



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

Thursday, the Twenty Fourth day of August Two Thousand Seventeen

PRESENT

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

CRL OP(MD) No.8352 of 2017

ABDUL PARI

... PETITIONER/ ACCUSED RANK No.1

Vs

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

... RESPONDENT/ COMPLAINANT

For Petitioner : M/S.R.SURIYA NARAYANAN Advocate

For Respondent : MR.A.RAMAR, ADDITIONAL PUBLIC PROSECUTOR

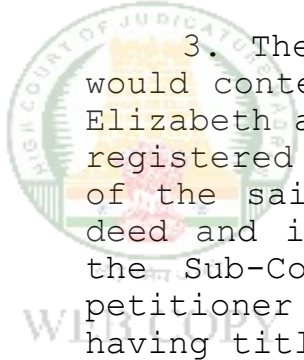
For Intervener : MR.M.KALIRAJ, Advocate

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

ORDER : The Court Made the following order :-

The petitioner, who apprehends arrest at the hands of the respondent police for the alleged offences punishable under Sections 143, 448, 380(NH), 294(b) & 506(i) of IPC., in Crime No.627 of 2017, seeks anticipatory bail.

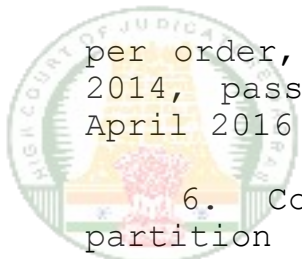
2. The case of the prosecution is that the defacto complainant is running a Hotel business viz., 'Saravana Bhavan' in Door No.12-1-63, as a tenant, from the previous owner and paying monthly rent by way of deposit into Court, as per the Order of Sub-Court, Theni, dated 22.03.2016 in I.A.No.249 of 2014 in O.S.No.148 of 2014 instituted by one Vincent, one of the heirs of the deceased V.J.Thomas and against the other L.Rs of the said person and also against the tenants, who are in possession of the disputed property, including the defacto complainant and on the date of occurrence, at about 2.00 p.m., while the defacto complainant had gone to Ulunderpet for condolence, the petitioner / accused along with 20 others had broken open the lock of the Hotel and damaged the articles found in the Hotel and took away those articles and after returning from Ulunderpet at about 10.00 p.m., when the defacto complainant questioned the same, the accused persons abused filthy language and also made a threat with dire consequences against the defacto complainant.



3. The learned counsel appearing for the petitioner / accused would contend that the disputed property originally belongs to one Elizabeth and she settled the property to her daughter viz., Rani by registered settlement deed, dated 15.04.2017 and thereafter, the son of the said Elizabeth viz., the Vincent questioned the settlement deed and in continuance, he has filed a Suit for partition before the Sub-Court, Theni in O.S.No.148 of 2014 and thereafter, the petitioner has purchased the property from the said Rani, who is having title over the property, based on the settlement deed, by way of registered sale deed, dated 11.05.2016 and the defacto complainant is the erstwhile tenant of the said premises and in the year 2016, he vacated the premises and subletting the same and the subletting the tenant handed over the disputed shop to the petitioner herein on 18.06.2017 and thereafter, the petitioner is in possession and enjoyment of the property and the defacto complainant came forward with the present complaint at the instigation of the said Vincent, as if he is in possession and enjoyment of the disputed property and the same was taken by the petitioner with the help of rowdy elements.

4. The learned Additional Public Prosecutor appearing for the respondent, on instructions, would submit that FIR was registered on 27.06.2017 in Crime No.627 of 2017 by the respondent Police against one named accused, who is the petitioner herein, arrayed as A1 and 20 others, on the basis of the written complaint given by the intervener / defacto complainant. He would further submit that the defacto complainant is running a Hotel business viz., 'Saravana Bhavan' in Door No.12-1-63, as a tenant, from the previous owner and paying monthly rent by way of deposit into Court, as per the Order of Sub-Court, Theni, dated 22.03.2016 in I.A.No.249 of 2014 in O.S.No.148 of 2014 instituted by one Vincent, one of the heirs of the deceased V.J.Thomas and against the other L.Rs of the said person and also against the tenants, who are in possession of the disputed property, including the defacto complainant and on the date of occurrence, at about 2.00 p.m., while the defacto complainant had gone to Ulunderpet for condolence, the petitioner / accused along with 20 others had broken open the lock of the Hotel and damaged the articles found in the Hotel and took away those articles and after returning from Ulunderpet at about 10.00 p.m., when the defacto complainant questioned the same, the accused persons abused filthy language and also made a threat with dire consequences against the defacto complainant. He also submitted that investigation in this case is still pending, since all the accused are 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, permanent injunction and also for mandatory injunction pending in O.S.No.148 of 2014, on the file of Sub-Court, Theni, 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



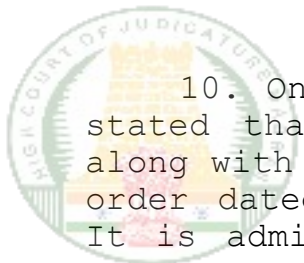
per order, dated 22.03.2016 in I.A.No.249 of 2014 in O.S.No.148 of 2014, passed by the learned Sub-Judge, Theni, from the month of April 2016 to till date ie., May 2017, through his counsel.

