

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MARCH, 2022

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL PETITION NO.1653/2022

BETWEEN:

SRI NANJAPPA

... PETITIONER

(BY SMT. MANDAVI PANDEY, ADVOCATE FOR
SRI MANJUNATHA M, ADVOCATE)

AND:

STATE BY CHIKKAJALA POLICE STATION
REP. BY LEARNED SPP
HIGH COURT BUILDING
BENGALURU-560001

... RESPONDENT

(BY SMT. RASHMI JADHAV, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 438 OF CR.P.C PRAYING TO ENLARGE THE PETITIONER ON BAIL IN THE EVENT OF HIS ARREST IN CRIME NO.136/2021 REGISTERED BY THE CHIKKAJALA POLICE STATION, DEVANAHALLI, FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 419, 420, 465, 468, 471 OF IPC AND ETC.

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THIS CRIMINAL PETITION COMING ON FOR ORDERS THROUGH VIDEO CONFERENCING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed under Section 438 of Cr.P.C. praying this Court to enlarge the petitioner on bail in the event of his arrest in respect of Crime No.136/2021 registered by the Chikkajala Police Station, Devanahalli, for the offences punishable under Sections 419, 420, 465, 468, 471 of IPC.

2. Heard the learned counsel for the petitioner and the learned High Court Government Pleader appearing for the respondent-State.

3. The factual matrix of the case of the prosecution is that this petitioner who had been arraigned as accused No.1 had indulged in creation of documents in order to make wrongful gain along with accused Nos.2 and 3 claiming that accused Nos.2 and 3 are the original owners of the property bearing Sy.No.3, new No.3/253, to the extent of 2 acres 30 guntas of the land at Navarathna Agrahara, Jala hobli, Yelahanka taluk, Bengaluru North. The allegation in the complaint that the complainant had

stated that his mother had purchased this property on 04.05.1981 and thereafter, she was in possession of the same and in view of the order passed in LRF (INA) 246/80-81, 243/80-81, 242/80-81, 369/81-82, 379/81-82, the very said property was re-granted in favour of the mother of the complainant. The mother of the complainant passed away in the year 2015 and regarding entries pertaining to the year 2011 to 2014 in RTC, the matter was pending with the Special Deputy Commissioner and after the death of the mother, the khatha was not transferred in favour of any other persons. It is also alleged in the complaint that on 28.10.2021, some unknown persons were moving around the said property and suspecting the same, enquired and came to know that there was a sale agreement in favour of M/s.Blue jay Enterprises Private Limited and when the said fact came to know to the knowledge of his brothers and sisters had been to the office of the Sub-Registrar, Malleshwaram, Bengaluru on 11.11.2021 and came to know that this petitioner, even though the mother of the complainant was passed away in the year 2015, indulged in creation of the documents and created fictitious persons i.e., one Akkayamma and also in the name of the complainant, a sale agreement was

executed in favour of M/s.Blue jay Enterprises Private Limited on 24.10.2019 and hence the complaint was lodged stating that the petitioner as well as other accused persons have collected the amount of Rs.3,50,00,000/- from the prospective purchaser. Hence, requested to take action against the persons who have indulged in creation of the documents and made an attempt to make wrongful gain i.e., against this petitioner and also the other two fictitious persons i.e., Akkayamma and Anjanappa. Based on the complaint, the case was registered on 15.11.2021 in Cr.No.136/2021 of Chikkajala Police Station, Devanahalli.

4. After the registration of the case, the petitioner had approached the jurisdictional District and Sessions Judge, Devanahalli seeking an anticipatory bail in Crl.Mis.No.15236/2021 and having taken note of the contents of the complaint as well as the gravity of the offences, the V Additional District and Sessions Judge, Bengaluru Rural District sitting at Devanahalli rejected the anticipatory bail on 01.12.2021. Being aggrieved by the said order, the petitioner had approached this Court by filing Crl.P.No.9705/2021 in respect of the very same crime for the aforesaid offences, but

the said fact is not stated in the present petition and suppressed the same. It is also important to note that when the said petition came up before this Court on 12.01.2022, the counsel for the petitioner sought time on the ground of ill-health and hence, this Court adjourned the matter to 19.01.2022. On 19.01.2022, the counsel on record appeared through video conference and sought permission to dismiss the same as withdrawn. Accordingly, this Court dismissed the petition as withdrawn in view of the submission of the counsel for the petitioner.

