Learned Additional Public Prosecutor opposed grant of anticipatory bail to the petitioner stating that the petitioner was arrayed as the main accused A1 and submitted that after selling the plots, the same lands were entered into the Revenue records as agricultural land and cheated the complainant and others.

7. Perused the record.

8. The complaint was filed 11 years after selling the property and handing over the possession. As seen from the layout approval granted by HMDA dated 03.02.2011 and 10.01.2012, the plots mortgaged to HMDA were not sold to the petitioners. The offence under Section 420 of IPC *prima facie* is not applicable to the petitioner as there is no intention to cheat from the inception and no complaint was lodged for a period of 11 years after handing over the possession. The offences under Section 405 and 406 are also *prima facie* not applicable as no property was entrusted by *de facto* complainants and the petitioner had not converted them to his own use or misappropriated the same or disposed of the property in violation of any direction of law or trust imposed against him. There were no allegations of forgery in the entire complaint. The petitioner could neither be blamed nor held responsible

for the alleged encroachment as it was not the petitioner who sold the property to others in the name of agricultural land. Hence, it is considered fit to grant anticipatory bail to the petitioner.

9. Accordingly, the Criminal Petition is allowed directing the petitioner/accused to be released on anticipatory bail subject to the following conditions:

- i) The petitioner-Accused is directed to surrender himself before the Station House Officer, Shankarpally Police Station, Cyberabad, within a period of (15) days from the date of this order. On such surrender, the said Station House Officer shall release the petitioner-accused on bail, on his executing a personal bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties for a like sum each to the satisfaction of the said Station House Officer.
- ii) The petitioner/Accused shall abide by the conditions stipulated in Section 438(2) of Cr.P.C.

Miscellaneous applications, pending if any, shall stand closed.

Dr. G.RADHA RANI, J

Date:24.04.2024
dgr