



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Friday, the Twenty Seventh day of March Two Thousand Fifteen

PRESENT

The Hon`ble Mr Justice P.N.PRAKASH

CRL OP(MD) No.1494 of 2015

P.VAIRAMUTHU

... PETITIONER(S) / ACCUSED

Vs

THE INSPECTOR OF POLICE
SEITHUR RURAL POLICE STATION, VIRUDHUNAGAR DISTRICT.
CRIME NO.14/2015. ... RESPONDENT/ COMPLAINANT

For Petitioner : M/S.R.MALAIKANI, Advocate for
M/S.R.ALAGUMANI Advocate

For Respondent : M/S.A.P.BALASUBRAMANIAN
Govt. Advocate (Crl. Side)

For Intervenor : M/S.D.FARJANA GHOSHIA, Advocate

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

ORDER : The Court Made the following order :-

Apprehending arrest at the hands of the respondent police in Crime No.14 of 2015, on the file of the respondent police for offences under Sections 406 and 420 IPC, the petitioner is now before this Court seeking Anticipatory Bail.

2.Heard the learned counsel for the petitioner, learned counsel for the intervenor and the learned Government Advocate (Crl. Side) for the respondent.

3.On 24.02.2015, this Court passed a detailed order incorporating the earlier orders passed by this Court in this matter. The order dated 24.02.2015 is extracted below:

"The petitioner, who apprehends arrest at the hands of the respondent police for the alleged offences punishable under Sections 406 and 420 I.P.C. in Crime No. 14 of 2015 on the file of the respondent police, seeks anticipatory bail.

2. Heard the learned Counsel for the petitioner, the learned Government Advocate (Crl.Side) and the learned Counsel for the intervenor.

3. This Court on 02.02.2015 passed the following order:



"Apprehending arrest at the hands of the respondent police in Crime No.14 of 2015, on the file of the respondent police for offences under Sections 406 and 420 IPC, the petitioner is now before this Court seeking Anticipatory Bail.

2. It is the case of the prosecution that the land in question belongs to the petitioner. The petitioner entered into an agreement on 08.01.2014 with the de-facto complainant to sell the land for a price of Rs.4,04,993/-. In this regard, the de-facto complainant paid Rs.1,00,007/- as advance to the petitioner on 08.01.2014 and an agreement was entered into. It is the case of the de-facto complainant that the petitioner agreed to execute the sale deed before 30th of Chithirai month and thereafter he went back on it. The de-facto complainant came to know that the property has been mortgaged by the petitioner with one Veluchamy, which he had suppressed at the time of entering into the agreement. When the de-facto complainant brought this to the notice of the petitioner, the petitioner demanded another sum of Rs.1,55,000/- to completely discharge the mortgage and execute the sale deed. The de-facto complainant appears to have given a sum of Rs.1,55,000/- on 12.03.2014 to the petitioner herein. Even thereafter when the petitioner did not come forward to register the sale, the de-facto complainant sent a representation dated 04.06.2014 to the Hon'ble Chief Minister and other Senior Police Officers. Even in this FIR, the de-facto complainant has fairly stated that based on the representation, a petition enquiry was conducted by the police, and in that petition enquiry, the petitioner appeared and gave an undertaking on 28.06.2014 that he will return the entire sum to the de-facto complainant on 04.07.2014. Even thereafter, when the petitioner did not comply with the request of the de-facto complainant either to execute the sale deed or return the sum of Rs.1,55,000/-, the petitioner has come forward to lodge the present complaint, based on which, this case has been registered.

3. The learned counsel for the petitioner submitted that it is the 2nd FIR and it is not maintainable.

4. In my considered opinion, this cannot be considered to be the second FIR, because, the de-facto complainant being very honestly and fairly stated that they had sent the representation dated 04.06.2014 to various authorities in the fond hope



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that a case would be registered against the petitioner. On that representation dated 04.06.2014, the respondent police appeared to have called the petitioner for enquiry, wherein, the petitioner agreed to settle with the de-facto complainant before 04.07.2014. Only when the petitioner again went back on his commitment, the present complaint has been lodged. Therefore, I do not find any suppression in the present complaint and this complaint may be treated as first FIR, as it could be seen that consistently the petitioner has been promising the de-facto complainant and has been engaging in deception.