5. The fact is that when the petition was pending before this Court till 19.01.2022, one more bail petition was filed before the District and Sessions Judge at Tumkur on 13.01.2022 in Crl.Mis.No.76/2022 and thereafter again during the pendency of the said petition before the District and Sessions Court, Tumkur, one more bail petition was filed before the District and Sessions Court, Mysuru and when the Public Prosecutor at Mysuru came to know about all these facts, a detailed objections was filed before the Principal District and Sessions Court, Mysuru and after hearing the arguments, the Principal District and Sessions Court, Mysuru, reserved the matter for orders and when the

matter was reserved before the Mysuru Court for orders, on 07.02.2022, the bail petition filed before the Tumkur Court was got dismissed as withdrawn in view of the memo for withdrawal. The bail petition filed before the Mysuru Court was dismissed vide order dated 08.02.2022 observing the fraud on the Court like, approaching different Courts for anticipatory bail. After dismissal of the bail petition on 08.02.2022, again on 21.02.2022, the petitioner has filed the present bail petition before this Court without disclosing the earlier petition. This Court has to take note that in the Tumkur Court as well as Mysuru Court, the petitioner has given fake addresses.

6. When this Court came to know the said fact, directed the counsel for the petitioner to produce the documents in respect of filing of the petitions before the Tumkur Court as well as the Mysuru Court, accordingly, the counsel for the petitioner has produced the copies of order sheet of CrI.Mis.No.76/2022 along with memorandum of criminal petition filed under Section 438 of Cr.P.C dated 13.01.2022 before the Tumkur Court which disclose that the said petition was filed during the pendency of the earlier bail petition i.e., CrI.P.No.9705/2021 filed before this

Court. The copy of the order dated 08.02.2022 in Crl.P.No.184/2022 passed by the Principal District and Sessions Court, Mysuru which also discloses that when the matter was heard and reserved for orders, the bail petition filed before the District and Sessions Court, Tumkur dismissed as withdrawn on 07.02.2022. After dismissal of the bail petitions filed before the Tumkur Court as well as Mysuru Court, again on 21.02.2022, the petitioner has filed the present bail petition before this Court seeking an anticipatory bail. But in the present petition, in paragraph 26, the petitioner has suppressed the filing of the earlier bail petition before this Court as well as approaching the Courts at Tumkur and Mysuru. Hence, it is nothing but a fraud on the Court and stooped into the level of suppressing all the facts before the Court and an attempt is made to get the bail order by hook or crook at the hands of this Court.

7. This Court would like to rely upon the following judgments of the Apex Court on the conduct of the seekers of justice, committed fraud on the Court. In the case on hand, not only committed fraud to the original owner of the property but also created fictitious persons with an intention to knock off the

property and received crores of rupees and also made an attempt to commit fraud on the Court and also involved in bench hunting act.

8. The Apex Court in the case of **KISHORE SAMRITIE vs STATE OF UTTAR PRADESH AND OTHERS** reported in **(2013) 2 SCC 398** held in paragraph 32 with regard to practice and procedure, abuse of process of court/law/fraud on the Court. The principles governing the obligations of a litigant while approaching the court and the consequences of abuse of process enumerated in this judgment. The Apex Court held that the cases of abuse of process of court and such allied matters have been arising before the courts consistently. It is observed that this Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of case. These are:

32.1. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts and came to the courts with "unclean hands". Courts have held that such litigants are neither entitled to be heard on the merits of the case nor are entitled to any relief.

32.2. The people, who approach the court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

32.3. The obligation to approach the court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

32.4. Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have overshadowed the old ethos of litigative values for small gains.

32.5. A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

32.6. The court must ensure that its process is not abused and in order to prevent abuse of process of court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the court would be duty-bound to impose heavy costs.

32.7. Wherever a public interest is invoked, the court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

32.8. The court, especially the Supreme Court, has to maintain the strictest vigilance over the abuse of process of court and ordinarily meddlesome bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed grievances and the court should endure to take cases where the justice of the lis well justifies it.

