



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

Wednesday, the Fourteenth day of February Two Thousand Eighteen

WEB COPY

PRESENT

The Hon`ble Mr.Justice R.PONGIAPPAN

CRL OP (MD) No.1064 of 2018

1 CHELLAMMAL
2 V.PRABAKARAN

... PETITIONERS/ ACCUSED 1 & 2

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
CITY CRIME BRANCH,
MADURAI DISTRICT.
(CRIME NO.5 OF 2018)

... RESPONDENT / COMPLAINANT

For Petitioners: Mr.N.ANANTHAPADMANABHAN, Advocate

For Respondent : Mr.A.ROBINSON, Govt. Advocate (Crl. Side)

For Intervenor : Mr.S.SUMESH, Advocate

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

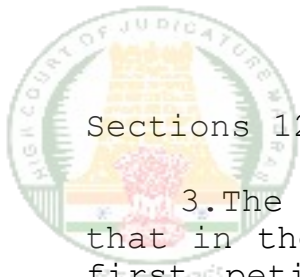
ORDER : The Court Made the following order :-

Reserved on : 07.02.2018

Delivered on : 14.02.2018

The petitioners, who are arrayed as Accused Nos.1 and 2, apprehend arrest at the hands of the respondent police for the alleged offences punishable under Sections 120(b), 406, 420, 416, 419 and 34 IPC, in Crime No.5 of 2018 and hence, seek anticipatory bail.

2.The case of the prosecution is that the first petitioner in this Criminal Original Petition is the wife of Late Virumandi Thevar. The second petitioner is her son. The first petitioner and her husband were blessed with 4 sons and 4 daughters, in which, the de-facto complainant is one of her sons. He lodged a complaint before the respondent police stating that after the death of Virumandi Thevar, the first petitioner being the wife, taken away several lakhs of rupees from HDFC Bank and from another one Bank, deposited in the name of Virumandi Thevar. After getting the deposit amount from the Bank, she handed over the same to the second petitioner and thereby, she committed the offences punishable under



Sections 120(b), 406, 420, 416, 419 and 34 IPC.

3.The learned counsel appearing for the petitioners submitted that in the deposit made by Late Virumandi Thevar, he appointed the first petitioner as his nominee. So, after the death of her husband, being the nominee, she is entitled to receive the entire money. Even though she had not disbursed the same to the legal heirs of late Virumandi Thevar, the said issue can be settled only by way of civil suit. Despite of that, the de-facto complainant converted the issue as criminal one and foisted the false case against the petitioners. Hence, he seeks anticipatory bail in favour of the petitioners.

4.The learned counsel appearing for the Intervenor/de-facto complainant reiterated the averments made in the complaint and prayed for dismissal of the Criminal Original Petition.

5.The learned Government Advocate (Criminal side) submitted that the first petitioner being the wife of one Late Virumandi Thevar, taken away several lakhs of rupees from HDFC Bank and from another one Bank, deposited in the name of Virumandi Thevar. After getting the deposit amount from the Bank, she handed over the same to the second petitioner. He further submitted that the investigation is in progress.

6.The submissions made by either side are considered. Admittedly, the first petitioner herein is the wife of one Virumandi Thevar. Now, after the death of the said Virumandi Thevar, the amount deposited by him in the HDFC Bank was taken away by the first petitioner. Furthermore, according to the case of the petitioners, the first petitioner was appointed as nominee to the deposits now in dispute. Therefore, it is necessary to arrive at a conclusion that the nominee is entitled to get back the entire deposit amount from the Bank concerned.

7.At this juncture, it is relevant to refer the decision of the Calcutta High Court in **Arnab Kumar Sarkar Vs. Smt. Reba Mukherjee and others** reported in **AIR 2007 Cal 79 : IV (2007) BC 134**, wherein at Paragraph No.9, it has been held as follows:-

'9.To deal with the second issue I feel upon reading of Sub-sections (1), (2), (3) and (4) together its proviso of Section 45ZA of the Bank Act, nomination in writing in this Section by the sole or more than one depositor has the effect of testamentary disposition for limited purpose after death of the depositor or depositors and in order to help the Bank discharge its obligation as trustee of the same to the nominee the moment demanded. For this purpose Bank is not required to wait for production of Succession Certificate, Letters of Administration or Probate and it is



free to hand over the money to the nominee on demand.''

8. So, as per above decision, at the time of receiving the deposited amount from the Bank, the first petitioner went to the extent that she is a Trustee for the deposit made by her husband. Further, no rule prohibits the Bank Managers in denying the payment.

9. At this juncture, it is relevant to refer the judgment of the Hon'ble Supreme Court in **Ram Chander Talwar and another Vs. Devender Kumar Talwar and others [Civil Appeal No.1684 of 2004, dated 06.10.2010]**, wherein the Apex Court has held as follows:

'Section 45ZA(2) merely puts the nominee in the shoes of the depositor after his death and clothes him with the exclusive right to receive the money lying in the account. It gives him all rights of the depositor so far as the depositor's account is concerned. ...'

10. Accordingly, the first petitioner being the nominee, she is not the owner of the money lying in the account. However, being the Trustee, she is having the duty to disburse the same to the legal heirs according to the rule of succession, to which, the deposit may be governed. If the first petitioner has not followed the said law, the remedy is available only in the Civil Court.

11. In the above circumstances, this Court is inclined to grant anticipatory bail to the petitioners. Accordingly, they are ordered to be released on bail 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 Judicial Magistrate No.I, Madurai, on condition that each of the petitioners shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the respondent Police or to the Police Officer, who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

(i) the petitioners shall report before the respondent Police daily at 10.00 a.m. for three weeks and thereafter, as and when required for interrogation.

(ii) the petitioners shall not tamper with evidence or witness either during investigation or trial.

(iii) the petitioners shall not abscond either during investigation or trial.

(iv) On breach of any of the aforesaid conditions, the anticipatory bail granted to the petitioners shall stand automatically cancelled and 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 petitioners 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]**.

12.The observation made by this Court is only for deciding this anticipatory bail petition and the Trial Court shall decide the matter on its own merits without being influenced by any of the observations made herein above.

sd/-
14/02/2018

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

TO

1. THE JUDICIAL MAGISTRATE NO.1,
MADURAI
2. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI
3. THE INSPECTOR OF POLICE,
CITY CRIME BRANCH, MADURAI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC TO Mr.N.ANANTHAPADMANABHAN , Advocate, Sr.No. 2492

SMN2
JAM/16/02/2018/PM-PN/ SAR 1 / 4P-6C

ORDER IN
CRL OP(MD) No.1064 of 2018
Date :14/02/2018