

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.07.2016

DELIVERED ON : 20.07.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. Nos.3371 of 2015 and 17742 of 2015

1 Nizamuddin @ M. Mohammed Marzook
2 Ziauddin Petitioners in Crl.O.P. No.3371 of 2015/
Defacto Complainant

vs.

1 The Inspector of Police
Central Crime Branch
EDF Team - II
Vepery, Chennai 600 007
2 A. Mallikinisha
3 M. Siddhiq alias
Abu Bakkar Respondents in Crl.O.P. No.3371/2015/
Complainant and Accused

The State represented by
the Inspector of Police
Central Crime Branch
EDF Team II, Vepery
Chennai

Crime No. not known of 2014 ...Petitioner/Complainant in
Crl.OP.No.17742/15

vs.

1 M. Siddiq @ Abu Backer
2 Malikkinisa Respondents in Crl.O.P.
No.17742/2015/Accused 1 & 2

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Crl.O.P. No.3371 of 2015:

Criminal Original Petition filed under Section 482 Cr.P.C. to cancel the conditional anticipatory bail granted in favour of respondents 2 and 3/accused in Crl.O.P. No.16057 of 2014 dated 09.12.2014.

Crl.O.P. No.17742 of 2015:

Criminal Original Petition filed under Section 482 Cr.P.C. to cancel the conditional anticipatory bail granted to A-1 and A-2/respondents by this Hon'ble Court, Madras in Crl.O.P. No.16057 of 2014 dated 09.12.2014.

For petitioners in Crl.O.P. Mr. Nizamuddin @ Md. Marzook
No.3371 of 2015 Party-in-person

For RR 2 & 3 in Crl.O.P. Mr. Prabhakaran, Sr. Counsel
No.3371 of 2015 for Mr. K.J. Saravanan
and

For Respondents in Crl.OP.
17742/15

For petitioner in Crl.O.P. Mr. C. Emalias
No.17742 of 2015 Addl. Public Prosecutor
and for R1 in Crl.OP
3371/15

COMMON ORDER

While Crl.O.P. No.3371 of 2015 has been filed by Nizamuddin @ M.Mohammed Marzook and Ziauddin to cancel the conditional anticipatory bail granted on 09.12.2014 in favour of respondents 2 and 3/accused in Crl.O.P. No.16057 of 2014, Crl.O.P. No.17742 of 2015 also has been filed by the State seeking the same relief.

2 For the sake of convenience, the parties will be referred to as de facto complainants (Nizamuddin @ M. Mohammed Marzook and Ziauddin), accused (Mallikinisha and Siddhiq @ Abu Bakkar) and police (the Inspector of Police, Central Crime Branch, EDF Team-II, Vepery, Chennai).

3 On the complaint lodged by the de facto complainants, the police registered a case in Crime No. 418 of 2014 against the accused for offences under Section 406, 420, 468, 471 and 506(I) IPC. The accused filed an application in Crl.O.P. No.16057 of 2014 for anticipatory bail, in which, this Court passed the following order on 28.10.2014.

"The petitioners, who apprehend arrest at the hands of the respondent police for an alleged offence punishable under Sections 406, 420, 468, 471 and 506(i) IPC in Crime No.418 of 2014, seek anticipatory bail.

2. The case of the defacto complainant Nizamuddin @ M.Mohammed Marzook is that the petitioners had entered into an agreement of sale in respect of the property and had given an unregistered sale deed to the defacto complainant by suppressing the earlier litigation between the petitioners and one Narayanan.

3. Per contra, it is the specific case of the petitioners that the property in question was purchased by them pursuant to a compromise decree passed in O.S.No.6549 of 2011 before the learned Additional District Judge (FTC-II), Chennai. The legal heir of the original owner, namely, Mrs.Mary Thomas had entered into the compromise memo with the petitioners and thereafter, the petitioners acquired the property through Court by way of sale deed, registered as Doc.No.7282 of 2011 dated 19.10.2011.

4. While so, one of the intervener namely, one Narayanan, who is represented by Mr.T.Arul, learned counsel, would submit that anticipatory bail should not be granted to the petitioners, on the ground that the intervenor has also got interest in the property.