9. This Court also would like to rely upon the decision of the Apex Court in the case of **DALIP SINGH vs STGATE OF UTTAR PRADESH AND OTHERS** reported in **(2010) 2 SCC 114** wherein also the Apex Court taking note of abuse of process regarding new creed of dishonest litigants, noticed and strongly deprecated and further observed that denial of any relief to such

persons and also held that for many centuries Indian society cherished two basic values of life i.e., "satya" and "ahimsa" propounded by Mahavir, Gautham Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, the post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the

pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

10. The Apex Court in the judgment reported in **(2014) 8 SCC 470** in the case of **SUBRATA ROY SAHARA vs UNION OF INDIA AND OTHERS** held that calculated psychological offensives and mind games adopted by counsel to seeks recusal of Judges, held, need to be strongly repulsed (as done herein) such tactics deprecated and similar approach commended to other courts when they experience such behaviour, held, any act of bench-hunting or bench-hopping or bench-avoiding cannot be allowed, Judge not to rescue himself from the matter unless he/she should not be hearing it for reasons of direct or indirect involvement. Further held, benchmark that justice must not only be done but should also appear to be done, has to be preserved at all costs. Hence, even in the face of calculated psychological offensives and mind games as adopted by counsel in the present case, oath of office of Judge, to decide every case without fear or favour, requires the Judge concerned to press on with the hearing of the matter and bear the burnt of rhetoric of

the counsel or party seeking to dissuade him/her from hearing the matter.

11. This Court also would like to rely upon the judgment of the Apex Court reported in **(2016) 3 SCC 70** in the case of **SCIEMED OVERSEAS INC. vs BOC INDIA LIMITED AND OTHERS** wherein also observed with regard to imposition of exemplary costs filing of false or misleading affidavit, imposition of cost fully justified of Rs.10 lakh on petitioner for filing a false or misleading affidavit in court and also observed that there is no reason to interfere with the impugned judgment and time granted to the petitioner to make deposit of costs.

12. Having considered the principles laid down in the judgments referred supra, this Court has to take note of events which are relevant to make mention herein. The relevant dates and events are mentioned in a tabular column as follows:

Date	Particulars of events
01.12.2021	The bail petition in Crl.Mis.No.15263/2021 was dismissed by the V Additional District Judge, Bengaluru Rural, sitting at Devanahalli.

08.12.2021	The Crl.P.No.9705/2021 was filed before this Court.
12.01.2022	The case was listed before this Court and the counsel for the petitioner sought time on the ground of ill-health.
13.01.2022	During the pendency of bail petition before this Court i.e., Crl.P.No.9705/2021, this petitioner had filed Crl.Mis.No.76/2022 before the Tumkur Court furnishing fake address.
19.01.2022	The petitioner fraudulently got dismissed the Crl.P.No.9705/2021 since one more petition was filed before the Tumkur Court.
01.02.2022	During the pendency of Crl.Mis.No.76/2022, one more bail petition was filed before the District and Sessions Court, Mysuru furnishing fake address and the same is numbered as Crl.Mis.No.184/2022 and Crl.Mis.No.76/2022 on the file of Tumkur Court got dismissed as withdrawn on 07.02.2022.
08.02.2022	The Crl.Mis.No.184/2022 filed before the Principal

	District and Sessions Court, Mysuru dismissed observing the fraud on the Court.
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13. Having considering these events , it is clear that it is nothing but fraud on the Court and the petitioner has gone to the extent that by hook or crook, he has to get a bail order even the petitioner had indulged in committing fraud on the Court when the matter was pending before this Court, approached the different Courts at different districts and apart from that the said fact is not stated in the present petition and by suppressing the same, the present petition is filed. Hence here is a case of suppression of true facts and also committed fraud on the Court approaching the different forum furnishing the fake address and an attempt is made to get the bail order by hook or crook invoking the provisions under Section 438 of Cr.P.C and an attempt was made to pollute the stream of justice. The Court must ensure that its process is not abused and in order to prevent abuse of process of Court, Court would be duty bound to impose heavy cost. The stream of justice should not be allowed to be polluted by unscrupulous litigants .

14. The counsel for the petitioner who appears before this Court also after having directed to produce the documents of Tumkur and Mysuru Courts, produced the same and made the submissions before the Court that this petitioner has not given any instructions to the respective counsel to file a petition before the Tumkur Court as well as Mysuru Court. Hence, it is a fit case to refer the matter to the jurisdictional police to investigate since there is a fraud on the Court suppressing the facts during the pendency of the petition before this Court, the bail petitions filed before the Tumkur Courts as well as Mysuru Court by making a false submissions and also giving fake addresses. Now, making an allegation against the advocates who have filed the respective petitions stating that the petitioner has not given any instructions to file the said petitions before the respective Courts. In view of the said submission, it is directed to register the case and investigate the matter as who have all indulged in committing the fraud on this Court as well as Courts at different districts by seeking a relief under Section 438 of Cr.P.C. and investigate that whether this petitioner has given instructions to the respective advocates who have filed the petition before the Tumkur and Mysuru Courts or not and if no such instructions are

given to the respective advocates, array the advocates as accused since this type of fraud on the Court has to be curbed with an iron hand and also to be dealt with identify the persons who have indulged in doing mischief and fraud also the black sheep involved in committing the offence of fraud. The petitioner gone to the extent of denying the giving the instructions and unscrupulous litigants should not be allowed to pollute the stream of justice.

