

HONOURABLE SRI JUSTICE B. VIJAYSEN REDDY

CRIMINAL PETITION No.5702 of 2024

ORDER:

This petition is filed under Sections 437 and 439 of the Criminal Procedure Code seeking to enlarge the petitioners, who are accused Nos.1, 2 and 3, on bail in FIR No.10 of 2024 registered with EOW (Cyberabad) Police Station, Cyberabad Commissionerate, Ranga Reddy District for the offences under Sections 406 and 420 IPC and Section 5 of the Telangana Protection of Depositors of Financial Establishments Act, 1999 (for short, 'the Act, 1999').

2. Heard the learned counsel for the petitioners and the learned Assistant Public Prosecutor appearing for the respondent-State.

3. Learned counsel for the petitioners contended that the police have deliberately included Section 5 of the Act, 1999, which is not attracted in the instant case. Learned counsel referred to definition of "deposit" under Section 2(b) of the Act, 1999 and judgment of this Court in CrI.P.Nos.2906 and 2907 of 2023 by order dated 24.01.2024.

4. Learned Assistant Public Prosecutor submitted that the petitioners were arrested and their police custody for a period of three days was over and further investigation is pending.

5. The case of the prosecution is that the *de facto* complainant B.V.S.Prasad paid in total a sum of Rs.33,73,125/- to purchase three flats under pre-launch scheme of 25% initial payments and the rest to be paid by getting bank loan. It is alleged that MOU was executed by the accused on 31.07.2021 wherein they committed that they will complete the project within 24 to 30 months. Even after an year of full payment, it is alleged the accused have not started work and they did not get HMDA permission. There are about 23 perspective buyers, who are victims of fraud allegedly committed by the accused. The *de facto* complainant and other victims approached the developers/accused several times and requested them to return the money collected from them. When all the customers pressurised the accused to start work, they changed the name of the company from 'Bharathi Builders' to 'Bharathi Builders India Pvt. Ltd.' for a tie up with Delhi based company. About couple of months ago, they have started a new company called 'Sree Bharathi Builders' with share of 60% of

Mr. Ashish Ahuja and rest 40% of the Chairman (Nagaraju) and MD (Shivarama Krishna) as individual persons and no where it is mentioned that they belong to 'Bharathi Builders' or its share.

6. As seen from the contents of the FIR, the *de facto* complainant and others are flat purchasers who have paid advance amount to the accused persons allegedly under pre-launch scheme.

7. *Prima facie*, the transaction between the *de facto* complainant and the accused persons does not attract meaning of "deposit" under Section 2(b) of the Act, 1999, which means that the deposit is a sum of money collected either in lumpsum or installments made with a financial establishment for a fixed period, for interest or return in any kind. Further, this Court by order dated 24.01.2024 in Crl.P.Nos.2906 and 2907 of 2023 held that Section 5 of the Act, 1999 is not attracted when investments are made for transfer of immovable property.

8. In the *prima facie* opinion of this Court, Section 5 of the Act, 1999 is not attracted and police were under obligation to comply with procedure prescribed under Section 41-A of the Code of Criminal

Procedure and the guidelines prescribed by the Apex Court in **Arnesh Kumar v. State of Bihar**¹.

9. Taking into consideration that petitioners have been deprived of benefit under Section 41-A of the Code of Criminal Procedure, in view of inclusion of Section 5 of the Act, 1999, which is not attracted as stated above, this Court is inclined to grant bail to the petitioners/Accused Nos.1, 2 and 3.

10. In view of the above, the Criminal Petition is allowed with the following conditions:

(i) The petitioners/Accused Nos.1, 2 and 3 shall be enlarged on bail on their executing personal bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) each with two sureties for a like sum each to the satisfaction of the learned Metropolitan Magistrate, Ranga Reddy District, L.B.Nagar, Hyderabad.

(ii) The petitioners/Accused Nos.1, 2 and 3 shall comply with the conditions stipulated under Section 437(3) of Cr.P.C. and shall

¹ AIR 2014 SC 2756

appear before the trial Court on all the dates when their presence is required.

Pending Miscellaneous Applications, if any, in this Criminal Petition, shall stand closed.

Date: 30.05.2024
KL/YVL

B. VIJAYSEN REDDY, J