BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Friday, the Eleventh day of September Two Thousand Fifteen

PRESENT

The Hon`ble Mr Justice K.KALYANASUNDARAM

CRL OP(MD) No.12723 of 2015

VELAYUTHAM ..PETITIONER/ACCUSED (RANK NOT KNOWN)

M.P.NALLASIVAM ..INTERVENOR IN MP(MD)No.1/2015 IN CRL.OP(MD)No.12723/2015

MOHANDOSS ..INTERVENOR IN MP(MD)No.2/2015 IN CRL.OP(MD)No.12723/2015

R.T.VADIVELU ..INTERVENOR IN MP(MD)No.3/2015 IN CRL.OP(MD)No.12723/2015

1 N.AYSHA RAJATHI
2 N.ASIFF ANSARI ..INTERVENORS IN MP(MD)No.4/2015 IN CRL.OP(MD)No.12723/2015

1 ABDUL KAPPAR
2 R.GANESAN ..INTERVENORS IN MP(MD)No.5/2015 IN CRL.OP(MD)No.12723/2015

S.KRISHNAN ..INTERVENOR IN MP(MD)No.6/2015 IN CRL.OP(MD)No.12723/2015

Vs.

STATE REP.BY THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH, TRICHY,
(CRIME NO. NOT KNOWN OF 2015) ..RESPONDENT/COMPLAINANT

For Petitioner : M/S.A.THIYAGARAJAN Advocate
For Respondent : M/s.S.PRABHA, Government Advocate (Crl.Side)
For Intervenor : Mr.K.PRABHU, Advocate in MP(MD)No.1/2015 in Crl.OP.12723/2015
For Intervenor : Mr.J.ANANDKUMAR, Advocate in MP(MD)Nos.2 & 6/2015 in Crl.OP.12723/2015
For Intervenor : Mr.N.RAHAMADULLAH, Advocate in MP(MD)No.3/2015 in Crl.OP.12723/2015
For Intervenor : M/S.J.PADHMAVATHY DEVI, Advocate in MP(MD)No.4/2015 in Crl.OP.12723/2015
For Intervenor : Mr.R.JEGADEESWARAN, Advocate in MP(MD)No.5/2015 in Crl.OP.12723/2015

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner, who is arrayed as sole accused apprehends arrest at the hands of the respondent police for the alleged offences punishable under sections 406 and 420 of IPC, in Crime No.19 of 2015 on the file of the respondent police and hence, seeks anticipatory bail.

2. The case of the prosecution is that the accused along with one Rajarathinam, S/o.Ramasamy and Suriyakala, W/o.Ranganathan were engaged in Real Estate business and they floated various schemes. One among them

is that the subscribers have to pay Rs.499/- per month for a period of 36 months and they will conduct a lot every month and whoever succeeds in the lot need not pay the subsequent subscriptions and a plot will be registered in their name and after completion of the entire instalment period, for the remaining subscribers the accused would convey the property in their name. The further case of the prosecution is that the de-facto complainant had joined in the group, started paying instalments from 19.10.1997 and the first instalment was collected by the accused and the subsequent instalments were collected by his agents, but failed to convey a plot as per the scheme and 150 similar persons in the area like the de-facto complainant were cheated by the accused.

3.Heard Mr.R.Anand, learned counsel for the petitioner, Mr.V.Kathirvelu, learned Senior counsel and Mrs.J.Padhmavathi Devi, Mr.Jagadeeswaran, Mr.N.Rahamadulah and Mr.J.Anandkumar, learned counsel appearing for the intervenors as well as the learned Government Advocate (Criminal side) appearing for the State.

