



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

Tuesday, the Eighteenth day of December Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) No.21934 of 2018

1.M. MAHENDRA BHOOPATHI

2 M. NITHIYA

... PETITIONERS / ACCUSED NOS.1 & 2

Vs

STATE REP.BY ITS

THE INSPECTOR OF POLICE,

DEVATHANAPATTI STATION,

THENI DISTRICT.

(IN CRIME NO. 453 OF 2018) ... RESPONDENT / COMPLAINANT

For Petitioners : MR.J.LAWRANCE Advocate

For Respondent : MR.K.SUYAMBULINGA BHARATHI,
Government Advocate(Crl. Side)

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

ORDER : The Court Made the following order :-

The petitioners, who apprehend arrest at the hands of the respondent police for the alleged offences punishable under Sections 420 and 294(b)(ii) of IPC., in Crime No.453 of 2018, seek anticipatory bail.

2. The case of the prosecution is that due to money dispute between the petitioners and the defacto complainant, the petitioners said to have assaulted the defacto complainant and also cheated him.

3. The learned counsel appearing for the petitioners would submit that the petitioners, who are husband and wife, running a hotel, in the name and style of 'Nithya Hotel'. Due to exigency of business, they have entered into a lease agreement with one Balasubramanian, on 16.10.2016, for a loan of Rs.5 Lakhs and had pledged their house property. For the same property, on 01.09.2018, they had again taken loan from one Kasimayan / the defacto complainant, for a sum of Rs.9 Lakh. Kasimayan had to pay the balance 8 Lakhs. Admittedly, the said Kasimayan has paid only one Lakh. Coming to know about the earlier lease agreement, the said Kasimayan and Balasubramanian on 04.12.2018 had attacked the 1st



petitioners and ransacked the entire hotel by causing damages for which the 1st petitioner's mother had lodged a complaint on 04.12.2016, which was registered in Crime No.452 of 2018, for the offenses under Sections 448, 427 and 323 IPC., and the time of occurrence is mentioned as 6.00 p.m., and the same was reported before the Police at 7.00 p.m., The defacto complainant had given a complaint to the respondent at 7.30 p.m., as though the occurrence had taken place at 5.30 p.m., pre-mentioning the time of occurrence. But the complaint had been received only at 9.30 p.m. Obviously, the defacto complainant wants to cover up his misdeeds of ransacking the hotel of the petitioner, this complaint has been lodged. It is a known fact that persons, who lend money, entered into a lease agreement for the purpose of loan, as security, in the case default arises in the loan, is usurp the property.

4. The learned Government Advocate (crl.side) would submit that due to money dispute between the petitioners and the defacto complainant, the petitioners said to have assaulted the defacto complainant and also cheated him. Investigation in this case is still pending.

5. I have heard the learned counsels appearing on either side and perused the materials available on record.

6. Considering the above facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioners, with certain conditions;

7. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on his appearance, before the learned Judicial Magistrate, Periyakulam, on condition that the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the learned Magistrate concerned and on further condition that;

[a] if the petitioners failed to surrender before the said Magistrate within a period of fifteen days, this Order shall stand automatically cancelled.

[b] the petitioners shall report before the respondent police, daily at 10.00 a.m., for a period of two weeks, and thereafter, as and when required, for interrogation.

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

[d] the petitioners shall not abscond either during investigation or trial.

[e] 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 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]**.



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

sd/-
18/12/2018

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/ TRUE COPY /

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

TO

1. THE JUDICIAL MAGISTRATE,
PERIYAKULAM.
 2. DO THRO' THE CHIEF JUDICIAL MAGISTRATE,
THENI DISTRICT.
 3. THE INSPECTOR OF POLICE,
DEVATHANAPATTI STATION,
THENI DISTRICT.
 - 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.
- +1. CC to MR.J.LAWRANCE Advocate SR.No.23555

ORDER
IN
CRL OP(MD) No.21934 of 2018
Date :18/12/2018

AE/VR SAR1/27.12.2018/3P/6C