15. This Court having great respect to the legal luminaries who have rendered their service before the independence and even after the independence also even for adopting the constitution to this country. Now the trend is changed as observed by the Apex Court in the case of **DALIP SINGH** and those persons indulged in such acts have to be identified with an intention to uphold the dignity of the institution. If such persons are allowed to continue this type of practice of committing fraud on the Court, the same will disrepute the institution and hence, the matter has to be investigated and it is a high time to initiate appropriate action to curb the unethical practice.

16. The Registrar General is directed to file a complaint before the jurisdictional police narrating all these aspects either by himself or authorizing a person to file a complaint before the Vidhana Soudha police and matter has to be probed.

17. Now, coming to the merits of the case. The very case of the prosecution is that this petitioner had indulged in committing an offence of impersonation and also setting up of two fictitious persons as owners of the property which belongs to the mother of the complainant and it is the specific case of the complainant that the property was purchased by his mother on 04.05.1981 and the same was re-granted in the year 1982 in favour of the mother of the complainant and she passed away in the year 2015 itself. In the name of the mother who is no more in the year 2019, created a sale agreement which was registered before the Sub-Registrar on 24.10.2019 not only in the name of the mother of the complainant and also in the name of the complainant and hence, there is an impersonation of his mother and the complainant having received an amount of Rs.3 crore and agreed amount of sale consideration is of Rs.5,83,00,000/-. Out of the sale consideration of Rs.5,83,00,000/-, this petitioner

had received an amount of Rs.2 crore as a confirming party and an amount of Rs.50 lakh each was paid in favour of the other fictitious persons i.e., Akkayamma and Anjanappa, in total Rs.3 crore has been received by this petitioner as well as the other two fictitious persons.

18. It is also important to note that in the sale agreement, it is stated that this petitioner is having an unregistered agreement of sale dated 16.10.2019 with respect to the schedule property by paying 90% of the sale consideration and balance would be paid at the time of registration of the sale deed hence, he has been arraigned as confirming party. When this Court noticed the averments in the sale agreement referring the sale agreement dated 16.10.2019, directed the counsel for the petitioner to produce the said sale agreement since nowhere in the petition stated with the said sale agreement executed in favour of this petitioner. Today, the counsel for the petitioner filed a copy of the GPA and claims that there is no any sale agreement in favour of this petitioner and GPA is produced before the Court i.e., executed by those two fictitious owners and claims that no such agreement of sale was executed in favour this petitioner but in the registered sale agreement, there

is a reference. The Apex Court in the judgments referred supra has categorically held that the persons who have indulged in committing the fraud, such person is not entitled for any relief, interim or final.

19. Having considered the allegations made in the complaint, it is clear that the sale agreement is created in the name of the person who is no more and apart from that the complainant is also made as party in the said sale agreement but the sale agreement is executed by the fictitious persons and this petitioner is also a confirming party in the sale agreement which has been registered in the office of the Sub-Registrar at Malleshwaram. The specific allegation is that not only impersonation but also the offences of forgery and fraud committed on the original owner who is the complainant and the petitioner also not disputes the fact that original owner is the mother of the complainant but sets up the fictitious persons and indulged in creation of property documents and the property is also worth of crores of rupees and in the alleged sale agreement itself, it is shown as value of the Rs.5,83,00,000/- and out of that, this petitioner had received an amount of Rs.2 crore.

When the allegations of impersonation, fraud and forgery are concerned, this type of person who has indulged in such acts is not entitled for exercising the discretion in his favour who seeks the relief of anticipatory bail.