4.The learned counsel for the petitioner submitted the petitioner is an innocent person and he has not committed any offence as alleged by the prosecution; that one Renganathan and his wife Suriyakala were running a partnership firm in the name of Sri Subha Mangala Real Estate and a scheme was floated by them; that unfortunately the said Renganathan died in the year 2000 and the petitioner, who was also doing Real Estate business wanted to help Suriyakala; that the petitioner along with the said Suriyakala and Rajarathinam had entered into a tripartite agreement on 25.07.2001, in which the petitioner has agreed to pay Rs.21,00,000/- to Rajarathinam and in pursuance of the agreement, the said Rajarathinam executed two power of attorneys in favour of the petitioner, dated 06.07.2001 authorising him to sell 39 plots, however, the principal had cancelled the power of attorney on 04.02.2003.

5.It is further submitted that when the power of attorney was in force, the petitioner had entered into an agreement with one Elanthendral to sell some of the properties and based on the agreement, the said Elanthendral laid a suit in O.S.No.671of 2008 for specific performance and the suit was decreed on 31.01.2010. In the meanwhile, the said Rajarathinam sold some of the properties in favour of one Pandurangan and based on the sale, he had also instituted a suit in O.S.No.419 of 2011 for declaration of his title over the property. It is further submitted that the petitioner has filed nearly 29 suits in respect of the property in dispute before the learned Subordinate Judge, Trichy and they are pending consideration.

6.The learned counsel further submitted that the present complaint is filed at the instigation of the said Rajarathinam to preempt the petitioner from prosecuting the civil suits and even assuming that without admitting the allegation made in the complaint, it is purely a civil transaction and the present complaint is filed after a lapse of 15 years with an ulterior motive.

7.It is further submitted that when the de-facto complainant and the other intervenors were subscribers of the scheme floated by the partnership firm, the petitioner was not at all in the picture and as per the conditions in the scheme, if the subscribers violate the condition in the scheme, they will not be entitled to a plot and the intervenors have not proved that they have complied with the conditions and paid the entire instalment amount.

8.It is further submitted that the intervenors have not issued notice to the accused nor filed any suit to enforce the contract and some of the bills produced by the intervenor namely N.Aysha Rajathi were signed by her husband, which were created for purpose of this case.

9.Per contra, the learned counsel for the intervenors submitted that the intervenors had joined in the scheme in the year 1997, the first instalment was collected by the accused and the subsequent instalments were collected by his agents; that the accused has not disputed the contents in the Release Deed, dated 25.07.2001, in which the accused had categorically admitted that he was doing real estate business along with other partners namely Suriyakala and Rajarathinam in the name of Srik Subha Mangala Real Estate.

10.It is further submitted that the release deed would reveal that the accused was collecting instalments through his agents namely, Siva, Nazar, V.Gowthan, R.Narayanan, Durai Raj, S.Arokiyam, Ramesh and Nandhiappan and the accused undertook to execute the sale deeds in favour of the subscribers in the lands situated in various survey numbers named as “Thara Nagar” and “Mugil Nagar”. Therefore, the contention of the learned counsel for the petitioner that the petitioner was not in the picture between 1997 and 2000 cannot be countenanced.

11.The learned counsel also referred to the averments made in the plaint filed by the petitioner in O.S.No. 87 of 2013 on the file of the I Additional Sub Judge, Trichy and the written statement filed by the petitioner in O.S.No.419 of 2011, wherein the accused had categorically admitted that he was doing Real Estate business along with two others namely Suriyakala and Rajarathinam.

12.It is further contended that the intervenors have completed paying instalments in the year 2000 and the accused had sent letters to some of them asking them to come and get the sale deed and thereafter, he was postponing the execution of the sale deed stating that civil litigations are pending; that as per the tripartite agreement, the accused ought to have sold the property to the subscribers and instead, he created documents as if he entered into an agreement with one Elanthendral, who is the very close relative of the petitioner and further instigated him to file a collusive suit for specific performance and the petitioner filed a memo stating that he consenting for the decree; that as per the case of the Elanthendral, he entered into an unregistered agreement with the accused in the year 2002 and after cancellation of the power of attorney, he instituted a suit in the year 2008, which would prove that the agreement is a fabricated one and the decree was obtained to defraud the intervenors and by playing fraud on the court.

