

Crl.O.P.No.10632 of 2015**R.SUBBIAH, J.**

Apprehending arrest at the hands of the respondent-Police, for the alleged offences punishable under Sections 147, 294(b), 323, 395, 420 & 506(ii) IPC, in Crime No.88 of 2015, the petitioners have approached this Court seeking the relief of anticipatory bail.

2.The 1st petitioner Thirunavukkarasu has been arrayed as 2nd accused and the 2nd petitioner Kuber @ Kubendiran has been arrayed as 4th accused in this case. The case of the prosecution, in brief, is as follows_ The defacto-complainant approached the 1st accused, who is the father of the 1st petitioner/A2, for the purpose of availing loan. The 1st accused has also agreed to advance loan to the defacto-complainant and asked the defacto-complaint to give the original documents of the property belonging to the defacto-complainant as security. Further, the 1st accused has also obtained Power of Attorney in his favour and received signatures in the blank papers and pro-notes from the defacto-complainant. Subsequently, the accused persons colluded with each other and transferred the property in favour of the third party. But, the 1st accused has not advanced the loan amount. When the defacto-complainant questioned the same, the 1st accused along with his son (1st petitioner/A2) and other co-accused threatened the defacto-complainant. Hence, the present complaint has been filed as against the accused persons. Originally, the complaint was lodged by the defacto-

complainant before Palapatti Police Station and the same was registered in Crime No.109 of 2015 under Sections 147, 294(b), 323, 506(ii), 395 and 420 IPC; later on, the said case has been transferred to the file of the respondent-Police herein and reassigned as Crime No.88 of 2015.

3.So far as the 2nd petitioner/A4 viz., Kuber @ Kubendiran is concerned, it is reported that he has been arrested by the respondent-Police on 03.05.2015. Hence, this anticipatory bail petition has become infructuous as against the 2nd petitioner/A4 and **accordingly, this petition is dismissed in respect of the 2nd petitioner/A4 as infructuous.**

4.The learned counsel appearing for the petitioners submitted that so far as the 1st petitioner/A2 viz., Thirunavukkarasu is concerned, the only overtact attributed as against him is that the 1st accused, who advanced loan amount to the defacto-complainant, wanted to visit the property of the defacto-complainant; hence, during the month of December-2013, the 1st petitioner/A2 went along with his father-A1 and other co-accused to the land of the defacto-complainant to see the same. The learned counsel for the petitioners submitted that though the transaction between the father of the 1st petitioner and the defacto-complainant took place in the year 2013, the complaint has been lodged only in the year 2014 only after the arrest of the 1st accused by the Police in connection with another case. The learned counsel for the petitioners would further submit that had the allegation made by the defacto-complainant been true, the defacto-complainant would have

lodged the complaint even before the arrest of the 1st accused in connection with another case. It is further submission of the learned counsel for the petitioners that the civil suit is also pending between the parties and the matter is purely civil in nature. The learned counsel for the petitioner has also relied upon a judgment reported in **(1994) 4 SCC 260 [Joginder Kumar Vs. State of U.P. And others]** in support of his contention that custodial interrogation is not necessary in the case of this nature. Thus, the learned counsel for the petitioner sought for grant of anticipatory bail to the 1st petitioner.

5.The learned Government Advocate (Crl.Side) has vehemently opposed the grant of anticipatory bail to the 1st petitioner, by filing a detailed counter stating that the 1st petitioner along with his father/A1 and other co-accused obtained the original title deeds and power of attorney from various persons under the guise of advancing loan amount. Later, with the help of the Power of Attorney, they executed sale deed in favour of third parties. The petitioners/accused are politically influenced persons and fearing of them, only after the 1st accused was arrested in connection with some other case, the present defacto-complainant and others have come forward to lodge the complaints. The learned Government Advocate (Crl.Side) would also submit that the custodial interrogation of the 1st petitioner/A2 is necessary and if the 1st petitioner is granted anticipatory bail, it would hamper the investigation, which is at initial stage. Thus, he sought of dismissal of the petition.

6.The learned counsel for the intervener has also opposed the grant of anticipatory bail to the 1st petitioner.

7.Keeping submissions made on either side, I have carefully gone through the entire CD file produced by the learned Government Advocate (Crl.Side), I find that in the statement given by the victim, the name of the 1st petitioner has also been referred, stating that he came along with the other accused persons and threatened the defacto-complainant. Further, it is the main allegation that the 1st petitioner/A2 along with 1st accused and other co-accused obtained power of attorney in their favour under the guise of advancing loan to the victims and thereafter, with the power of attorney, they executed sale deeds. Considering the nature of the offences, I am of the opinion that this a case where custodial interrogation of the 1st petitioner is necessary for effective investigation. In this regard, a reference could be placed in the judgment relied upon by the learned Government Advocate (Crl.Side) reported in **(2012) 9 SCC 235 (Maruti Nivrutti Navele Vs. State of Maharashtra)**, wherein it has been held as follows_

"As observed above, all the three counsel appearing for the parties took us through MoUs, lease deed and other correspondence/communications with the educational authorities as well as the report of the Deputy Collector, Pune, to the Senior Police Inspector, Bundgarden Police Station, Pune. It is also relevant to point out that all these materials were scrutinised/analysed by the Additional Sessions Judge, Pune and the High Court while considering the application for anticipatory bail. It is true that the parties have also

approached the civil Court for various reliefs. At the same time, as pointed out by the counsel for the State and the second respondent complainant, considering the seriousness relating to corrections/additions/alterations made in various documents, information furnished to the educational authorities which, according to them, are incorrect, we are of the view that in order to bring out all the material information and documents, custodial interrogation is required, more particularly, to ascertain in respect of the documents which were alleged to have been forged and fabricated. In the said documents and other materials which are in the possession of the appellant and the allegation against him that he has made false representation before the public authority on the basis of those documents for obtaining necessary permission, as pointed out by the State, in order to secure possession of those documents, custodial interrogation is necessary. For this reason, the Additional Sessions judge and High Court rejected the claim for anticipatory bail.

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In the light of the above discussion and in view of the mandate prescribed in Section 438 of the Code, we fully agree with the conclusion arrived at by the Additional Sessions Judge and the High Court in rejecting the relief of anticipatory bail. Consequently, the appeal fails and the same is dismissed.

In view of our order dismissing the appeal, the interim protection granted by this Court on 23.09.2011 shall stand vacated and the appellant is granted two weeks' time from today to surrender and seek regular bail. It is also made clear that the conclusion arrived at by the Courts below

including the present order relates only to eligibility or otherwise of the relief of anticipatory bail and the trial Court is free to decide the bail application dehors the above observation and in accordance with law."

The above said dictum squarely applies to the present facts of the case.

8.In the light of the above said Judgment, this Court is of the view that the custodial interrogation of the 1st petitioner/A2 is necessary in this case in order to unearth the real facts. Hence, this Court is not inclined to grant anticipatory bail to the 1st petitioner.

In fine, the criminal original petition is dismissed as against the 1st petitioner. Insofar as the 2nd petitioner is concerned, the criminal original petition is dismissed as infructuous.

18.06.2015

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R.SUBBIAH, J.

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Pre-delivery order

in

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