



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

Friday, the Fifteenth day of September Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice A.M.BASHEER AHAMED

CRL OP(MD) No.11198 of 2017

1 ABDUL BARI

2 DHAYALAN

... PETITIONERS / ACCUSED NO.1 & 2

M.K.SUBBURAYAL

... PETITIONER / INTERVENER

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
TOWN POLICE STATION, BODINAYAKANUR,
THENI DISTRICT
(CRIME NO.627 OF 2017)

... RESPONDENT / COMPLAINANT

For Petitioners : M/S.R.SURIYANARAYANAN Advocate

For Respondent : MR.A.RAMAR Additional Public Prosecutor

For Intervener : M/S.M.KALIRAJ Advocate

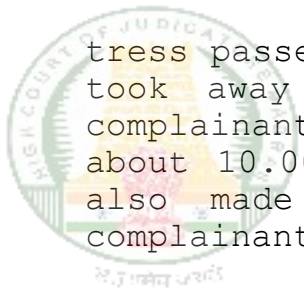
PETITION FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :-

(Orders Reserved on 30.08.2017]

The petitioners, who were arrested and remanded to judicial custody on 29.07.2013, for the offences punishable under Sections 143, 448, 380, 294(b) and 506(i) of IPC., in Crime No.627 of 2017, on the file of the respondent police, seek bail.

2. The case of the prosecution is that the defacto complainant is running a Hotel business in the name of 'Saravana Bhavan' in Door No.12-1-63, as a tenant, from the one of the legal heirs of the owner and paying the monthly rent by way of depositing into Court, after the dispute arose between the LRs of the owner of the property, as per the order passed in I.A.No.249 of 2014 in O.S.No.148 of 2014 on the file of the Sub-Court, Theni. The said Suit was filed for the relief of partition of 1/11 share in which, the predecessors of the first petitioner and the intervener are the parties, as defendants and as per the order dated 22.03.2016. On the date of occurrence, at about 2.00 p.m., while the defacto complainant had gone to Ulunderpet for condolence, the petitioners along with other accused had broke open the lock of the hotel and



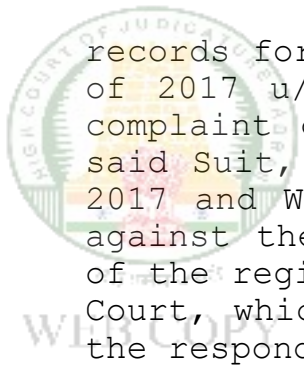
trespass passed into it and damaged the articles found in the Hotel and took away the articles from the Hotel and when the defacto complainant questioned the same, after returning from Ulunderpet at about 10.00 p.m., the accused persons abused filthy language and also made a threat of dire consequences against the defacto complainant. Hence, the case is registered.

3. The counsel for the petitioners states that the first petitioner is a purchaser of the subject property and he is in possession and enjoyment of the same. On 21.03.2017, when the second petitioner is in the Hotel premises, the henchmen attacked the defacto complainant and one Vincent came into the Hotel and attacked the second petitioner with deadly weapons and he took treatment at Government Hospital for the injuries and the first petitioner has given a complaint before the respondent police for the said occurrence, but the respondent Police has not registered the case, on the other hand, the respondent Police has registered the present false case against the petitioners herein due to the influence of one Vincent.

4. The learned Additional Public Prosecutor appearing for the respondent, on instructions, would submit that FIR was registered by the respondent Police against one named accused, who is the first petitioner herein, who is arrayed as A1 and 20 others. The 2nd petitioner is the unnamed accused in the said FIR and during investigation, he is arrayed as A2. The said FIR was registered in Crime No.627 of 2017, on the basis of the written complaint given by the defacto complainant / intervener on 27.06.2017, for the occurrence dated 21.06.2017 at 14.00 Hrs. The petitioners were arrested on 29.07.2017 and remanded on the same day and they are now in judicial custody. The remaining accused are absconding in this case and the investigation is still pending.

5. The learned counsel appearing for the intervener / defacto complainant reiterates the very same contentions made by the learned Additional Public Prosecutor for the respondent. Adding further, he would submit that the intervener / defacto complainant is arrayed as D21 in a Suit for partition pending on the file of Sub-Court, Theni, as O.S.No.148 of 2014 filed by one of the legal heirs of the deceased V.J.Thomas, against the other heirs and tenants of the disputed property, claiming 1/11 share of the plaintiff and D1 to D10 each and the intervener is depositing the monthly rent into the Court, as per order, dated 22.03.2016 in I.A.No.249 of 2014 in O.S.No.148 of 2014, passed by the learned Sub-Judge, Theni, from the month of April 2016 to till date ie., May 2017, through his counsel.

