



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

Wednesday, the Sixteenth day of September Two Thousand Fifteen

PRESENT

The Hon`ble Mr Justice K.KALYANASUNDARAM

CRL OP(MD) No.16917 of 2015

ROBERT XAVIER

... PETITIONER /SOLE ACCUSED

Vs

THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH/ALGSC
KANYAKUMARI DISTRICT
(CRIME NO 51 OF 2015)

... RESPONDENT / COMPLAINANT

S.MURUKESAN

... INTERVENER

For Petitioner : MR.G.R.SWAMINATHAN, Advocate for T.ANTONY ARUL RAJ,
Advocate

For Respondent : MRS.S.PRABHA, Govt. Advocate (Crl. Side)

For Intervenor : Mr.M. Ramanathan, Advocate

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 465, 467, 468 and 420 of IPC, in Crime No.51 of 2015 on the file of the respondent police and hence, seeks anticipatory bail.

2.According to the de-facto complainant the Commission of Padmanabhapuram Municipality, Thuckalay, the Municipality has purchased 6 cents comprised in Survey Nos.B8/102-1 and B8/102-2 from one Aisha Beevi and its right was also declared in O.S.No.650 of 1972 and as per the decree passed in O.S.No.650 of 1972, the accused has no right over the property. While so, the accused by committing impersonation, created a sale deed of the year 1998 as if one Muthaiyan, s/o Suvisesha Muthu has sold 3 cents in his favour. Now, it came to light that the said Muthaiyan died in the year 1986 itself and thereby the accused cheated the de-facto complainant's Municipality.

3.Mr.G.R.Swaminathan, learned counsel appearing for the petitioner submitted that the petitioner is an innocent person and he has not committed any offence as alleged by the prosecution. The learned counsel further submitted that the property comprised in Survey No.B8/102-2 was owned by one Aisha Beevi and Muthaiyan and in the year 1963, the said Aisha Beevi had mortgaged that property with one Anthonimuthu and while the mortgage was in subsistence, the Padmanabhapuram Municipality purchased to an extent of 6 cents from the said Aisha Beevi in the year



1968. Later, the Municipality filed a suit in O.S.No.650 of 1972 on the file of the District Munsif, Padmanabhapuram for redemption of mortgage and the suit was decreed and based on the decree, the de-facto complainant has also filed Execution Petition and the same is pending.

4.The learned counsel further submitted that the petitioner had purchased the remaining 3 cents in Survey No.B8/102-2 from the owner Muthaiyan, by a registered sale deed, dated 04.02.1998 and thereupon, he constructed a building with plan approval and since the petitioner has contested against the de-facto complainant in the execution petition filed in O.S.No.650 of 1972, the de-facto complainant Municipality has refused to assess the building for property tax. Therefore, the petitioner was constrained to file a writ petition in W.P.(MD)No.1615 of 2006 for direction to assess the property tax and this court having found that the petitioner is the owner of the property to an extent of 3 cents, allowed the writ petition and challenging the same, W.A.(MD)No.327 of 2006 was filed and the same was also dismissed by the Division Bench of this court on 11.09.2006. Even thereafter, the de-facto complainant refused to assess the property tax, by order, dated 02.07.2007, which necessitated the petitioner to file another writ petition in W.P.(MD) No.2272 of 2007 and the same was allowed. The appeal filed by the de-facto complainant Municipality in W.A.No.657 of 2007 challenging the order was also dismissed by the Division Bench of this court. It is further submitted that the de-facto complainant has no locustandi to file the present complaint, since the legal-heirs of the vendor Muthaiyan have not chosen to prefer any complaint against the accused and the present complaint is filed with an ulterior motive.

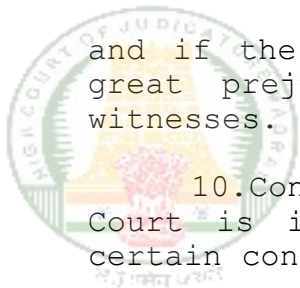
5.Mr.G.R.Swaminathan, learned counsel for the petitioner has produced the typed set of papers containing the copy of the plaint and the decree passed in O.S.No.650 of 1972 and the orders passed in the writ petitions and the writ appeals to show that the de-facto complainant is claiming right over 6 cents in old Survey No.3210B, new survey No.B8/102. The Sub Division made in respect of Survey No.B8/102-1 and B8/102-2 and FMB sketch issued by the Commissioner of Padmanabhapuram Municipality also show that the property to an extent of 3 cents in Survey No.B8/102 belongs to the petitioner.

6.Per contra, Mr.M.Ramanathan, learned counsel appearing for the intervenor submitted that by virtue of a sale deed, vide document No.1944/70 the Padmanabhapuram Municipality is the absolute owner of the property to an extent of 6 cents in old Survey No.3210-B, new survey No.B8/102 of Thuckalay village. The suit filed by the de-facto complainant to redeem the mortgage was decreed and the same was confirmed by this court in S.A.No.332 of 1984. However, the accused based on the forged document is claiming right over the property and filed various petitions in E.P.No.178 of 2000 to prolong the litigation.

7.The learned counsel further contended that the vendor of the respondent namely Muthaiyan died on 05.05.1986, however, the accused had created documents as if the dead person sold the property on 04.02.1998 and therefore, the petitioner is not entitled for anticipatory bail.

8.The respondent has filed a counter affidavit objecting grant of anticipatory bail to the petitioner.

9.The learned Government Advocate (Criminal side) submitted that the accused had created forged sale deed in document No.268/1998, dated 04.02.1998 as if it was executed by Muthaiyan in favour of the accused



and if the petitioner is released on anticipatory bail, there will be great prejudice to the investigation and he will also temper the witnesses.

10. Considering the above facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

11. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance before the learned Judicial Magistrate (Land Grabbing Cases), Tirunelveli and on his executing a 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 learned Magistrate concerned and on further condition that the petitioner shall appear before the respondent police daily at 10.00 a.m until further orders. The petitioner shall comply with the condition stipulated under Section 438 Cr.P.C. Scrupulously.

12. The petitioner shall appear before the concerned Magistrate within a period of 15 days from the date on which the order copy made ready, failing which, the petition for anticipatory bail stands dismissed.

sd/-
16/09/2015

/ TRUE COPY /

Sub-Assistant Registrar

TO

- 1 THE JUDICIAL MAGISTRATE (LAND GRABBING CASES), TIRUNELVELI
- 2 DO THRO THE CHEIF JUDICIAL MAGISTRATE, KANYAKUMARI DISTRICT
- 3 THE INSPECTOR OF POLICE, DISTRICT CRIME BRANCH/ALGSC, KANYAKUMARI DISTRICT
- 4 THE ADDITIONAL PUBLIC PROSECUTOR, MADURAI BENCH OF MADRAS HIGH COURT MADURAI

+1. CC to M/S.T.ANTONY ARUL RAJ Advocate SR.No.55273.

ORDER
IN
CRL OP(MD) No.16917 of 2015
Date :16/09/2015

AM/15.10.2015/DP/SAR-II/3P/6C