

HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

CRIMINAL PETITION No.7718 of 2024

ORDER :

Petitioners/Accused Nos.1 and 2 have filed this petition under Section 438 of Cr.P.C., seeking anticipatory bail in Cr.No.145 of 2024 of P.S. INSP ADMIN (DD), registered for the offences under Sections 406 and 420 of IPC and Section 5 of the Telangana State Protection of Depositors of Financial Establishments Act, 1999 (for short “the TSPDFE Act”).

2. Heard Sri Y. Soma Srinath Reddy, learned counsel for petitioners and the learned Additional Public Prosecutor appearing for the State.

3. The case of the prosecution is that the petitioners herein are wife and husband and are running a real estate Company under the name and style of “M/s.EVK Projects Pvt. Ltd.” The complainant/Mr.Raghavendar and another person by name Mr.T.Anil Kumar have approached the petitioners for purchase of two villas called “EVK Shri Shilpa” at Shankerpally, at the rate of Rs.70 Lakhs each and entered into a Memorandum of Understanding on 27.10.2021. Thereafter, the petitioners informed the complainant that

they lost the site and would refund money within six months as per the agreement dated 27.10.2022, but they did not refund the amount as agreed, and thus, cheated them.

4. The learned counsel for petitioners/accused Nos.1 and 2 has submitted that the present crime has been registered on baseless allegations and that the petitioners never cheated the complainant or any other person. It is further contended that the entire investigation is completed including the recording of statements of witnesses and only charge sheet is to be filed. Accordingly, prayed to grant anticipatory bail to the petitioners.

5. The learned Additional Public Prosecutor has opposed the grant of anticipatory bail on the ground that there are specific allegations against the petitioners that having collected money from the complainant, they did not allot house plot to him and failed to refund the amount as per the agreement, and thus, cheated the complainant. Accordingly, he prayed to dismiss the petition.

6. On perusal of the complaint and the material placed on record, it is apparent that civil suits were filed against the property sold by the petitioners herein, due to which, the petitioners could not proceed

with construction work as promised to the complainant, and thus, *prima facie*, they do not have an intention to cheat the complainant, but they could not honour the agreement for the reasons beyond their control, and thus, the offences under Sections 420 and 406 of IPC would not *prima facie* attract as there should be an intention to cheat from the beginning itself. It is to be noted that the petitioners have registered the land in favour of complainant and the petitioners never misappropriated such property in any manner. Further, in order to attract an offence under Section 5 of the TSPDFE Act, there should be a financial establishment and it should have defaulted in the return of the deposits either in cash or kind or ought to have defaulted in the payment of interest on the deposit as agreed upon and there is no agreement between the parties to consider that the amount was deposited with an intention to receive interest on that. The petitioners herein are not running any financial establishment, but are running a real estate Company. In view of the same, it is a fit case to grant anticipatory bail to the petitioners in the present case.

7. Accordingly, this criminal petition is allowed directing that the petitioners/accused Nos.1 and 2 shall be released on anticipatory bail subject to the following conditions:

1. The petitioners/accused Nos.1 and 2 shall surrender before the Station House Officer of P.S. INSP ADMIN (DD) within two weeks from today, and on such surrender, the said Station House Officer shall release them on bail on each of them executing a personal bond for Rs.50,000/- with two sureties each for the like sum.
2. The petitioners/accused Nos.1 and 2 shall appear before the Station House Officer concerned twice a week i.e. on every Sunday and Wednesday between 11.00 a.m. and 5.00 p.m. for a period of eight weeks or till filing of charge sheet, whichever is earlier.
3. The petitioners shall deposit their passports with the Station House Officer concerned.
4. The petitioners/accused Nos.1 and 2 shall abide by the other conditions stipulated in Section 438(2) of Cr.P.C. and co-operate with the Investigating Officer in investigating the case.

JUVVADI SRIDEVI, J

Date: 22.07.2024

ajr