5. It can be seen that the petitioners have lodged a criminal complaint as against the said Narayanan for fabricating the Power of Attorney and dealing with the said property.

6. Mr.T.Arul, learned counsel pointed out that Narayanan has also given a complaint, which has been registered in Crime No.47 of 2014, in which the petitioners herein were arrested and released on bail.

7. Be that as it may, the issue in this case is as to whether the petitioners had suppressed about the dealings and the legal issue while entering into the MOU with the defacto complainant Nizamuddin @ M.Mohammed Marzook. On perusal of the MOU, that was entered into by the petitioners with Nizamuddin @ M.Mohammed Marzook in April, 2014, it is clear that they have stated as follows:

"In such occasion, they party of the 2nd part received an amount of Rs.2,05,10,840/-
(Two crore five lakhs Ten thousand and Eight

Forty only) from the party of the 1st part on various dates. The party of the 2nd part executed an unregistered sale deed dated 21.11.2013 in favour of the party of the 1st part with an understating that the same would be registered after clearing legal issues."

Therefore, I find that there is no suppression committed by the petitioners at the time, when they enter into the MOU with the defacto complainant Nizamuddin @ M.Mohammed Marzook.

8. Mr.S.Vignesh, learned counsel appearing for yet another defacto complainant would submit that the petitioners are dealing with a part of this intervenor's property to the extent of 13 cents. That is the subject matter of the complaint and the intervenor has got his own remedy available, if the petitioners are dealing with his part of the property.

9. Mr.Y.Kaja Navas, learned counsel for the 4th intervenor would submit that he has already filed a suit in O.S.No.151 of 2011 in I.A.No.759 of 2011 and there was an interim injunction against 19 and odd cents, allegedly belonging to him. This is not the subject matter of this complaint. That is the suit for bare injunction and not for declaration. Therefore, I am rejecting the contention of this intervenor also.

10. Learned Government Advocate (Crl.Side) would submit that the patta, which was held by the petitioners, has not been obtained by them, as investigated by Police. In this regard, it is pertinent to mention that the title is not claimed through patta, but is claimed through the compromise decree, that has been passed by the Court below.

11. At this juncture, learned counsel for defacto complainant Nizamuddin @ M.Mohammed Marzook submits that admittedly the petitioners have taken around Rs.2 Crores from him and the same should be returned to the defacto complainant.

12. I find much force in the submission of the learned counsel for the intervenor Nizamuddin @ M.Mohammed Marzook. Mr.N.R.Elango, learned Senior Counsel for the petitioners would state that he will advise the petitioners to return the amount.

13. Considering the facts and circumstances of the case, the petitioners could be enlarged on interim

anticipatory bail for six weeks for repayment of the substantial amount to the defacto complainant. Accordingly, the petitioners are ordered to be released on interim anticipatory bail for a period of six weeks in the event of arrest or on their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned XI Metropolitan Magistrate, Saidapet, Chennai, on condition that each of the petitioner shall execute 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 respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that the 1st petitioner shall report before the respondent police daily at 10:30a.m. for a period of two weeks and thereafter, as and when required and the 2nd petitioner, being a lady, shall report before the respondent police as and when required for interrogation.

List this matter on 08.12.2014 for hearing."

4 On 09.12.2014, the accused filed an affidavit before this Court in CrI.O.P. No.16057 of 2014 and on the said date, this Court passed the following order:

On 28.10.2014, this Court granted interim anticipatory bail to the petitioners on condition that they make substantial payments to the de-facto complainant.

2.Today the first petitioner appeared before this Court and filed an affidavit, wherein, in paragraphs 3 and 7 the following has been stated:

"3.I submit that as per the order of this Hon'ble Court we made fair endeavour to hand over Demand Draft to the tune of Rs.10,00,000/- dated 29.11.2014 and 04.12.2014 (Five Lakhs each) and Rs.15,00,000/- as cheque dated 16.01.2015, in Cheque Nos.519703 and 519704 but he could not be contact and moreover he is always accompanying with an accused namely, Selvam alias Daniel who is main Kartha for the entire issue, therefore, I am placing the said Demand Draft and cheque before this Hon'ble Court to show our bonafide.

