

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twenty Second day of February Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice N. ANAND VENKATESH

CRIMINAL ORIGINAL PETITION No.25651 of 2018

S.CHANDRAIAH

[PETITIONER / ACCUSED]

Vs

[RESPONDENT]

THE STATE REP BY ITS,
THE SUB INSPECTOR OF POLICE,
FOREGERY DOCUMENT WING,
CCB, TEAM 5, VEPERY,
CHENNAI.
CR.NO.178 OF 2018.

For Petitioner : M/S.B.KUMAR, Senior Counsel, for
M/S.S.SENTHIL Advocate

For Respondent : MRS. M.PRABHAVATHI, Additional Public Prosecutor

For Intervener : M/S.A.SARAVANAN, Advocate

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

ORDER : The Court Made the following order :-

The petitioner/1st accused, who apprehend arrest at the hands of the respondent police for the offence punishable under Sections 420, 465, 468, 471 r/w Section 34 of IPC in Crime No.178 of 2018 on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution is that Memorandum of understanding were signed on 15.02.2015 containing certain clauses. However, subsequently the petitioner brought one more copy of the Memorandum of Understanding in a stamp paper and got the signature of the de-facto complainant and de-facto complainant believed the Memorandum of Understanding to contain the same clauses and therefore, signed the same. However, later it came to be known that the Memorandum of Understanding contained certain clauses, which was not there in the original Memorandum of Understanding, thereby, the de-facto complainant was cheated. The further case of the prosecution is that the petitioner had inserted a hand written Annexure to the Memorandum of Understanding and taken advantage of the same and this was not even signed by the de-facto complainant. This was also used while filing a petition under Section 9 of the Arbitration Act before

this Court and interim orders were obtained by the petitioner. Therefore, by manipulation of the Memorandum of Understanding, the petitioner has attempted to usurp and grab the lands belonging to the de-facto complainant. This fraudulent Memorandum of understanding was also submitted to the bank for opening an escrow account.

3. As per the direction given by this Court, the petitioner and the defacto complainant have handed over the original of the Memorandum of Understanding dated 15.01.2015. The learned Senior Counsel appearing for the defacto complainant submitted that there is a discrepancy regarding certain clauses in the original Memorandum of Understanding itself. The learned senior counsel submitted that even though the signature found in the original MOU produced by the petitioner is not disputed, these signatures were taken from the Defacto complainant without revealing the changes made in the clauses contained in the Memorandum of Understanding. The learned Senior counsel appearing for the petitioner submitted that the defacto complainant had subscribed the signature in the MOU only after understanding the clauses contained in the MOU.

4. The next dispute is with regard to the hand written Annexure to the MOU dated 15.02.2015. According to the learned senior counsel appearing for the defacto complainant, the very signature found in the annexure is disputed. The learned senior counsel further added that the defacto complainant came to know about this Annexure only after the same was filed by the petitioner while moving an application under Section 9 of the Arbitration Act before this Court. On the other hand, the learned senior counsel appearing for the petitioner submitted that the defacto complainant was completely aware about the Annexure and it was in fact signed by the defacto complainant. The learned Senior Counsel further added that this Annexure was also acted upon and 16 Sale Deeds covering various plots in the Annexure were executed by the Defacto Complainant to the purchasers of the plots, who were introduced by the petitioner. Therefore, the learned Senior Counsel submitted that the defact complainant cannot now feign ignorance about the Annexure.

5. The next dispute is regarding the original annexure. According to the learned Senior Counsel appearing on behalf of the petitioner, the original annexure is in possession of the defacto complainant. According to the learned Senior Counsel appearing for the defacto complainant, the original Annexure is not with the defacto complainant and in fact the very signature found therein is being disputed.

6. The original MOU in possession of the petitioner and the defacto complainant, have been handed over to this Court and this Court in turn has handed over these original documents to the learned Additional Public Prosecutor, who in turn will hand it over to the Investigating Officer for the purpose of further investigation. The issue as to whether the hand written Annexure was acted upon by the parties, will be clearly revealed if the purchasers of the property to whom 16 plots have been sold are examined by the police. These

purchasers will reveal as to whether they directly approached the defacto complainant and purchased the property or they were introduced by the petitioner to the defacto complainant. Their statement will have a direct bearing on the genuineness of the hand written Annexure which has now become the subject matter of controversy.

7. This is a fit case where the respondent police can resort to the procedure under section 41 A of the Cr.P.C and the above findings of this Court can be kept in mind during the course of investigation.