20. The counsel for the petitioner would submit that this petitioner was not aware of all these things and not committed any fraud, the said allegation is of serious nature against the petitioner, the matter has to be probed and the presence of this petitioner is required for the investigation of the matter. Apart from that this petitioner also committed fraud on this Court by filing the petitions one after another during the pendency of the petition before this Court and also made an attempt to get the order by filing the petition before the Tumkur Court as well as Mysuru Court furnishing the fake address. When such persons stooped into the level of committing fraud on the Courts, it is not a fit case to exercise the discretion in favour of the petitioner and the same should be dismissed with exemplary cost as observed by the Apex Court .

21. Now, coming to the aspect of role of the Investigating Officer. Though the case was registered long back

making an allegation of fraud, impersonation, forgery, the Investigating Officer has not taken any steps either to apprehend the petitioner or investigate the matter. Instead of allowed the petitioner to approach the different forums i.e., this Court, District and Sessions Court at Tumkur and District and Sessions Court at Mysuru and had the knowledge of the same and till date even not investigated the matter and allowed him to play fraud on the Courts. Hence, it shows that he is also hand in glove with the petitioner. Hence, it is appropriate to direct the Director General of Police to change the Investigating Officer and appoint new Investigating Officer for the investigation.

22. With regard to avoid these type of fraud on the Court all over the State by filing several petitions before different Courts by filing a memo of appearance and not filing vakalat of the petitioner but the petitioner counsel claims that he has not given any instructions to file the petitions before the Tumkur Court as well as Mysuru Court. When such being the material on record, it is appropriate to direct the registry to evolve a machanism in view of the modern technology to trace all these fraud committed on the Court and appropriate to give directions

to both the registry as well as the District Courts to evolve a mechanism, as well as the Public Prosecutors who represents before the different Courts to assist the Court and bring it to the respective Courts notice with regard to the fraud committed on the Court with the assistance of the Investigating Officers and hence, it is necessary to give directions to the registry to adopt modern technology and find out the mechanism to identify the persons who involves in committing the fraud. Now a days, the bench hunting or bench hopping or bench avoiding acts are increased and the same has observed by the Apex Court in the judgment referred supra. The trend is filing more number of petitions in the same Court and observe the trend of the Court and filing of not pressing the petition before the Court are increasing and it is necessary to give certain directions to the registry to evolve mechanism and though criminal rules of practice Rule 6(2) provides provision for filing vakalath or memo of appearance in view of change of trend in committing the fraud on Court filing of memo of appearance to be avoided in case of petition filed under Section 438 of Cr.P.C since the accused/petitioner will not be in custody.

23. In view of the discussions made above, I pass the following:

ORDER

(i) The bail petition is dismissed with cost of Rs.1,00,000/-. The cost is payable within 4 weeks. If not paid, the registry is directed to recover the same in accordance with law.

(ii) The following guidelines are given to the registry and also to the District Courts all over the State to evolve mechanism with modern technology to curb the practice of fraud on the Court and verify every application for being filed for regular or anticipatory bail as to whether such similar petitions for bail has been made before any other Courts and issue necessary circulars with the approval of Hon'ble Chief Justice.

(iii) The Director of the Prosecution of the State shall instruct the Public Prosecutors of their respective States that they are duty bound to supply necessary information to the concerned Court regarding pendency or the decision of the earlier bail application of the accused in the same offence after taking information from the concerned Investigating Officer/Police official.

(iv) The registry and District Courts are directed to insist for vakalat when a bail petition is filed seeking for an anticipatory bail since the accused is not in custody in order to avoid fraud on the Court since the petitioner denies the very instructions given to the counsel and it is safer on the counsel also.

(v) The registry is directed to issue a circular to the said effect and also make endeavour to identify the number of petitions being filed and make it clear that the first petition is maintainable and subsequent petitions are not maintainable to avoid bench hunting/bench hopping/bench avoiding.

(vi) The Director General of Police is directed to change the Investigating Officer immediately who has not taken any steps when the serious offence of impersonation, fraud and forgery is alleged and appoint a new Investigating Officer to investigate the matter.

(vii) The Registrar General is directed to file a complaint before the jurisdictional police i.e., Vidhana Soudha police to

investigate the matter with regard to fraud on this Court and other Courts as observed in the order.

(viii) The registry is directed to send a copy of this order to Director General of Police to comply with the order.

(ix) The jurisdictional police is directed to investigate the matter based on the complaint to be filed by the Registrar General as directed and submit a report within three months from the date of registration of the case.

(x) The Registrar General is directed to send this order to all the Principal District and Sessions Judges in the State to comply with the order.

**Sd/-
JUDGE**