5. Mr.R.Alagumani, learned counsel for the petitioner, submits that the petitioner is ready to return a sum of Rs.1,00,007/-, but, whereas the de-facto complainant has very clearly stated that total sum of Rs.2,55,007/- has been paid. At this juncture, the learned counsel seeks time to get instructions. Therefore, adjourned the matter by

05.02.2015 'for orders'.

4. Today, when the matter was taken up, the learned Counsel for the petitioner gave a demand draft for a sum of Rs.49,500/- and a cash of Rs.500/- to the defacto complainant which is present before the Court and collected the same. The petitioner has also filed a memo to the effect that he would pay the balance sum of Rs.2,05,000/- within a period of three weeks from today.

5. Taking into consideration the above facts and circumstances of the case, Interim Anticipatory Bail is granted to the petitioner for a period of three weeks from today and in the event of arrest, the petitioner is directed to be released on bail on his executing a bond for Rs.10,000/- (Rupees Ten Thousand only) **without** sureties to the satisfaction of the Arresting Officer.

6. Call on 17.03.2015 under the caption "for reporting compliance".

4.Today, the accused/petitioner and the de-facto complainant are present. Ms.Guruvathai, Sub Inspector of Police, Seithur Rural Police Station, Virudhunagar District is present. She identified the parties before this Court. The accused and the de-facto complainant have filed a memo, in which, it is stated as follows:

"It is humbly submitted that the petitioner is the accused in Cr.No.14 of 2015 on the file of the respondent police. The petitioner has filed the above CrI.O.P.(MD) No.1494 of 2015 seeking for anticipatory bail. Now the parties are ready to settle the entire dispute and differences as part of which on 24.02.2015, the petitioner paid the de-facto complainant Rs.50,000/- (Rupees fifty thousand only) (Rs.49,500/- through DD and Rs.500/- in cash). Today, (17.03.2015) the petitioner has paid Rs.1,00,000/- (One lakh only) in cash to the de-facto



complainant and the de-facto complainant also received the same. The remaining amount due for the de-facto complainant namely, Rs.1,05,000/- (one lakh five thousand only) has been paid today (27.03.2015) and the same was received by the de-facto complainant. Now, the entire amount according to the prosecution, due for the de-facto complainant was paid and thereby they have settled their entire dispute and the differences. To that effect the memo is filed."

5. Thus, it appears that both the petitioner and the de-facto complainant have amicably settled the matter between them. Under such circumstances, anticipatory bail is granted to the petitioner.

6. Accordingly, the petitioner is ordered to be released on bail, in the event of arrest or on his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate, Rajapalayam, on executing a separate bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that,

(a) the petitioner shall report before the respondent police as and when required for interrogation.

[b] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[c] the petitioner shall not abscond either during investigation or trial.

[d] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

7. The learned counsel for the petitioner made a request that since the parties have arrived at mutual compromise, the entire FIR should be quashed followed by the judgment of the Hon'ble Supreme Court in **Gyan Singh vs. State of Punjab** reported in **2002 (5) CTC 526**. This Court is diffident in exercising the power under Section 482 Cr.P.C., since the subject matter is being dealt with by another learned Judge and further it is also not a matrimonial matter for this Court to exercise the jurisdiction under Section 482 Cr.P.C. co-extensively. Therefore, the parties may file an application under Section 482 Cr.P.C. and seek the relief in accordance with law.

sd/-

27/03/2015

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TO

1. THE JUDICIAL MAGISTRATE
RAJAPALAYAM

2. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR

3. THE INSPECTOR OF POLICE
SEITHUR RURAL POLICE STATION, VIRUDHUNAGAR DISTRICT.

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

RL/5 C- 1.4.2015

ORDER
IN
CRL OP(MD) No.1494 of 2015
Date :27/03/2015