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

Tuesday, the Eleventh day of December Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) Nos.20928 and 20930 of 2018

P. MANIKANDAN ... PETITIONER / ACCUSED A2
IN CRL OP(MD) No.20928 of 2018

P.PANDIAN ... PETITIONER / ACCUSED A1
IN CRL OP(MD) No.20930 of 2018

Vs

STATE THROUGH
THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
THENI DISTRICT
IN CRIME No. 52 of 2018 ... RESPONDENT / COMPLAINANT
IN CRL OP(MD) No.20928 of 2018

(*)IN CRIME NO.52 OF 2018 ... RESPONDENT / COMPLAINANT
IN CRL OP(MD) No. 20930 of 2018

V.ARUNADEVI ... PETITIONER/INTERVENER/
DEFACTO COMPLAINANT
IN CRL MP(MD) No. 9963 & 9964 of 2018
IN CRL OP(MD) No. 20930 of 2018

For Petitioner : MR.C.MAYILVAHANA RAJENDRAN Advocate
IN CRL OP(MD) No. 20928 of 2018

MR.R.RAJARATHINAM, Advocate for
MR.C.RAMESH, Advocate
IN CRL OP(MD) No. 20930 of 2018

For Respondent : MR.S.CHANDRASEKAR, ADDITIONAL PUBLIC PROSECUTOR
IN BOTH THE PETITIONS.

For Intervener : MR.D.VEERAKATHIRAVAN, Senior Counsel for
MR.K.MUTHUMALAI
IN CRL MP(MD) No. 9963 & 9964 of 2018
IN CRL OP(MD) No. 20928 of 2018

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

ORDER : The Court Made the following order :-

The petitioners, who are A2 & A1 respectively Crl.O.P.(MD) Nos.20928 & 20930 of 2018, apprehend arrest at the hands of the respondent police for the alleged offences punishable under Sections 120(b), 406, 420, 468 and 471 IPC., in Crime No.52 of 2018 and seek anticipatory bail.

2. The case of the prosecution is that during 2012, A1's wife one Vijaya and the defacto complainant Arunadevi had purchased the property in Karungkattankulam Village, Chinnamanur, through a registered sale deed. The defacto complainant and the said Vijaya had executed a power deed in favour of A1, in respect of the above land on 10.12.2012, in Document No.5584/2012. As per the power, A1 has to sell 10 plots of that property and even five years thereafter, he had not informed anything with regard to sale of the plots. On suspicion about the same, the petitioner made a discrete enquiry and came to know that during the year 2018 had registered sale deeds. In the sale deeds, 'Life Certificate' had been enclosed in which the defacto complainant's signature has been forged and the defacto complainant's photo has been affixed, without her permission and this Life Certificate had been given by A2 / Doctor Manikandan, as though she had appeared before him and signed the same. Hence, she had preferred the complaint.

3. Mr.R.Rajarathinam, the learned counsel appearing for A1 and Mr.C.Mayilvahana Rajendran, learned counsel appearing for A2 would submit that the defacto complainant's husband Elangovan and the petitioner are business partners and there was disputes regarding land transaction earlier and A1 had preferred a complaint before the District Crime Branch, who had registered the case in Crime No.12 of 2018 and after investigation a charge sheet against him, before the learned Judicial Magistrate, Theni, in C.C.No.153 of 2018 is filed. According to A1, the defacto complainant had executed a power of attorney vide Doc.No.845/12 on 14.02.2012. Thereafter, A1 had executed a sale deed in favour of several persons, based on the power of attorney. The life certificate of the defacto complainant was given by A2. Moreover, the purpose of life certificate produced before the Registrar is whether the principle is alive. In this case, the defacto complainant is the principle and the petitioner had enclosed the life certificate with bonafideness and he has not committed any offence. The power of attorney is still in existence and it has not been cancelled. The contention of A1 is that the defacto complainant's husband had misappropriated and cheated the funds of A1.

