

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.1193 of 2019

S.Natarajan

S/o.G.Subramani Iyer

... Petitioner/Defacto Complainant

Vs.

1. S.Ravirathinam
S/o.S.R.Selvaraj

2. The State rep. by
The Inspector of Police,
Central Crime Branch,
Team - XVI-A (Crime No.434/2015)
Vepery, Chennai - 600 007.

... Respondents/3rd Accused, Complainant

Prayer: Criminal Original Petition filed under Section 439(2) Cr.P.C. to cancel the order of bail dated 18.12.2018 passed in Crl.M.P.No.199 of 2018 in Cr.No.434 of 2015 by the Special Court for exclusive trial of land grabbing offences No.II, Periyamet, Chennai - 600 003.

For Petitioner : Mr.C.S.Dhanasekaran

For Respondents

For R1 : Mr.K.M.Vijayan, Senior Counsel
For Ms.R.T.Shyamala

For R2 : Mrs.M.Prabhavathi
Additional Public Prosecutor

ORDER

This petition has been filed to cancel the bail granted to the first respondent in Crl.M.P.No.199 of 2018 by the Special Court for exclusive trial of land grabbing offences No.II, Periyamet, Chennai, by an order dated 18.12.2018.

2. The case of the prosecution is that the property situated at Survey No.84/1A, bearing Door No.3/545, East Coast Road, Neelangarai, Chennai, originally belongs to the father of the petitioner and after his demise, it was inherited by his

legal heirs. The first respondent and his mother Kudiyarasu Devi, his brothers S.Suresh Kumar, S.Rajarathinam had claimed the title over the property depending upon the document No.2626 of 2000 on the file of the Sub Registrar Office, Neelankarai. On the strength of the above said document, they filed suit in O.S.No.9662 of 2001 on the file of the VII Assistant City Civil Court, Chennai and the same was dismissed. The appeal preferred by them in A.S.No.707 of 2006 on the file of the V Additional City Civil Court, Chennai was also dismissed and it confirmed that those persons have no rights over the property. On knowing all the facts, again the first respondent executed the lease deed with M/s.Tek Smart Group and the same has been registered in Document No.2551 of 2015. Again one S.Ravirathinam and S.Sureshkumar have executed settlement deeds in favour of their minor daughters and sons and the same were registered as Document Nos.3323 of 2015 and 3324 of 2015, respectively, thereby the accused persons with an intention to grab the property by fabricating those documents and committed those offences. Hence the complainant.

3. The learned counsel appearing for the petitioner submitted that on the above said complaint a case has been registered in Crime No.434 of 2015 by the second respondent Police herein for the offences punishable under Sections 420, 465, 467, 468, 471 r/w 120-B of IPC. He further submitted that on 15.12.2018, the first respondent was arrested and remanded to judicial custody. Thereafter, he filed bail petition and the same was ordered on 18.12.2018, on the following conditions :-

"9. On considering the above facts and circumstances this Court is inclined to grant bail to the petitioner with the following conditions :-

a) The petitioner shall execute a bond for sum of Rs.10,000/- with two sureties each for a likesum.

b) The sureties shall affix their photograph and left thumb impression in surety bond with production of Aadhar Card and Ration Card.

c) The petitioner shall report before the respondent/police daily at 10.00 am., until further order and for interrogation if necessary.

d) The petitioner shall not tamper with the evidence or witness during investigation and also should not abscond from appearance before this Court at the time of trial"

3.1. He further submitted that the first respondent

committed very serious offence of forgery and used the fabricated document as genuine, in which he is not entitled for the bail after the clear verdict of the civil Courts. Therefore, the entire matter is not civil in nature and the offences committed by the first respondent clearly attract as per the allegations. Without considering the above facts and circumstances, the learned Magistrate granted bail to the first respondent that too without jurisdiction. He further submitted that the offences registered as against the first respondent is punishable for life imprisonment for the offences under Sections 467 and 468 of IPC. Therefore, the learned Magistrate has no power and jurisdiction to enlarge the first respondent on bail. Therefore, he sought for cancellation of bail granted to the first respondent.

4. Per contra, the learned Senior Counsel appearing on behalf of the first respondent submitted that the first respondent is the bona fide purchaser of the land situated situated at Survey No.84/1A, bearing Door No.3/545, East Coast Road, Neelankarai, Chennai, ad measuring 1.50 acre and the same was purchased from Krishanarathiammal and Santhanalakshmi Ammal by a registered sale deed dated 15.09.2000 and the same was registered as Document No.2626 of 2001 in the office of Sub Registrar, Neelankarai, based on the compromise memo entered between them. He further pointed out that the offence under Sections 468, 471 are triable by the first class Magistrate. Therefore, when the Magistrate has power to remand the first respondent, he has power to release the accused on bail, though all the offences are triable by the first class Magistrate. Further he submitted that whatever the conditions imposed by the learned Magistrate while granting bail were duly complied with by the first respondent. Therefore, he sought for dismissal of this petition.

5. The learned Additional Public Prosecutor appearing for the second respondent - Police submitted that on the complaint lodged by the petitioner, a case was registered in Crime No.434 of 2015 for the offences under Sections 420, 465, 467, 468, 471 r/w 120-B of IPC as against the first respondent and others. Thereafter, the first respondent was arrested and subsequently he was released on bail by the Court below on certain conditions and the same were complied with by him.

