

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV

CRIMINAL PETITION No.3695/2019 DATED:24-06-2019

Mr. S. Krishnalal S/ o L.M. Shivanna Naik Vs. State of Karnataka, Through Station House Officer, Anti-Corruption Bureau, Bengaluru-560001.

ORDER

Petitioner is seeking to be enlarged on bail in the event of his arrest pursuant to proceedings in FIR No.13/2019 registered under Section 13 ( 1) A read with 13 ( 2) of Prevention of Corruption act, 1988 read with Sections 420, 465, 468, 471 and 120B of IPC, with the Anti-Corruption Bureau Police Station.

2. The case that is made out by the prosecution is that the land in Survey No.132 of Kowdanahalli Village, was notified for road widening of T.C. Palya Main Road and it is stated that the Bruhat Bengaluru Mahanagar Palike (BBMP) authorities had offered Transfer of Development Rights (TDR) which is in lieu of monetary compensation to the owners.

3. It is stated that the petitioner (Accused No.1) and the other accused had entered into conspiracy pursuant to which the Khatha of the property came to be transferred into the names of the legal heirs of Revanna viz., Munirajappa and others despite land having been notified for acquisition by the Bengaluru Development Authority (BDA).It is further stated that though Munnirajappa and others did not possess any property rights having sold sites to third parties more than a decade ago by connivance of officials of the BBMP and BDA, including the petitioner, Munirajappa and others were allotted TDR pursuant to acquisition of land in Survey No.132.It is further stated that the present owners of the acquired land are in occupation of buildings said to have been acquired but have not been demolished by the BBMP till date.

4. It is stated that the Petitioner (Accused No. 1) along with others by their illegal action and abuse of official position and authority have caused wrongful loss to the BBMP and private parties to the tune of about 56.33 crores through the issuance of TDRs to persons other than the true owners.

5. It is alleged that B.S. Surendranath, K. Gowtham, K. Suresh and Vallamark Reality Holdings (Pvt.) Limited, negotiated with the family members of Revanna and have made them to apply to the Tahsildar for change of Katha concealing the fact that the land was developed into a Revenue Layout and the sites were sold.

6. It is further stated that the officials of the BBMP by abusing their authority have inflated the extent of area sought to be acquired and accordingly, TDRs have been issued disproportionate to the land involved causing loss to the BBMP. It is alleged that the officer in-charge during the relevant period of time was the petitioner. Pursuant to investigation by the department, sanction has been obtained to register a complaint under Section 17 ( 3) of the Prevention of Corruption Act, 1988 and as per the Government Order dated 14.03.2016

and it is stated that further investigation is required by arraigning petitioner and others as accused as per the report dated 11.04.2019.

7. The petitioner had sought for anticipatory bail before the Sessions Judge in CrI. Misc.No.4189/2019 under Section 438 of Cr.P.C., which however came to be rejected by order dated 27.05.2019 and also canceling the interim anticipatory bail granted on 14.05.2019.

8. The petitioner has filed the present petition seeking to be enlarged on anticipatory bail.

9. While the petitioner claims to be innocent of the offences alleged and contends that in light of the earlier order granting interim anticipatory bail by order dated 14.05.2019 in CrI. Misc.No.4189/2019, the same needs to be taken note of and similar relief extended. It is also asserted that the petitioner had visited the office of the respondent on 15.05.2019, 23.05.2019 and 25.05.2019 for the purpose of co-operating with the Investigation in light of the requirement as per the order passed and that he had presented himself before the XXIII City Civil and Sessions Judge on 18.05.2019, 24.05.2019 and 25.05.2019 and accordingly, has been co-operating with the Investigating Agency as well as the proceedings pending before the trial Court. It is also asserted that the ground that was sought to be made out for custodial interrogation was that certain files with respect to issuance of TDR were missing for which the petitioner was responsible, the same has been denied and the petitioner asserts that he was not in possession of the said files and the same was not handed over by his predecessor.

10. Sri. Venkatesh P. Dalwai, Special Public Prosecutor appearing on behalf of the respondent has filed his detailed statement of objections and asserts that the petitioner has not handed over files to the incumbent officer relating to issuance of TDRs with respect to the present controversy as regards Survey No.132 of Kowdanahalli Village. It is asserted that the original file No.DRC/99-002958 which is a file pertaining to the case on hand was not available and that the same was not handed over. It is further contended that the petitioner along with the other accused have tampered with files with an intention to cause wrongful loss to the existing land holders.

11. The Anti-Corruption Bureau (ACB) after having enquired into the matter had obtained due sanction as per Section 17 ( A) of the Prevention of Corruption Act as a prima facie case was made out and FIR came to be registered. Investigation is in progress. It is stated that on the basis of investigation thus far, it has come to light that the extent acquired has been inflated, eventually leading to issuance of TDR disproportionate to the extent acquired. It is stated that the records were manipulated with the involvement of the petitioner and other officials to the detriment of the State Exchequer and to favour the private persons. It is asserted that the petitioner though claims that he has co-operated with the Investigating Agency by marking his presence on 15.05.2019, 23.05.2019 and 25.05.2019, and though the petitioner had entered into the office of the respondent, he has walked out without appearing before the Investigating Officer. It is asserted that the procedural requirement to mark attendance before the concerned official was to obtain signature on the slip

and surrender it back at the reception of the respondent-Office. It is stated that such endorsement from the concerned officials has not been obtained and though the slips (without endorsement) indicate that he had met the Deputy Superintendent of Police who was conducting the investigation and the Inspector General of Police, the petitioner had not met such of the officers. Hence, it is contended that discretion ought not to be extended to the petitioner.