4. He would further submit that A1's wife and the defacto complainant were running a finance in the name of 'Lakshmi Finance', which was in control and management of defacto complainant's husband, who had not only misappropriated the funds of the finance business, by making false representation and creating documents with

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false particulars, had executed a sale deed, A1 lodged a complaint against the defacto complainant's husband and on completion of investigation, charge sheet filed, which is pending trial. As a counterblast to the same, the said Elangovan had lodged the above complaint using his wife. Insofar as A2 is concerned, he is the Senior Assistant Surgeon at Kuppan Aarasipatti Village and carry on his private practice at Thevaram. He had issued the life certificate, which is a genuine one. Due to the dispute and enmity between A1 and the husband of the defacto complainant, A2 has been falsely implicated in this case.

5. Mr.Veerakathiravan, the learned Senior Counsel appearing for the intervenor would submit that when the defacto complainant had lodged a complaint on 24.04.2018, against the accused, it came to be registered only on 22.11.2018. He admits that Elangovan / husband of the defacto complainant / A1 jointly doing business and had purchased the properties in Karunkattukulam Village and a power of attorney was executed by the defcto complainant in respect of the above lands. Using the power of attorney, housing plots were sold by the first accused. There seems to be some hatred developed between the said Elangovan and the first accused. A1 had lodged a complaint against the defacto complainant's husband in Crime No.12 of 2018 before the District Crime Branch, Theni and in Crime No.118 of 2018, on the file of Inspector of Police, Chinnamanur Police Station, Theni. He further submits that when the defacto complainant's husband moved an anticipatory bail petition before the Sessions Court, the accused had filed intervening petition and vehemently opposed the same. Further, he submit that the defacto complainant was running pillar to post for getting anticipatory bail and bitter feud were existing between them. No person went along with the first accused wife for getting life certificate from the second accused and in the life certificate no specific date has been mentioned. Using the life certificate, A1 had executed three sale deeds, for total sale consideration of Rs.14,00,000/- and the sum apportioned to the defacto complainant has not been made. Further, no reason has been given why the life certificate has been obtained from the Doctor at Kuppanapatti Village, which is situated 12 km., away from the Chinnamanur, when there are other doctors available and hence, the sale deeds were executed based on forged life certificate and are not genuine and the defacto complainant had sent notice to the officials of Revenue and Registration Departments, Periyakulam, to find out with the correctness of the document, custodial interrogation is necessary in the case. The learned Senior Counsel vehemently opposed the anticipatory bail applications of the accused.

6. Mr.S.Chandrasekarn, the learned Additional Public Prosecutor, appearing for the State would submit that initially the first accused and the defacto complainant's husband were doing business together. The defacto complainant and the first accused wife had purchased the property jointly in her name. The defacto complainant's husband was running a finance business along with

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accused wife and there were several transactions between them. Due to some misunderstanding in the business, rivalry and enmity had arose between them, which had lead to the first accused lodged a complaint against the defacto complainant's husband and the defacto complainant had lodged a complaint against the accused. During preliminary enquiry, the disputed signature was sent to the Regional Forensic Laboratory and the report was submitted to the Court. Based on the report, the case was registered.

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

8. On perusal of the Regional Forensic Laboratory report, it is found that specimen, admitted and questioned documents signatures were sent to the Forensic Laboratory and it had verified the same and given opinion that questioned signatures differ. On further perusal of the report it is found that admitted signatures and questioned signatures sent were all photocopies. The report itself could not be taken as substantial proof. It is an opinion. The offences are all document based and the documents are available with the investigating agency and with the concerned Department. Further, the petitioners have no access to the same. On the above factual scenario, this Court is inclined to grant anticipatory bail to the petitioners, with certain conditions;

9. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on their appearance, before the learned Judicial Magistrate, Theni, on condition that the petitioners shall execute each 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

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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.

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sd/-
11/12/2018

(*)Amended as per the order of this Honourable Court made in CRL MP(MD) No. 9953/2018 in CRL OP(MD) No. 20930/2018, Dated 10.12.2018.

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

TO

1 THE JUDICIAL MAGISTRATE
THENI

2 DO THROGUH THE CHIEF JUDICIAL MAGISTRATE
THENI

3 THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
THENI DISTRICT

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

+2. CC to MR.C.MAYILVAHANA RAJENDRAN Advocate SR.No.23012 & 23094
+1. CC to MR.C.RAMESH Advocate SR.No.23011

ORDER
IN
CRL OP(MD) No.20928 of 2018
Date :11/12/2018

MSI/PN-AC/SAR-I/14.12.2018-5P/8C