6. Heard Mr.C.S.Dhanasekaran, learned counsel appearing for the petitioner, Mr.K.M.Vijayan, learned Senior Counsel appearing for the first respondent and Mrs.M.Prabhavathi, learned Additional Public Prosecutor appearing for the second respondent.

7. This petition has been filed to cancel the bail granted to the first respondent by an order dated 18.12.2018 in Crl.M.P.No.199 of 2018, on the file of the Special Court for exclusive trial of land grabbing offences No.II, Periyamet, Chennai in Crime No.434 of 2015, registered for the offences under Sections 420, 465, 467, 468, 471 r/w 120-B of IPC on the file of the second respondent Police. The first respondent was arrested and remanded to judicial custody on 15.12.2018. Therefore, the first respondent moved bail petition before the learned Magistrate. While the first respondent was enlarged on bail, the learned Magistrate imposed conditions that the first respondent shall report before the second respondent daily at 10.00 am., until further orders. He duly complied with the conditions and subsequently the said condition was relaxed.

8. Now the point for consideration is that whether the learned Magistrate has power to grant bail to the first respondent or not?

9. The offences registered in Crime No. 434 of 2015 are under Sections 420, 465, 467, 468, 471 r/w 120-B of IPC. Insofar as the offences 467 is concerned fabrication of valuable security, will etc., the accused shall be punishable with imprisonment of life or imprisonment for ten years and fine. The said offence is non cognizable, non bailable, non compoundable and triable by the first class Magistrate concerned. Therefore, though the offences punishable for imprisonment for life, it is triable by the first class Magistrate. Therefore, the Special Court for exclusive trial of land grabbing offences No.II, Periyamet, Chennai, has power to enlarge the accused on bail. In fact the very constitution of Land Grabbing Offence Court is under challenge before the Hon'ble Supreme Court of India and the matter is pending. Therefore, the powers and jurisdictions of the said Court has to be decided by the Hon'ble Supreme Court of India. Insofar as the other facts are concerned, the nature of allegations are civil in nature and admittedly there are civil proceedings and writ petitions are pending. Therefore this Court finds no illegality or infirmity in the order passed by the learned Magistrate and the present petition is liable to be dismissed

10. Accordingly, this criminal original petition is dismissed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

rts

To

1. The Presiding Officer
Special Court for exclusive trial
of land grabbing offences No.II,
Periyamet, Chennai

2. The Inspector of Police,
Central Crime Branch,
Team - XVI-A,
Vepery, Chennai - 600 007.

3. The Public Prosecutor,
High Court, Madras.

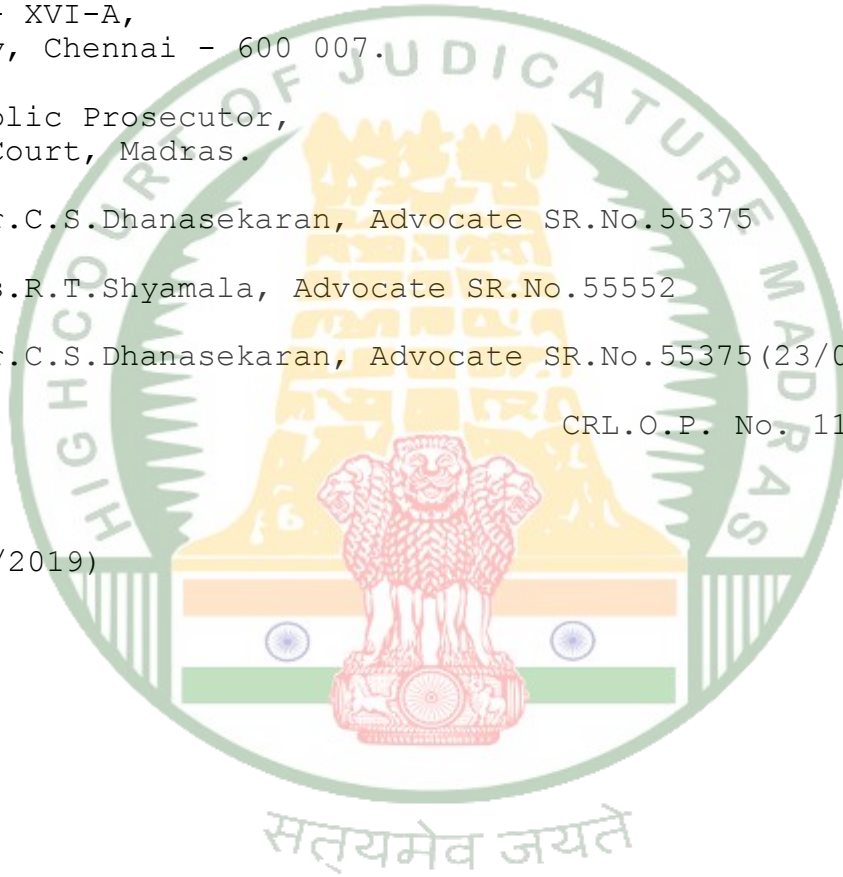
+1cc to Mr.C.S.Dhanasekaran, Advocate SR.No.55375

+1cc to Ms.R.T.Shyamala, Advocate SR.No.55552

+4cc to Mr.C.S.Dhanasekaran, Advocate SR.No.55375 (23/07/2019)

CRL.O.P. No. 1193 of 2019

NMI (CO)
GMY (22/07/2019)



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