13.It is further contended that the petitioner is a financier and he actively participated in the business run by Rajarathinam and Suriyakjala, the wife of the deceased Ranganathan even the said Ranganathan was alive and the accused has executed a sale deed in respect of the same property as power agent, prior to the tripartite agreement entered in the year 2001. The learned counsel have produced the encumbrance certificates in support of their contention.

14.The learned counsel have also produced the documents to show that the petitioner has signed in the receipt of first instalment and submitted that the intervenors/subscribers are from downtrodden community, who had paid their hard-earned money with a view to fulfil their ambition of owning a property, however, they were cheated by the accused. It is further submitted that to unearth the truth and to verify the signature in the document, custodial interrogation of the petitioner is very much required. It is further submitted that the petitioner is an influential person and if he is enlarged on anticipatory bail, he will interfere with the investigation and temper the witnesses.

15.It is true that the alleged transaction had taken place between 1997 and 2000 and the complaint was registered in the year 2015. However, undisputably the subscribers in the scheme floated by the accused have come from the downtrodden community and they have invested their hard-earned money to fulfil their life time ambition to live in their own house. The monthly instalment of Rs.499/ and the period of time would suggest that they are from last straw of the society. Further, the petitioner has not disputed the tripartite agreement, in which he has undertaken to execute sale deeds in favour of the subscribers of Subha Mangala Real Estate. The release deed refers the names of the agents appointed by the accused and the receipts produced by the intervenors would show that the amounts were collected by the agents appointed by the accused.

16.As per the release deed, dated 25.07.2001, the accused ought to have execute the sale deeds in favour of the intervenors/subscribers, instead the accused had entered into an agreement with Elanthedral to sell 22 plots in the year 2002. Further, the petitioner was informed about the cancellation of the power of attorney on 04.02.2003 and admittedly, the said Elanthendral had laid a suit only in the year 2008. Despite the same, the petitioner has filed a memo submitting to the decree.

17.It is further seen that the petitioner had sold to an extent of 9600 square feet in Mugil Nagar in favour of his wife bearing plot Nos.51, 52, 53 and 54 by a registered sale deed, dated 27.03.2007. The petitioner had also sent letter, dated 04.03.2004 to some of the intervenors asking them to come for registration of the sale deed.

18.In view of the above facts, I could see considerable force in the argument of the learned counsel for the intervenors that the accused with an intention to cheat and defraud the subscribers, had created documents and filed suits with an ulterior motive. In my considered view that the petitioner ought to have executed the sale deeds in favour of the subscribers as per the agreement and ought to have filed proper written statement in O.S.No.671 of 2008 stating that the owners of the property are necessary parties in the suit, instead of submitting the decree. Further, the petitioner has categorically admitted in the plaint filed in O.S.No.72 of 2013 and in the written statement filed in O.S.No.419 of 2011 that he was doing Real Estate business along with Rajarathinam and Suriyakala.

19.Considering the gravity of the offence, this court is not inclined to grant anticipatory bail to the petitioner. Hence, this petition is dismissed.

sd/-
11/09/2015

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE INSPECTOR OF POLICE, DISTRICT CRIME BRANCH, TRICHY.

2 THE ADDL.PUBLIC PROSECUTOR,MADURAI BENCH OF MADRAS HIGH COURT,MADURAI.

+1. CC to M/S.A.THIYAGARAJAN Advocate SR.No.53503
+1cc to M/s.K.PRABHU, Advocate in SR.No.53523
+1cc to M/s.J.ANANDKUMAR, Advocate in SR.No.53681
+1cc to M/s.N.RAHAMADULLAH, Advocate in SR.No.53743
+1CC to M/S.J.PADHMAVATHY DEVI, Advocate SR.No. 53657.

ORDER IN
CRL OP(MD) No.12723 of 2015
Date :11/09/2015

PBK/SK-SKN/SAR LIB 06/10/2015 ::5P-8C::