

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Fourth day of December Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

CRIMINAL ORIGINAL PETITION No.20552 of 2017

1 K.MARIYAPPAN
2 MUTHURAJA

[PETITIONER / ACCUSED]

Vs

THE STATE REP BY ITS,
THE INSPECTOR OF POLICE,
DCB/ALGSC, SP OFFICE,
NAGAPATTINAM DISTRICT
CR.NO.11 OF 2016.

[RESPONDENT]

For Petitioner : M/S.P.VIJENDRAN Advocate

For Respondent : PUBLIC PROSECUTOR

For Intervener : MR.A.THIYAGARAJAN SENIOR COUNSEL FOR
M/S.D.VEERASEKARAN Advocate

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

ORDER : The Court Made the following order :-

This is the second anticipatory bail application and the first anticipatory anticipatory bail application in CrI.O.P.No.4438 of 2017 was dismissed by this Court on 10.05.2017 by brother S. BASKARAN,J. Since brother S. BASKARAN,J., is sitting in Madurai Bench, the matter has been posted before this Court as Specially Ordered Matter.

2. Heard Mr.P. Vijendran, learned counsel for the petitioner, Mr.A. Thiyagarajan, learned Senior Counsel and the learned Government Advocate (CrI.Side).

3. On the complaint lodged by one Mr.Natarajan, the respondent police have registered a case in Cr.No.11/2016 on 17.12.2016 for the offences punishable under Secs.406, 420, 465 and 471 IPC against K. Mariappan/A.1, M. Muthuraja/A.2 and unnamed others.

4. It is the case of the defacto-complainant that the property, in question, measuring 9 ½ acres of land, in Survey No.365/2 belongs to the family of the defacto complainant and that the defacto complainant had given the property for cultivation purpose to the petitioners herein. While so, it is alleged in

the complaint that the first petitioner had obtained patta in respect of the said land vide patta Nos.247 and 692 in his name as if he is the owner of the said land and on the strength of the patta, he has executed a Settlement Deed vide document No.1367/2016 in favour of his son. Hence the complaint and the consequent First Information Report.

5. Mr.P. Vijendran, learned counsel appearing for the petitioners submitted that the petitioners filed Crl.O.P.No.11102 of 2017 for quashing the first information report in Cr.No.11/2016, in which, this Court, while dismissing the quash petition on 18.08.2017, has made the following observation:

" 2. It appears from the materials placed before this Court that there are rival claims raised with regard to the title of the properties in S.Nos.191/11, 191/12, 191/13, 191/8, 192/7, 209/13, 191/10, 204/4 and 365/2 situated at Kidarnkondan Village, Tharangampadi Taluk, Mayiladuthurai District. This Court, by order dated 21.03.2017, disposed of the petition in Crl.O.P.No.5524 of 2017 filed by the second respondent herein, by directing him to appear before the respondent police along with the original documents. Similarly, in this petition in Crl.O.P.No.11102 of 2017, by way of interim order, on 28.06.2017, this Court directed the respective parties to appear before the respondent police along with the original documents, relating to the properties in question."

6. He further submitted that in compliance of the said direction, the petitioner obtained the original documents from the file of Additional District Munsif, Mayiladuthurai and submitted the same to the police and thereafter have returned the document back to the said Court.

7. Per contra, the Police have filed a counter, wherein, paragraph Nos.5 to 8, it is stated as follows:

5. It is submitted that as per the order dated 28.06.2017 of this the Hon'ble High Court has directed the first respondent to enquire the petitioner and the petitioner is directed to appear for enquiry on 12.07.2017 before the police, to prove their case. Accordingly, the petitioner appeared before the Police on 12.07.2017 and submitted some documents at the time of enquiry.

6. It is submitted that the enquiry revealed that Mariappan entered into a sale agreement for S.No.191/9, 192/5 and 192/6, measuring an extent

of 3 Acres and 65 cents in patta No.247, on 19.05.1995 for a sale consideration of Rs.35,000/- vide unregistered document, from Tmt. Kamatchi, D/o Vasudevapillai, who is the brother of Natarajan/defacto-complainant. In the said document Tmt.Kamatchi made an endorsement that as and when the petitioner requires to register she is willing to register the document.