6. Continuing further, the learned counsel for the intervener would contend that while the partition Suit is pending, the 1st petitioner had purchased the Door Nos.63, 63-A Building and vacant site, under a registered sale deed, dated 11.05.2016 from one of the co-owner viz., Rani, who is arrayed as D10 in the above partition Suit. Claiming rights and possession of the Hotel viz., Saravana Bhavan, running by the intervener / defacto complainant, who is a lawful tenant, by creating the said sale deed on forged



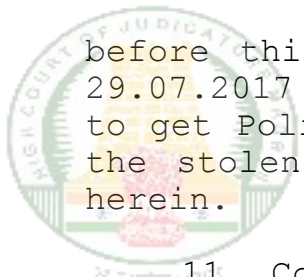
records for which an another FIR was also registered in Crime No.221 of 2017 u/s.452, 420, 465, 468, 471 and 506(ii) of IPC., on the complaint of one V.J.T.Vincent, who is the plaintiff in the above said Suit, against the petitioner / accused and W.P.(MD)No.3184 of 2017 and W.M.P.(MD)No.2534 of 2017 filed by the said V.J.T.Vincent against the petitioner and his seller Rani and 3 others in respect of the registered sale deed, dated 11.05.2016 is pending before this Court, which also passed an order of status-quo to be maintained by the respondent in that Writ Petition, as on date.

7. The counsel for the intervener further states that he had kept Rs.1,61,000/- by cash in the bureau and articles totally worth about Rs.7,68,650/- were there in the said Hotel on the date of occurrence, but the petitioners along with other accused have taken away the said cash and other articles. Therefore, the defacto complainant / intervener has given a complaint before the Inspector of Police, Town Police Station, to recover the theft articles and also the cash of Rs.1,61,000/- from the accused Abdul Bari, who is the first petitioner herein, by enclosing the list of hotel articles and the list of documents also. But, till date the respondent Police has not taken any steps to recover the same and hence, the custodial interrogation of the petitioners is very much necessary to recover the stolen money and articles from the accused and the respondent Police has also filed a search warrant petition to made a search in the accused persons house so as to recover the stolen articles and money before the learned Judicial Magistrate, Bodinayakanur and the same is pending as on date and if the accused persons are released on bail, they will tamper the evidence and the respondent Police could not recover the same.

8. The first petitioner / accused relied his title over the disputed property through D1 and D10 in the above civil Suit by way of settlement and thereafter by way of sale deed and the partition suit is pending in a competent civil Court. During the pendency of the suit, the first petitioner had purchased the disputed property also. The anticipatory bail moved by the first petitioner herein in CrI.O.P(MD)No.8352 of 2017 was dismissed by this Court, as per the order dated 24.08.2017 stating that custodial interrogation of the first petitioner is required, since all the accused are absconding in this case.

9. While the said Anticipatory Bail Application moved by the 1st petitioner / accused was heard by this Court and is pending for orders, the respondent Police arrested the first petitioner herein on 29.07.2017, however, subsequent to that the said Anticipatory Bail application was dismissed by this Court. Now, the first petitioner along with 2nd petitioner since both were arrested in this Crime Number filed this bail application before this Court.

10. The earlier anticipatory bail application moved by the 1st petitioner was dismissed by this Court stating that the custodial interrogation of the first petitioner is required in this case. It is also admitted that the petitioners were arrested on 29.07.2017 while the said anticipatory bail application is pending for orders



before this Court. However, the petitioners are in custody from 29.07.2017 onwards. The respondent Police has not taken any steps to get Police custody of the petitioners herein for the recovery of the stolen articles and cash of Rs.1,61,000/- from the petitioner herein.

11. Considering the above facts and circumstances of the case and also considering the fact that the petitioners are in prison from 29.07.2017 onwards in this case and no steps have been taken by the respondent Police so far to get police custody of the petitioners herein, this Court is inclined to grant bail to the petitioners, subject to certain conditions.

12. Accordingly, the petitioners are ordered to be released on bail on their executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) each with two sureties, each for a like sum to the satisfaction of the learned District Munsif-cum-Judicial Magistrate, Bodinayakanur and on further condition that:

[a] the petitioners shall report before the respondent police daily at 10.30 a.m., until further orders, for interrogation.

[b] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[c] the petitioners shall not abscond either during investigation or trial and the petitioners shall co-operate with the investigation by the respondent police.

[d] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners 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].

sd/-

15/09/2017

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

TO

- 1 THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE, BODINAYAKANUR.
- 2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, THENI DISTRICT.
- 3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 4 THE INSPECTOR OF POLICE,
TOWN POLICE STATION, BODINAYAKANUR, THENI DISTRICT.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.R.SURIYANARAYANAN Advocate SR.No.30774

ORDER IN
CRL OP(MD) No.11198 of 2017
Date :15/09/2017