7.I submit that now I am negotiating with prospectus buyer to sell my properties therefore through this affidavit I undertake to settle the entire amount due to the defacto complainant i.e., Rs.1,80,00,000/- (One Crores and Eighty lakhs).

"On 05.06.2015, cheques to the sum of Rs.90,00,000/- (Ninety lakhs) bearing cheque Nos.519705 to 519713, nine cheques of Rs.10,00,000/- (ten lakhs) each. And further on 30.06.2015 cheques to the sum of Rs.90,00,000/- (Ninety lakhs) bearing cheque Nos.519714 to 519722, nine cheques of Rs.10,00,000/- (ten lakhs) each."

3.In the light of the above statement made, interim anticipatory bail granted to the petitioners is made absolute. Cheques and Demand drafts were given in the Open Court and they were handed over to the de-facto complainant who is present in the Court and he has acknowledged the same by signing on the reverse of the affidavit given by the petitioner.

4.The de-facto complainant submitted that after the cheques are cleared, they would enter into an agreement to file joint application for quashing the proceedings and the said submission made is placed on record.

5.With the above observations, this Criminal Original Petition is allowed. However, it is made clear that the petitioners have to appear before the respondent police as and when required for interrogation."

5 After obtaining anticipatory bail, the accused did not honour the cheques and the cheques were dishonoured when they were presented by the de facto complainants and therefore, the de facto complainants are before this Court in CrI.O.P. No.3371 of 2015 for cancellation of anticipatory bail that was granted on 09.12.2014 in CrI.O.P. No.16057 of 2014. Likewise, the police have also filed CrI.O.P. No.17742 of 2015 for cancellation of the anticipatory bail granted to the accused for not complying with the conditional order of anticipatory bail that was granted by this Court.

6 The petition for cancellation of anticipatory bail, viz., CrI.O.P. No.3371 of 2015, came up for admission before this Court on 22.04.2015 and notice was served on the accused. On 01.06.2015, Mr. K.J.Saravanan, learned counsel for the accused, entered appearance and pleaded to this Court that his clients will honour the cheques and repay the amount, if some reasonable time is granted. Therefore, these petitions for cancellation of anticipatory bail were adjourned by this Court from time to time, so as to enable the accused to return, at least, the principal amount of Rs.2 crores, to the de facto complainants.

7 From the docket sheet of the order, this Court would see that sums of Rs.15 lakhs, Rs.5 lakhs, Rs.15 lakhs, Rs.4 lakhs and Rs.4 lakhs have been paid on 20.08.2015, 27.08.2015, 14.10.2015, 29.10.2015 and 29.01.2016, respectively. Thereafter, the present petitions have been adjourned to several dates, despite which, the accused have not chosen to make any payment.

8 Today, Nizamuddin @ M. Mohammed Marzook (the first de facto complainant) appeared as a party-in-person and submitted that the accused have no intention to return the money and in fact, they are continuing to carry on with their nefarious activities and are involved in land grabbing by targeting old people and NRIs as victims.

9 This Court is not an Execution Court under Order 21 C.P.C. for the accused to keep paying the decree amount. The fact remains that the accused had given an undertaking to this Court that they would honour the cheques on the strength of which, anticipatory bail was made absolute on 09.12.2014 and after getting an advantageous order, the accused have shown their true colours and therefore, they do not deserve any further indulgence.

10 Mr. Prabhakaran, learned Senior Counsel appearing for the accused would submit that the accused are not able to sell properties in order to make payment. This submission cannot be countenanced in the light of the fact that the accused had received huge amounts from the de facto complainants for selling a property and they have also undertaken to return the amount by giving cheques on the strength of which, this Court granted anticipatory bail to them on 28.10.2014.

11 Mr. Prabhakaran further submitted that since the de facto complainants have initiated prosecution against the accused under Section 138 of the Negotiable Instruments Act, 1881, for the bounced cheques, anticipatory bail should not be cancelled.

