

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Fifth day of December Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

CRIMINAL ORIGINAL PETITION No.21610 of 2017

and CRL.MP.NO.13002 OF 2017

I.PALANIVEL,

[PETITIONER / ACCUSED]

Vs

STATE REPRESENTED BY,

[RESPONDENT]

INSPECTOR OF POLICE,

R5-VIRUGAMBAKKAM POLICE STATION,

CHENNAI-27,

CR.NO.1067 OF 2016.

For Petitioner : M/S.K.KRISHNAN Advocate

For Respondent : MR.K.MATHAN Govt. Advocate (Crl. Side)

For Intervener : MR/S S.VIYAYAKUMAR 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 in the first anticipatory bail application viz., Crl.O.P.No.19079 of 2017, this Court had passed orders on 20.09.2017 and 22.09.2017, which are as follows:

" **Order dated 20.09.2017**

Today, Mr.A.C. Sankar, Assistant Commissioner of Police, Vadapalani (Range) and Mr.Velumani, Inspector of Police, Virugambakkam Crime branch are present.

2. It is the case of the de-facto complainant that he purchased a Flat No.S8 in Shanmuga Sundaram Street, Saligramam, vide a sale deed dated 01.09.2011, from Palanivel and registered as Document No.4889 of 2011. Thereafter, the petitioner had kept the flat under lock and key, and living elsewhere. Subsequently, Palanivel and his henchmen forcibly entered into the flat and took the possession. Pursuant to which the de-facto complainant lodged a complaint, based on

which the respondent police have registered a case in Cr.No.1067 of 2016 under Sections 448, 454, 406 and 506(i) IPC against Palanivel and others.

3. The learned counsel for the petitioner/ accused submitted that the de-facto complainant purchased the flat in the year 2011 for a total sale consideration of Rs.48,00,000/- and that he had paid only Rs.19,00,000/-, and he has not yet paid the balance amount. Therefore, according to the petitioner, possession was not handed over to the de-facto complainant. But, on reading of the sale deed dated 01.09.2011, it is clearly stated that possession has been handed over to the de-facto complainant.

4. The learned counsel for the de-facto complainant brought to the notice of this Court that the accused have sold the same flat by a sale deed dated 06.12.2012 to one A.S.Kannan, and subsequently, the said A.S. Kannan has executed a sale deed on 12.10.2015 infavour of one Newton, in respect of the same flat.

5. On reading of the sale deed dated 12.10.2015, the schedule shows the flat as Flat No.S8. Thus, it is a clear case of land grabbing. If the petitioner hands over the possession of the flat to the de-facto complainant, then this Court can consider granting anticipatory bail to the petitioner.

Post the matter 'for orders' on 22.09.2017 .

" Order dated 22.09.2017

When this Court was about to dismiss this petition on merits, the learned counsel for the petitioner sought permission of this Court to withdraw this petition and he has also made an endorsement to that effect.

2. In view of the submission and endorsement made by the learned counsel for the petitioner, the petition is dismissed as withdrawn.

2. In the present petition, the learned counsel for the petitioner submits that he is willing to amicably settle the matter with the defacto-complainant by paying a sum of Rs.30,00,000/-, but, however, the defacto-complainant is not receiving the amount.

3. The learned counsel for the petitioner submitted that though the petitioner had executed the sale deed in favour of the defacto-complainant in the year 2011, yet, possession was not handed over to the defacto-complainant and full sale consideration was also not paid.

4. This is strongly refuted by the learned counsel for the defacto-complainant, who submits that the sale deed dated 07.09.2011 itself shows that possession was handed over and full consideration was paid.

5. The petitioner has filed an affidavit dated 29.11.2017, wherein, in paragraph No.4, he has stated as follows:

" 4. I submit I am ready to settle this issue before this Hon'ble Court for that effect, after this Hon'ble Court direction I contact with defacto-complainant past one week, but he is not arriving the settlement amount. Hence I am willing to pay a sum of Rs.30,00,000/-(thirty Lakhs only) to the defacto-complainant, for proving my bonafide I am producing a sum of Rs.3,00,000/-(Three Lakhs only) by way of D.D.No.013881 Axis Bank, Kodambakkam Branch dated 29.11.2017 balance a sum of Rs.27,00,000/-(Twenty seven lakhs) I will pay within 5 months from today in 5 instalments. Hence I humble prayed before this Hon'ble Court may be accept this affidavit."

6. However, during the hearing of the case, the learned counsel for the defacto-complainant submitted that the defacto-complainant is not willing to agree to this proposal and that, the State Bank of India, which had financed the housing loan for the purchaser of the flat by the subsequent purchaser Newton, has initiated recovery proceedings against Newton and bringing the property to sale.

7. This Court is indeed surprised as to how the State Bank of India, M.R.C. Nagar Branch had given housing loan to Newton, when the same flat has been sold by the petitioner to the defacto-complainant as early as 07.09.2011 under document No.4889/2011, S.T.O. Virugambakkam. Of course, this is a matter between State Bank of India, Newton and the petitioner.

8. The learned counsel for the petitioner submitted that though in the affidavit dated 29.11.2017 the petitioner agreed to deposit a sum of Rs.3,00,000/- immediately, he is now ready to show his bonafide by depositing Rs.5,00,000/- within one week and deposit of the balance amount of Rs.25,00,000/- within one month from the date of furnishing sureties.

9. [*] "9. In the result, the petitioner is granted interim anticipatory bail till 06.02.2018" in the event of his arrest or on his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, of whom one should be a blood related surety, each for a like sum to the satisfaction of XXIII Metropolitan Magistrate, Saidapet, Chennai, and on further condition that:

[a] the petitioner shall deposit a sum of Rs.5,00,000/- (Rupees five lakhs only) to the credit of Cr.No.1067/2016.

(b) the sureties can be accepted only on the deposit of Rs.5,00,000/- (Rupees five lakhs only)

© Balance of Rs.25,00,000/- (Rupees twenty five lakhs only) shall be deposited within one month from the date of furnishing sureties.

(d) the petitioner and sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[e] the petitioner shall report before the respondent police at 10.30 a.m on every Monday and Saturday.

[f] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[g] the petitioner shall not abscond either during investigation or trial.

[h] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**.

[i] If the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

(j) On such deposit being made, the learned Magistrate shall re-deposit the amount in Fixed Deposit Account in any Nationalised Bank so that the principal and interest can be disbursed to the parties at the culmination of the proceedings depending upon the outcome or in the meantime, if the parties have arrived at an amicable settlement, the same can be disbursed in terms of the compromise.

List the matter on 06.02.2018.

-sd/-
05/12/2017

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.

[*]Being mentioned ordered as per order of this court dated 21/12/2017

TO

1 THE METROPOLITAN MAGISTRATE,
NO.XXIII, SAIDAPET, CHENNAI

2 THE CHIEF METROPOLITAN
MAGISTRATE, EGMORE [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 STATE REPRESENTED BY,
INSPECTOR OF POLICE,
R5-VIRUGAMBAKKAM POLICE STATION,
CHENNAI-27,
CR.NO.1067 OF 2016.

+1CC to M/S.K.KRISHNAN Advocate on payment of necessary
charges SR NO.22242

CRL OP.21610/2017

Date : 05/12/2017

RD 13/12/2017

MK:22/12/2017