6. Continuing further, he would contend that while the partition Suit is pending, the petitioner / accused 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, 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 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 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. I have perused the materials available on records and also heard and considered the rival submissions advanced on either side.

8. Petitioner / Accused categorically admitted that he has purchased the disputed property from 10th Defendant in O.S.No.148 of 2014 pending on the file of Sub-Court, Theni, in the month of May 2016. Further, it is admitted that the defacto complainant is the erstwhile tenant of the disputed premises, but it is contend that the defacto complainant has vacated the disputed property in the year 2016 and he has sub leased the sale, who said to be handed over the disputed shop to the petitioner / accused herein, on 18.06.2017. The petitioner further admitted that the defacto complainant is depositing the rent before the Sub-Court, Theni, but the contended that the defacto complainant did not deposit any rent after vacating the premises.

9. On perusal of the complaint, dated 28.06.2017, addressed to the Superintendent of Police, Theni District [Typed set of papers of accused at Page 52], he has stated that after execution of the sale deed, dated 11.05.2016, he took possession of the property mentioned in the sale deed and thereafter, he has been running the hotel business by purchasing the required articles viz., Tables, Chairs, vessels etc., and in the month of January, he has leaded out the hotel to one Natarajan for rent and thereafter, he leased out the hotel to one Abdul Raheem, for 11 months from 10.02.2017, but he has handed over the premises to the petitioner on 18.06.2017. Prior title holders of the disputed property are shown as defendants in the pending Suit as D1 and D10 respectively. The petitioner / accused relied his title over the disputed property through D1 and D10 by way of settlement and thereafter, by way of sale deed. The partition suit is pending in a competent civil Court, claiming 1/11 share of the plaintiffs and D1 to D10. During pendency of that suit, the petitioner / accused has purchased the property.



10. On perusal of the records produced by the intervener it is stated that the intervener has been depositing the monthly rent along with the other tenants before the Sub-Court, Theni, as per its order dated 22.03.2016 during the pendency of the partition suit. It is admitted that the intervener is the tenant of the disputed property viz., Hotel Saravana Bhavan. The petitioner / accused has not chosen to file any records to show that the intervener has vacated the disputed premises of Saravana Bhavana Hotel and it is not stated when the intervener has vacated the premises. The petitioner / accused has approached this Court for granting anticipatory bail on the false set of facts regarding the possession of the disputed premises.

11. Though the claim of the petitioner / accused and the intervener / defacto complainant relate to the civil dispute, which is pending before the Sub-Court, Theni, the intervener / defacto complainant has depositing the monthly rent of the tenanted premises before the concerned Court till the month of May 2017. Hence, there is no prima facie case on the side of the petitioner / accused in respect of seeking possession of the disputed property. The custodial interrogation of the petitioner / accused is required in respect of the articles and the amount taken away from the hotel 'Saravana Bhavan'. The petitioner is also having previous case in respect of the disputed premises. The allegation stating that the intervener himself has vacated the premise shop and thereafter, the petitioner is in possession of the said Hotel cannot be accepted, at this stage. The Memo, dated 22.08.2017, filed by the petitioner stating that petitioner was arrested on 29.07.2017 is recorded. However, it cannot be treated as bail petition.

12. Considering the above facts and circumstances of the case and also the claim of possession by the petitioner / accused without seeking the possession through the Court of Law and also the custodial interrogation is required, since all the accused are absconding in this case, this Court is not inclined to grant anticipatory bail to the petitioner, at this stage.

13. In the result, the Criminal Original Petition stands dismissed.

sd/-

24/08/2017

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



TO

1 THE INSPECTOR OF POLICE
BODINAYAKANUR TOWN POLICE STATION,
THENI DISTRICT.

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

+1. CC to M/S.M.KALIRAJ, Advocate SR.No.29251

ORDER

IN

CRL OP(MD) No.8352 of 2017

Date :24/08/2017

MPK

SM/PM-PN/SAR-2/ 5P/4C