8. Considering the facts and circumstances of this case and also the specific stand taken by the respondent Police to resort to the procedure under Section 41A of the Code of Criminal Procedure, this Court directs the respondent Police to follow the procedure set out in Section 41A of the Code of Criminal Procedure. The respondent Police shall issue an appearance notice to the accused in the form and manner set out in the proceedings of the Director General of Police, Tamil Nadu, viz., the Circular Memorandum in RC.No.000252/Crime 4(2)/2019 dated 30.01.2019, as amended vide Circular Memorandum RC.No.000252/Crime 4(2)/2019 dated 07.02.2019. The petitioner shall comply with the terms of the notice and shall also co-operate with the investigation.

9. If the petitioner complies and continues to comply with the terms of the notice, he shall not be arrested for the offences referred to therein. If, however, arrest is deemed necessary after the appearance of the petitioner, the Investigation Officer shall record reason for such an eventuality as contemplated under Section 41A (3) of the Code of Criminal Procedure, and shall adhere to the directions set out by this Court in **State .Vs. Nakeeran Gopal** reported in **[2019 1 LW (Cr1.) 26]**.

10. If the petitioner evades service of appearance notice or fails to comply with the terms of the notice or appears to be unwilling to identify himself when called upon, it shall be open to the respondent Police to proceed under Section 41A(4) of the Code of Criminal Procedure, to arrest the accused.

11. This Criminal Original Petition is disposed of with the aforesaid directions.

-sd/-

22/02/2019

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 PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

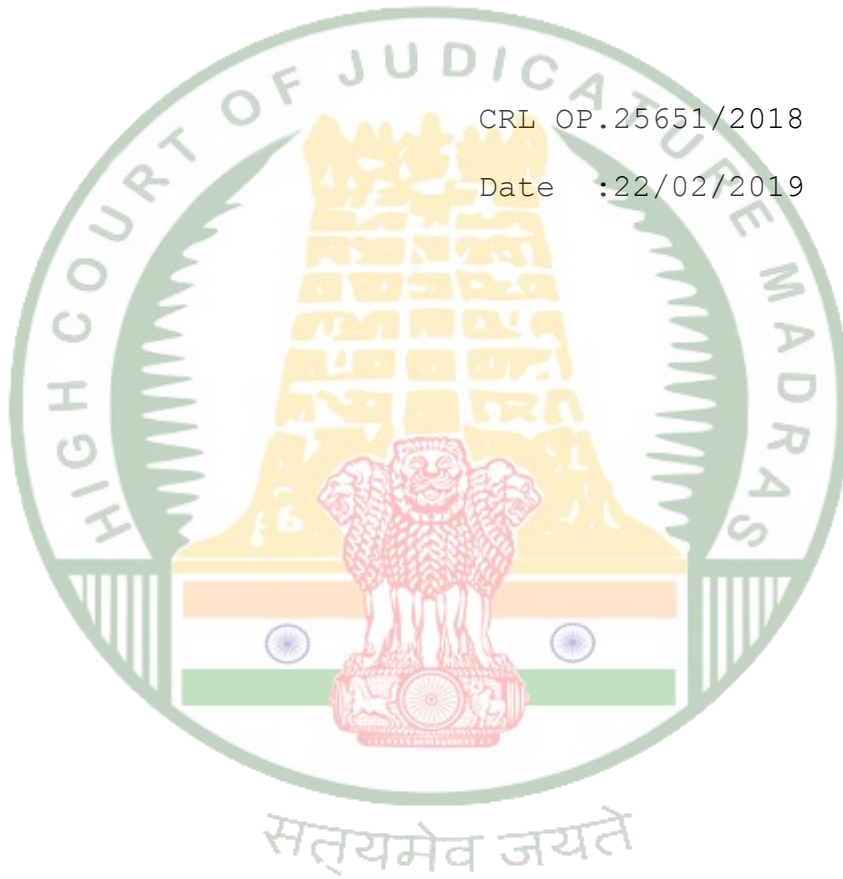
2 THE SUB INSPECTOR OF POLICE,
FOREGERY DOCUMENT WING,
CCB, TEAM 5, VEPERY,
CHENNAI.

+1 CC to M/S.S.SENTHIL Advocate on payment of necessary charges
SR.NO.3981

CRL OP.25651/2018

Date :22/02/2019

TA-26/02/2019



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