7. It is submitted that on 19.05.1995 itself another sale deed was executed by Tmt.Kamatchi D/o Vaudevapillai in favour of Mariappan alienating the lands in S.No.192/5 to an extent of 16 2/3 cents (50 Kuzhi) land has been sold vide document No.281/95 on the file Sub Registrar, Semmanarkoil. Taking advantage of these two documents the petitioners/accused (A-1 & A-2) tried to grab the other adjacent lands owned by the other family members of the defacto complainant. The petitioners herein also produced the copy solvency certificate dated 05.02.2002, possession certificate issued by theTahsildar, Tarangampadi, dated 20.04.2016, copies of registered and unregistered documents showing the transactions between Kamatchi and Mariappan. The petitioner produced the original sale deed only with regard to transactions between him and Kamatchi and the same is not farming post of complaint. The other documents he produced are only Xerox copies and no title document is produced to prove his title and ownership. But the defacto complainant produced title documents and proved their ownership.

8. It is submitted that during the course of investigation I have given requisition letter to the Tahsildar. Tharangabadi for requesting the date of details of change of Patta Nos.204, 607, 247 and 1201 and also to furnish the details of the officers concern, who all are involved in this case. So, I have submitted a requisition letter before the Revenue Divisional Officer, Mayiladuthurai, who all are involved in this offence along with the petitioners/accused (A.-1 & A-2.")

8. Mr.A. Thiyagarajan, learned Senior counsel for the defacto-complainant took this Court through First Information Report and submitted that the first petitioner had no legal title to the property, which he settled in favour of his son and thereby caused encumbrance to the property. He also submitted that patta that was issued to the first petitioner, has been cancelled by the revenue

authorities.

9. Per contra, Mr.P. Vijendran, learned counsel appearing for the petitioners submitted that the land was actually sold to the first petitioner in the year 1995 by the family of the defacto-complainant for a valuable consideration, but, for certain other social reasons, it was not registered in accordance with law and therefore, the petitioner was justified in getting the patta in his name and settling the property in his son.

10. In this regard, he placed strong reliance on two agreements, entered into between the first petitioner and one Kamatchi, cousin brother's daughter of the defacto-complainant herein, wherein, certain lands, which were adjacent to the present land, were sold to the first petitioner by the said Kamatchi.

11. This Court gave its anxious consideration to the rival submissions.

12. On a reading of the first information report, it is the specific case of the defacto-complainant that the property, in question, was not sold to the first petitioner, but, whereas, the first petitioner had obtained patta in the year 2016 and immediately, thereafter, he had executed a settlement deed in favour of his son on 26.08.2016 itself, which only shows that he had created encumbrance knowing full well that the property does not belong to him. This Court does not want to give a finding this way or that way in the anticipatory bail application as that may prejudice the parties in any other civil litigation that is pending before them. However, this Court is of the view that if the first petitioner cancels the settlement deed, executed in favour of his son, that can be a substantial change in the factual circumstances for this Court to grant anticipatory bail to them.

13. Mr.P. Vijendran, learned counsel seeks two weeks time to report to this Court.

14. Cancellation of the settlement deed shall be done by the petitioners without prejudice to the other civil rights if any. In order to facilitate the cancellation of the settlement deed, interim-anticipatory bail may be imperative because, only then they can come out from hiding without fear of arrest.

15. Accordingly, the petitioners are ordered to be released on interim anticipatory bail till 18.12.2017 in the event of their arrest by the respondent police on each of them executing a personal bond for Rs.10,000/- (Rupees ten thousand only) without sureties to the satisfaction of the arresting officer.

Post the matter on 18.12.2017.

-sd/-
04/12/2017

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

2 THE INSPECTOR OF POLICE,
DCB/ALGSC, SP OFFICE,
NAGAPATTINAM DISTRICT.

+1CC to M/S.P.VIJENDRAN Advocate on payment of necessary charges SR NO.21980

CRL OP.20552/2017

Date :04/12/2017

MK:04/12/2017