12 This Court is not a recovery Court. Therefore, when the cheques were dishonoured, the de facto complainants can have no other option but to resort to legal means like filing a suit and initiating prosecution under Section 138 of the Negotiable Instruments Act. But, that cannot be a reason to absolve the accused from their responsibility to this Court. The accused cannot take advantage of the Court order by filing an undertaking affidavit and giving cheques and later on, not honouring the cheques.

13 It is made clear that the amount of money mentioned in para 7 above, in this order, is based on the records available in this Court and may not represent the correct figure. However, it is an admitted fact that the accused have not paid the entire sum of Rs. 2 crores.

14 The anticipatory bail granted by this Court in CrI.O.P. No.16057 of 2014 on 28.10.2014, which was made absolute on 09.12.2014, is cancelled and it is open to the police to arrest the accused.

In the result, both the Criminal Original Petitions are allowed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

cad

To

1.The Additioanl District Judge-II
Chennai

2.The XI Metropolitan Magistrate
Saidapet, Chennai-15

3.-do-Thro The Chief Metropolitan Magistrate
Egmore (for information)

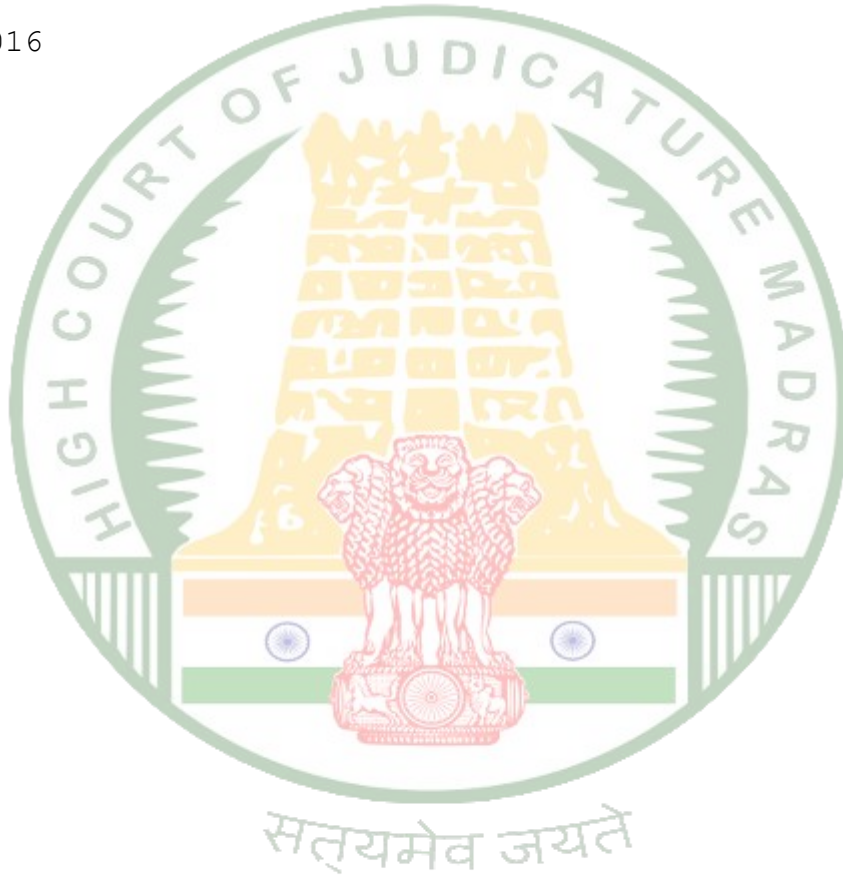
4 The Inspector of Police
Central Crime Branch
EDF Team - II
Vepery, Chennai 600 007

5 The Public Prosecutor
High Court of Madras, Chennai 600 104

+1 cc to Mr.J.Ramachandran Advocate sr.41554
+1 cc to Mr.K.J.Saravanan Advocate sr.41014
+2 ccs to Mr.Nizamudeen @Marzook, party in person
sr 12155

common order in
Crl.O.P. Nos.3371 and 17742 of 2015

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