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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.02.2018

Delivered on : 09.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Cr1.O.P. (MD) Nos.16411 and 17320 of 2017

Cr1.O.P. (MD) No.16411 of 2017:-

P.Durai Raj ... Petitioner /
De-facto Complainant
Vs.

1.The State Rep. by
The Inspector of Police,
District Crime Branch,
Tirunelveli District.
(Crime No.20 of 2017) ... 1st Respondent /
Complainant

2.Velusamy
3.Ponraj
4.Samuthirakani ... Respondents 2 to 4 /
Accused Nos.2 to 4

PRAYER: Criminal Original Petition is filed under Section 439(2) of the Code of Criminal Procedure, to cancel the anticipatory bail granted by the learned District and Sessions Judge, Tirunelveli, in Cr.M.P.No.5611 of 2017, vide order dated 17.11.2017.

Cr1.O.P. (MD) No.17320 of 2017:-

P.Durai Raj ... Petitioner /
De-facto Complainant
Vs.

1.The State Rep. by
The Inspector of Police,
District Crime Branch,
Tirunelveli District.
(Crime No.20 of 2017) ... 1st Respondent /
Complainant

2.Selvaraj ... 2nd Respondent /
Accused No.3



PRAYER: Criminal Original Petition is filed under Section 439(2) of the Code of Criminal Procedure, to cancel the bail granted by the learned Special Judicial Magistrate (Land Grabbing), Tirunelveli, in Cr.M.P.No.6051 of 2017, vide order dated 20.11.2017.

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For Petitioner : Mr.R.Anand
(in both the CrI.O.Ps.)

For R1 : Mr.A.Robinson
(in both the CrI.O.Ps.) Government Advocate
(Criminal side)

For R2 to R4 : Mr.S.R.A.Ramachandran
(in CrI.O.P.(MD)No.16411/2017)

For R2 : No Appearance
(in CrI.O.P.(MD)No.17320/2017)

COMMON ORDER

The respondents 2 to 4 in Cr.O.P.(MD)No.16411 of 2017 are Accused Nos.2 to 4 in Crime No.20 of 2017. The second respondent in CrI.O.P.(MD)No.17320 of 2017 is the third accused in the said crime number.

2.Now, the petitioner/de-facto complainant has filed these Criminal Original Petitions to cancel the order of anticipatory bail granted by the learned District and Sessions Judge, Tirunelveli, in Cr.M.P.No.5611 of 2017, dated 17.11.2017 and cancel the order of bail granted by the learned Judicial Magistrate No.I, Tirunelveli, in Cr.M.P.No.6051 of 2017, respectively.

3.The learned counsel representing the case of the de-facto complainant submitted that the Courts below without considering the aspect that the alleged fraud committed by the respondents/accused casually, came to the conclusion that the dispute with regard to the case is civil in nature and therefore, granted anticipatory bail and bail in favour of the above accused. In order to substantiate the claim, he relied on a judgment of our Hon'ble Apex Court in *Puran Vs. Rambilas* and another [Appeal (CrI.)Nos.599 and 600 of 2001, dated 03.05.2001], in which, our Hon'ble Apex Court clearly held that at the stage of granting bail, detailed examination of evidence and elaborate documentation of the merits of the case while passing orders on bail application has to be taken into account. Now, applying the principles laid down by our Hon'ble Apex Court with the cases on hand, the Courts below granted anticipatory bail and bail during the time when at the stage, the investigation is not completed. So, it is impossible to look into the matter with regard to evidence and other materials relied on by the prosecution.

<https://hcservices.ecourts.gov.in/hcservices/>

4.In this aspect, in *Kalyan Chandra Sarkar Vs. Rajesh Ranjan Alias Pappu Yadav* and another reported in 2004 (7) SCC 528, wherein



our Hon'ble Apex Court has held that the factors which are required to be considered by the Court before granting bail are; (a) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, (b) reasonable apprehension of tampering with the witness or apprehension of threat of the complainant, and (c) *prima facie* satisfaction of the Court in support of the charge.

5. Further, in the case of State of U.P. Through CBI Vs. Amarmani Tripathi reported in 2005 (8) SCC 21, the Hon'ble Apex Court has held as follows:

"18. We may also refer to the following principles relating to grant or refusal of bail stated in Kalyan Chandra Sarkar vs. Rajesh Ranjan, 2004 (7) SCC 528: (SCC pp.535-36, para 11)

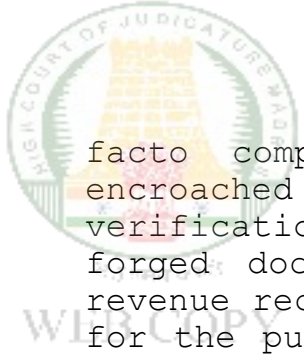
"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for *prima facie* concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) *Prima facie* satisfaction of the court in support of the charge. (See Ram Govind Upadhyay vs. Sudarshan Singh [2002 (3) SCC 598] and Puran vs. Rambilas [2001 (6) SCC 338])."

6. Now, considering the guidance given by our Hon'ble Apex Court in the abovesaid judgments, it is seen that the Courts below based on the documents, came to the conclusion that the dispute between the petitioner and the respondents is civil in nature. Further, the <https://hcservices.courts.gov.in/hcservices/> came to the conclusion that custodial interrogation is not necessary for completing the investigation. In this aspect, on going through the averments made in the FIR, it is seen that the de-



facto complainant clearly alleged that the respondents/accused encroached western side of his house and thereafter, on verification, the first accused in the alleged offence created a forged document and thereafter, mutations were effected in the revenue records. So, according to him, the evidence to be collected for the purpose of completing the investigation are available only in the form of documents. The *mens rea* and dishonest intention has to be identified only at the time of trial, particularly, after going through the evidence put forth by the prosecution. Only due to that reason, this Court holds that the anticipatory bail and bail granted are not a perverse one. Accordingly, the orders passed by the Courts below do not warrant any interference by this Court. Hence, these Criminal Original Petitions are dismissed.

Sd/-

Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar

To

- 1.The District and Sessions Judge,
Tirunelveli.
- 2.The Special Judicial Magistrate (Land Grabbing),
Tirunelveli.
- 3.The Judicial Magistrate No.I,
Tirunelveli.
- 4.The Inspector of Police,
District Crime Branch,
Tirunelveli District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Cr1.O.P. (MD) Nos.16411 and 17320 of 2017
09.02.2018

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KK/SV MMS/SAR 4/19.02.2018/ 4P- 6C/