



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

Tuesday, the Thirty First day of March Two Thousand Fifteen

PRESENT

WEB COPY

The Hon`ble Mr Justice P.N.PRAKASH

CRL OP(MD) No.4713 of 2015

A.C.GURUNATHAN

... PETITIONER/ACCUSED No.1

Vs

STATE REP BY THE INSPECTOR OF POLICE
NAGAMALAI PUDUKKOTTAI POLICE STATION,
NAGAMALAI PUDUKKOTTAI,
MADURAI DISTRICT.

(CRIME NO. 399 OF 2014) ... RESPONDENT/COMPLAINANT

YUSUF ABUTHAHIR

...PETITIONER /DEFACTO COMPLAINANT

For Petitioner : M/S.HALL MARK ASSOCIATES Advocate

For Respondent : MR.A.P.BALASUBRAMANIAN Govt. Advocate (Crl. Side)

For Intervenor : MR. R.GANDHI Advocate

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

ORDER : The Court Made the following order :-

The petitioner, who apprehends arrest at the hands of the respondent police for the alleged offence punishable under Sections 420, 468 and 471 IPC in Crime No.399 of 2014 on the file of the respondent police, seeks anticipatory bail.

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

3. This is second anticipatory bail petition and the first anticipatory bail petition in Crl.O.P(MD) No.17822 of 2014 was dismissed by this Court on 27.01.20156. It is the case of the defacto complainant that the petitioner herein has to pay a sum of Rs.3,60,000/- in respect of an aborted land transaction, which the petitioner had with the defacto complainant. While so, the petitioner represented to the defacto complainant that one of his relatives has got another land measuring to an extent of 16,426 sq.ft., in S.No.19A/1B, Karadipatti Village, Madurai and said that in lieu of the sum of Rs.3,60,000/-, he would have the said land conveyed to the defacto complainant. Believing the representation of the petitioner, the defacto complainant appears to have paid around Rs.10,00,000/- to the petitioner.



4. Learned counsel for the petitioner, while strongly repudiating this, submitted that the sum of Rs.10,00,000/- was not paid by the defacto complainant. Be that as it may, the allegation of the defacto complainant is that at the instance of the petitioner, one Sundarammal, the relative of the petitioner executed a Power of Attorney on 04.04.2014, which was registered in favour of the defacto complainant before the Sub-Registrar, Arasaradi. The petitioner and Sundarammal gave the copies of several documents, showing their title to the above said property. The defacto complainant closely scrutinised the documents and was shocked to note that those documents were forged and fabricated documents. Therefore, the defacto complainant started putting pressure on the petitioner and Sundarammal and Sundarammal subsequently cancelled the Power of Attorney on 25.04.2014, but they are yet to return the sum of Rs.10,00,000/- that was paid by the defacto complainant to the petitioner.

5. Learned counsel for the petitioner refuted the aforesaid submission and contended that the petitioner had not in anyway cheated the defacto complainant inasmuch as Sundarammal has filed a suit against the petitioner in O.S.No.214 of 2014 before the learned District Munsif, Thirumangalam for bare injunction, restraining the petitioner from interfering with the said property supposed to be in the possession of Sundarammal. Even in that suit, the said Sundarammal has stated that she has given a Power of Attorney on 04.04.2014 in favour of the defacto complainant herein, which she cancelled subsequently on 25.04.2014. According to the petitioner, the property in question originally belonged to one Alamelu and from Alamelu, it devolved upon by way of a Will in favour of one Koochammal, who in turn had given the property by way of a settlement deed dated 04.04.2014 in favour of Sundarammal. Learned counsel for the petitioner submits that when the title of the property is so clear, there is no reason for the defacto complainant to make such allegation that the petitioner had attempted to sell the property with encumbrance.

6. At the first blush, the arguments of the learned counsel for the petitioner did sound convincing. However, learned counsel for the defacto complainant brought to my notice the copies of documents that were given by the petitioner to convince the defacto complainant to enter into the deal. One such document is the death certificate of Alamelu. Learned counsel for the defacto complainant submits that in the death certificate of Alamelu that was given by the petitioner, it is seen that the date of death is shown as 29.02.2007. Learned counsel for the defacto complainant further submits that 2007, being leap year, the date 29 could never be in the calendar. Notwithstanding this, on enquiry conducted by the defacto complainant, it was found that the death certificate relates to one Krishnan, who died on 29.06.2007 and the same has been manipulated and fabricated, as if it relates to the death of Alamelu.



7. Per contra, learned counsel for the petitioner submits that the said death certificate and all other documents, which the defacto complainant alleges to be forged were suit documents filed by Sundarammal against the petitioner in O.S.No.214 of 2014 and therefore, criminal prosecution cannot be initiated, as the matter is *sub judice* before the Civil Court. I am unable to persuade myself to agree with this contention, because of the judgment of the Hon'ble Supreme Court in the case of George Bhaktan vs. Rabindra Lele and others, reported in 2014 (11) Scale 613, wherein it is held that if a document has been forged outside the Court and later submitted to the Court, the provisions of Sections 195 and 340 Cr.P.C. will not apply and Police have got the power to investigate the complaint under Chapter 12 of Cr.P.C., without reference to any Civil Court.

8. It is alleged by the defacto complainant that Gurunathan / petitioner herein is a signatory to the alleged Will left by Alamelu bequeathing the property to Koochammal and thus, Koochammal is not totally a stranger to this transaction inasmuch as the petitioner has signed as witness in the Will and he has also produced the death certificate, which is a bogus document, showing as if Alamelu had died on 29.02.2007. Therefore, the determination in the Civil Court would have no bearing in a case of this nature.

9. Taking into consideration the serious nature of allegation against this petitioner, this Court is not inclined to grant him anticipatory bail. Hence, the Criminal Original Petition is dismissed.

sd/-
31/03/2015

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

TO

- 1 THE INSPECTOR OF POLICE
NAGAMALAI PUDUKKOTTAI POLICE STATION,
NAGAMALAI PUDUKKOTTAI,
MADURAI DISTRICT.
- 2 THE ADDL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.4713 of 2015
Date :31/03/2015