

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twenty Fifth day of July Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice G.K. ILANTHIRAIYAN

CRIMINAL ORIGINAL PETITION No.15084 of 2019

1 NAJMA
2 MOHAMED FAKIM
3 RAVI

[PETITIONERS / ACCUSED]

Vs

THE INSPECTOR OF POLICE [RESPONDENT]
CENTRAL CRIME BRANCH, EDF I,
TEAM II, VEPERY, CHENNAI.
CR.NO.105 OF 2019

For Petitioner : M/S.KANNAN R. Advocate

For Respondent : M/S.M.PRABHAVATHI, ADDITIONAL PUBLIC PROSECUTOR

For Intervenor : M/S R.JOHN SATHYAN, Advocate

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 offences punishable under Sections 406, 420 & 506 (i) of IPC in Crime No.105 of 2019, seek anticipatory bail.

2.The case of the prosecution is that the petitioners and husband of the defacto complainant entered into a joint venture agreement on 29.11.2010 with 50:50 undivided shares as well as the constructed area. Thereafter, the petitioners have fabricated another joint venture agreement dated 29.11.2010 as if changed the share over the defacto complainant as well as the petitioners. Thereafter, they also without his consent taken the possession of the first floor originally which was allotted to the defacto complainant of the disputed property. Hence, the complaint.

3.The learned counsel for the petitioner would submit that the third petitioner owned the subject disputed property measuring an extent of 2400 sq.ft. situated at bearing door No.2/29(old), Rangarajapuram 4th Street, Saidapet, Chennai - 600015 comprised in S.No.2/14 & 1/10(A) (1) Venkatapuram Village, Saidapet Taluk, Chennai District by way of registered sale deed dated 29.04.2010 bearing document No.2090/10 on the file of SRO, Adyar from Sri.Selvarangaraj & others. Thereafter, they entered into a joint venture agreement with the husband of the defacto complainant on 29.11.2010.

Accordingly, the defacto complainant also constructed the entire premises in accordance with the joint venture agreement and they were allotted second floor of the premises and half of the portion in the ground floor of the premises. Thereafter, the some dispute between them. On 25.02.2013, they were entered into a Memorandum of Undertaking in which he agreed to return the Power of Attorney executed at the time of entered into a joint venture agreement, further undertaking to the sale amount shall be adjusted in the sale consideration of undivided 600 sq.ft. He further submitted that the defacto complainant set up one person called Baskar claiming a tenant, took possession of the first floor of the building and filed a suit in the year 2014 before the City Civil Court, Chennai and subsequently, and the same was dismissed for default. Further, after a lapse of five years, now the present complaint has been lodged with falsely foisted against the petitioners. Therefore, he prays to grant anticipatory bail to the petitioners.

4.The learned counsel for the intervener/defacto complainant, submitted that originally flat owned by the petitioner on 29.11.2010, they entered into a joint venture agreement 50:50 undivided share as well as the constructed area. As per the joint venture agreement, the first floor goes to the promoter, namely, the defacto complainant and the second floor goes to the land owner and half of the portion goes to the promoter, namely, the defacto complainant. Thereafter, the said joint venture agreement forged by the petitioners and changed the shares as if the first floor goes to the petitioner and the second floor goes to the promoter and thereafter, as per original joint venture agreement they also rented out the first floor to Baskar when he was about to take possession of the first floor of the property, the petitioner locked the premises by another lock. They did not allow the tenant as well as the defacto complainant into the premises. Now the defacto complainant is staying at Bangalore. The petitioners taken the possession of the entire property and cheated the defacto complainant. Further, he vehemently opposed to grant anticipatory bail to the petitioners and also insisted to take action to fabrication of documents of joint venture agreement and also Memorandum of Undertaking. He further submitted that he never executed any document dated 25.02.2013. Therefore, he vehemently opposed to grant anticipatory bail to the petitioners.

5.The learned Additional Public Prosecutor would submit that there are two joint venture agreements. The summons under Section 41A of Cr.P.C. issued to the petitioners, A2 alone was appeared whereas A1 and A3 was not appeared for enquiry. However, she vehemently opposed to grant anticipatory bail to the petitioners.

6.It is seen that the petitioners are owners of the land measuring 2400 sq.ft. situated at bearing door No.2/29(old), Rangarajapuram 4th Street, Saidapet, Chennai - 600015 comprised in S.No.2/14 & 1/10(A) (1) Venkatapuram Village, Saidapet Taluk, Chennai District. Admittedly, the petitioners and husband of the defacto complainant have entered into a joint venture agreement dated 29.11.2010. As per the joint venture agreement, the defacto complainant completed the construction on payment of amount to the

petitioners. According to the case of the prosecution, as per the joint venture agreement, first floor goes to the defacto complainant and second floor goes to the original owner of the property. According to the learned counsel for the petitioners that there is another joint venture agreement subsequently original joint venture has been changed by the parties. According to that, the first floor goes to the land owner and second floor goes to the defacto complainant. Accordingly, the possession of the first floor has been taken possession by the petitioners.

7. Admittedly, the defacto complainant did not take any possession of any of the floor as per the joint venture agreement. There is a dispute between the parties in respect of the portion allotted as per the joint venture agreement. Now, the respondent also issued summons under Section 41A of Cr.P.C to the petitioners to attend the enquiry.

8. Considering the above fact and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioners on condition that the petitioners shall hand over the possession of the ground floor and half of the portion, namely 400 sq.ft. constructed area and the entire second floor to the defacto complainant within a period of two weeks and on handover the aforesaid possession, if not comply with the condition, the order stands automatically cancelled.

9. Accordingly, the petitioners 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 on which the order copy made ready, before the learned Chief Metropolitan Magistrate, Egmore, Chennai on condition that each petitioner 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 respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand and on further condition that:

[a] the petitioners and the two sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioners shall handover the possession of the ground floor and half of the portion, namely 400 sq.ft. constructed area and the entire second floor to the defacto complainant within a period of two weeks and on handover the aforesaid possession, if not comply with the condition, the order stands automatically cancelled.

[c] the petitioners shall report before the respondent police with all documents daily at 10.30 a.m., for a period of four weeks and thereafter as and when required for interrogation.

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

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

[f] 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].

[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

-sd/-

25/07/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)

High Court, Madras - 600 104.

TO

1 THE CHIEF METROPOLITAN
MAGISTRATE, EGMORE, CHENNAI

2 THE OFFICER INCHARGE,
CITY CIVIL COURT, CHENNAI.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE
CENTRAL CRIME BRANCH, EDF I,
TEAM II, VEPERY, CHENNAI.

+2 CC to M/S.KANNAN R. Advocate on payment of necessary charges
Sr.15455

CRL OP.15084/2019

Date :25/07/2019

RVR 31/07/2019