12. It is further asserted that the petitioner who was the custodian of the file has removed the file from the office in order to destroy vital evidence. It is asserted that during the period, the petitioner was working with the BBMP TDR section, similar files (about 47 files) with respect to issuance of TDR namely, Development Right Certificate (DRC) files were missing. Accordingly, it is asserted that the petitioner being an official is capable of destroying evidence and hence, in light of the requirement to investigate the conspiracy, custodial interrogation of the petitioner is necessary.

13. Heard the counsel on both the sides.

14. The respondents have placed documents for perusal of this Court relating to investigation thus far.

15. I have carefully perused the material and noted its contents.

16. The Apex Court has laid down the guidelines on law relating to grant of anticipatory bail in the judgment of Shri Gurbaksh Singh Sibbia and others Vs. State of Punjab reported in (1980) 2 SCC 565 and also subsequently, in the case of Siddharam Satlingappa Mhetre v. State of Maharashtra and others reported in (2011) 1 SCC694. The Apex Court in the case of Siddaram Satlingappa (supra) has observed number of guidelines ought to be kept in mind for considering an application as detailed in para112. What would be of particular relevance with respect to the present facts is the guideline contained in the observation:

"vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

ix. The Court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant ".

17. In the facts as made out by the prosecution the modus operandi of obtaining TDRs disproportionate to the actual extent of land acquired is a matter under investigation. The question of involvement of the officials of BBMP allegedly being a part of the larger conspiracy in connivance with land owners and others still to be unravelled.

18. The respondent is on record stating that the original file No.DRC/99-002958 pertaining to the issue of TDRs with respect to Survey No.132 is missing. It is also stated that the petitioner has not handed over the said file to his incumbent and that during the period the petitioner was working from 14.12.2013 to 04.09.2014, 29.12.2016 to 30.06.2017 and 01.07.2017 to 25.07.2018 files about nearly 47 files with reference to issuance

of TDR have been missing. The unearthing of material for investigation is a matter in the exclusive domain of the Investigating Authority.

19. The fact that is made out is that there were missing files including the file relating to the dispute on hand which is under investigation. That the present case is one of a larger class of cases where similar offences requires to be unearthed relating to issuance of TDR as made out by the respondent-Authority is to be kept in mind. The manner in which there has been conspiracy involving the petitioner and other officials to cause wrongful loss to the State Exchequer, to the aggrandizement of private persons requires investigation by the Authority including custodial interrogation.

20. It is to be kept in mind that interrogation pursuant to orders granting anticipatory bail bail is qualitatively different from custodial interrogation.

21. The observation of the Apex Court in the case of State rep. by the C.B.I. vs. Anil Sharma reported in (1997) 7 SCC 187 as regards need for custodial interrogation and its need in appropriate circumstances aptly laid down as follows:

" 6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders ".

22. In the facts made out in the present case, considering of the magnitude of present offence and the possible revelation of similar offences would require custodial interrogation as asserted by the respondent Authority.

23. A careful perusal of the material placed before the Court which are the papers relating to investigation would support providing due discretion to the Investigating Authority. It would not be appropriate to refer and place the investigation, so far made as revealed from the records into public domain by referring to the same in the present order as investigation is in a crucial stage and ought not to be hampered by due disclosure which may preempt accused and others from possible destruction of evidence.

24. In fact, the positive assertion of the Investigating Authority that 47 files relating to issuance of TDRS are missing with respect to the period during which the petitioner was the custodian would also indicate that other offences of like nature may be unraveled during the course of custodial interrogation of the petitioner. This is a matter that has weighed in the mind of the Court. Though the petitioner asserts that he has no custody of such files, it is precisely in the light of such assertion the petitioner must subject himself to custodial interrogation to enable the Authority to stretch its investigating arm as far as may be necessary.

25. What is of serious concern is the assertion of the Authority that the petitioner is attempting to mislead the Court by false assertions that he has been co-operating with the Investigating Authority. Though the petitioner claims that he had been to the office of the Investigating Authority on three occasions on 15.05.2019, 23.05.2019 and 25.05.2019, it is asserted that the petitioner has obtained slips for having entered the office but has not met the Investigating Officer or the Inspector General of Police and has in fact, visited the office only to demonstrate that he has been co operating with the Investigating Authority though the petitioner has not met any of the concerned officers. At this stage, there is no reason to suspect the assertion of the respondent being a public authority, on this count and this is also a factor that has weighed in the mind of the Court in coming to the conclusion. In fact, the Sessions Judge in his order dated 27.05.2019 has considered the plea of the petitioner and rejected it with detailed reasoning.

26. While dealing with economic offences, a different approach is required. The fact that the punishment prescribed may not be imprisonment for life or death is no reason to construe offences as being minor and no straightjacket formula can be laid down. The required approach as regards economic offences as made out in the present case is as observed in the Apex Court in the case of Nimmagadda Prasad Vs. Central Bureau of Investigation reported in (2013) 7 SCC 466, para 25 which reads as follows:

" 25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. " 27. Accordingly, the petition is dismissed in light of the above observations.

It is made clear that the observations are made for the limited purpose of the present proceedings and the rights of the petitioner to seek for being enlarged on bail during subsequent stages is kept open.

In the light of disposal of main petition, I.A. No.1/2019 has been rendered redundant and does not survive for consideration.