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

Monday, the Twenty Seventh day of July Two Thousand Fifteen

PRESENT

The Hon`ble Mr Justice K.KALYANASUNDARAM

CRL OP(MD) No.6477 of 2015

1 KANNAN@MUTHUKANNAN ... PETITIONER/ACCUSED NO.1

Vs

1 THE INSPECTOR OF POLICE
ETHAMOZHI POLICE STATION, KANYAKUMARI DIST.
(IN CRIME NO.49/2015)
... RESPONDENT/COMPLAINANT

For Petitioner : M/S.N.DILIP KUMAR Advocate

For Respondent : MR.K.V.RAJARAJAN, Government Advocate (Crl. Side)

PETITION FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :-

This Court on 23.04.2015 has granted interim anticipatory bail to the petitioner subject to the condition that he shall transfer the property of the deceased in the name of the de-facto complainant on or before 03.06.2015 at his cost.

2.According to the de-facto complainant Mrs.Babi, her husband was running a Fishing Net Manufacturing Company and for the development of the business, he borrowed loan from the accused and A1 Kannan @Muthukannan, who by force got transferred the property of her husband and A2 had lent Rs.1,00,000/-, but collected several lakhs from her husband under threat and A3 has given Rs.50,000/- and he demanded Rs.5,00,000/- from her husband and also threatened him with dire consequences and due to which, her husband committed suicide.

3.On 23.04.2015, the learned counsel for the petitioner submitted that the deceased had borrowed money from the petitioner and repaid the entire loan amount and after purchasing the property on 07.11.2014, A1 had agreed to transfer the same to the deceased on or before 07.05.2015, however, in the meantime, he committed suicide. The learned counsel further submitted that the petitioner was ready to transfer the property in the name of the deceased and in view of the above submission, this court has granted interim anticipatory bail to the petitioner on 23.04.2015.

4.The petitioner has got change of vakalath from his earlier counsel and engaged the present counsel and also filed an affidavit stating that he was working as Carpenter and the deceased, who is his friend was running a Fishing Net manufacturing company and in the year 2013, he offered to sell his property for a sum of Rs.12,00,000/- and the machineries for a sum of Rs.11,00,000/-. The petitioner had pledged his jewels and the jewels of his neighbours and relatives with the Indian Overseas Bank, Ethamozhi Branch to mobilise Rs.6 to 7 Lakhs and by withdrawing Rs.6,00,000/- from the Chit company, he paid the sale consideration and purchased the property by a registered sale deed, dated 16.02.2013.

5.It is further stated in the affidavit that the petitioner borrowed a Term Loan-SME Sector of Rs.10,00,000/- on 16.04.2014 from the Indian Overseas Bank, Ethamozhi Branch to purchase two Fishing Net Manufacturing Machineries for Rs.12,00,000/- and since, he has not well versed with the Fishing Net Manufacturing Industry, he allowed the deceased to run the Unit. While so, the deceased, without the knowledge of the petitioner, sold one of the Fishing Net machineries. So, the petitioner preferred a complaint with the Superintendent of Police, Kanyakumari District and the Deputy Superintendent of Police, Kanyakumari and in the negotiation, the deceased through his brother Krishna Thangam and wanted to purchase the entire property. The petitioner has also agreed to sell the property for Rs.12,00,000/- and also received Rs.2,00,000/- as advance, but before paying the balance amount, the deceased committed suicide and the present complaint was given at the instigation of the Paternal uncle of the deceased Mr.Thangaswamy, who is an Advocate.

6.Mr.N.Dilip Kumar, learned counsel for the petitioner submitted that the petitioner came from a humble background and he purchased the property by obtaining loan from the Bank and after purchasing the property, he mutated the revenue record and also transfer EB connection and since, his son is named as Rishi, he obtained the Registration Certificate as Rishi Fishing Net from the Commercial Tax Department and also applied in the same name with the Department of Industries and Commerce.

7.The learned counsel further submitted that the petitioner had agreed to sell the property to the deceased as per the agreement, dated 07.11.2014 for Rs.12,00,000/- and received Rs.2,00,000/- as advance, but the balance amount of Rs.10.,00,000/- was not paid as on date; that if the de-facto complainant pays the balance sale consideration, the petitioner is ready to sell the property to the de-facto complainant and if he is directed to reconvey, without paying the balance amount, he would be put to irreparable loss and he could not pay the loan amount to the Bank.

8.Mr.M.Saravanan, learned counsel appearing for the intervenor submitted that the petitioner is a collecting agent as well as financier and the usual practice is that while lending amount the financiers get document transferred in their name and after the entire loan is settled, they will reconvey the property to the borrower and in the present case, the deceased discharged the entire loan and the petitioner/A1 had agreed to reconvey the property and the deceased had never entered into an agreement with the petitioner to purchase the property for Rs.12,00,000/-. The learned counsel further submitted that the petitioner had lodged a false complaint against the deceased and while conducting enquiry, the petitioner obtained the signature of the deceased in the agreement, dated 07.01.2014 by threat and coercion.

9.It is further submitted that in the sale deed, the service connection numbers were mentioned as 07-146-017-371, but without the knowledge and consent of the vendor, the petitioner has corrected the service connection number as 07-146-017-377 and got transfer of the service connection, he has further stated that his vendor was out of station, which shows that the conduct of the petitioner and that the petitioner has obtained interim anticipatory bail stating that he will transfer the property in the name of the de-facto complainant, but now after changing the earlier counsel, he has taken a different stand and therefore, the petitioner is not entitled for anticipatory bail.

10.Heard the learned Government Advocate (Criminal side) appearing for the respondent State.

11.The learned counsel for the petitioner has produced the typed set containing the the petitioner's Birth Certificate, copy of the sale deed, property tax receipts, TIN registration number, house tax receipts and the unregistered sale agreement to substantiate his case that the deceased had sold the property for valuable consideration. In the unregistered agreement, the deceased Brother Mr.B.krishna Thangam has signed as a witnesses. The petitioner has also produced the statement of the jewels loan Card, EB Bill statement and the electricity bill paid by the petitioner for running a Fishing Net Manufacturing unit, Bank passbook, CC Account statement and the Jewel Loan card and on the other hand, the intervenor has not produced any materials for discharge of the loan amount and also did not dispute the execution of the sale deed in favour of the petitioner by her husband.

12.This court has carefully considered the submissions made on either side and also perused the materials available and finds force in the contention of the learned counsel for the petitioner. Hence, the interim anticipatory bail already granted to the petitioner is made absolute.

sd/-
27/07/2015

/ TRUE COPY /

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

TO

1 THE INSPECTOR OF POLICE
ETHAMOZHI POLICE STATION, KANYAKUMARI DIST.

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

+1. CC to M/S.N.DILIP KUMAR, Advocate, SR.No.41767
+1. CC to M/s. R.J.KARTHICK, Advocate, SR.No.41505

ORDER
IN
CRL OP(MD) No.6477 of 2015
Date :27/07/2015

CSL/KBM/SAR-II/07/08/2015
3P/5C