



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

Friday, the Eleventh day of January Two Thousand Nineteen

WEB COPY

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) No.21430 of 2018

P.BALU

... PETITIONER / ACCUSED RANK NO.3

Vs

STATE REP. BY  
THE INSPECTOR OF POLICE,  
LAND GRABBING SPECIAL CELL,  
THENI.  
CRIME NO.18/2015

... RESPONDENT / COMPLAINANT

For Petitioner : MR.S.ALAGUSUNDAR Advocate

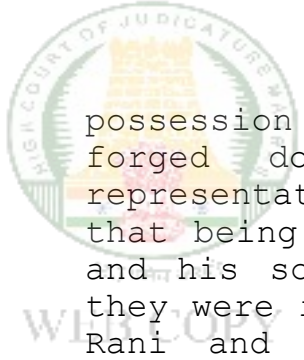
For Respondent : MR.K.SUYAMBULINGA BHARATHI,  
Government Advocate (Crl.Side)

PETITION FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner/A3, who was arrested by the respondent police on 17.10.2018, for the offences punishable under Sections 294(b), 419, 420, 447, 468, 471 and 506(ii) of IPC., in Crime No.18 of 2015, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the defacto complainant's property worth about to Rs.10,00,000/- was taken away by the accused, by impersonating the defacto complainant and when the same was questioned, he was threatened to be finished off. The defacto complainant was having 4 acres and 24 cents of punja land, in Sy.No.2353/1 in his possession and he was carrying on the agricultural work in it. During the year 1995 of the said 4 acrs and 25 cents of land, power was given to one Prince Peter George. The same was sold by him to one Joseph in the year 1996. These two persons had joined with the petitioner, brother of the defacto complainant, on 23.12.2012 had given a power and based on the power, the petitioner's brother Balu had sold the same to his son Ashok Kumar. Hence, these people had conspired and joined together and by impersonating, prepared forged documents and had taken away the property. When a Panchayat was held, the accused stated that though only documents have been created, the lands are still in



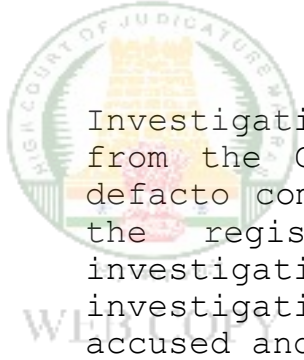
possession and enjoyment of the petitioner and promised that the forged documents would be cancelled. Believing their representation, the defacto complainant was keeping quiet. While that being so, on 14.09.2014, at about 10.00 a.m., the complainant and his sons Jeyabalan and Sivakumar and his family members when they were in their field, the petitioner, his son Ashok Kumar, wife Rani and brother's daughter-in-law armed with knife, Logs had entered into the defacto complainant's field, abused him and forced out of him from his land. Hence, he had preferred a complaint to the Superintendent of Police for the forgery created by the accused and using the same attempted to take away his land.

3. The learned counsel appearing for the petitioner would submit that the petitioner was arrested on 17.10.2018 and he has been remanded to custody. There was a oral partition between the family members of the defacto complainant and the petitioner and the petitioner had filed an anticipatory bail petition before this Court along with other accused. This Court had granted the relief of anticipatory bail to the said accused viz., A4 & A5. The defacto complainant had filed cancellation of anticipatory bail petition and this Court had directed the petitioner to produce the original power of attorney, dated 30.10.1995. The petitioner was unable to find out and produce the said documents before this Court. Hence, the anticipatory bail already granted to the petitioner has been cancelled and he was arrested.

4. The learned counsel continuing further would submit that the petitioner has filed a civil suit, which is pending before the District Munsif Court, Andipatti, in O.S.No.139 of 2014 regarding the said property. In the suit also, the petitioner has not filed original power of attorney, dated 30.10.1995. The categorical contention of the petitioner is that the original power of attorney has been misplaced. The core of contention is the power of attorney, dated 30.10.1995, which had been executed by the defacto complainant in favour of Peter George S/o.P.P.George regarding the property comprised in Survey No.2353/1, to the extent of 4 acres, 24 cents in patta No.2147. Based on which, the petitioner is said to have purchased the property and thereafter, transferred to his son. The power of attorney dated 30.10.1995, which has been registered as Doc.No.260 of 1995 before the Sub Registrar's Office, Uthamapalayam.

5. The learned counsel appearing for the defacto complainant would submit that the petitioner, who is in possession of the original document, has not produced the same, since it will be a clinching evidence against the petitioner and commission of the above offence. The contention of the petitioner that the original is not with him cannot be countenanced.

6. The learned Government Advocate (crl.side) appearing for the State has filed status report reiterating the contents in the status report and contentions of the defacto complainant. He would further submit that major parts of the investigation is over and the



Investigating Officer is awaiting for original records and opinion from the Government Pleader is obtained and finger print of the defacto complainant has been collected and sent for comparison with the registered document of the defaco complainant. The investigation has been followed up diligently and on completion of investigation, charge sheet would be filed. There are totally six accused and the petitioner / A3 in this case.

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

8. Admittedly, the dispute is between brothers, The petitioner is the brother of the younger brother and civil suit is pending between them. Further, the petitioner has filed an affidavit wherein the petitioner had affirmed that the original power of attorney is not available and only the certified copy of the same is available. Further, he undertakes that the petitioner will not object for certified copy of Document in question to be taken into consideration as primary evidence and will not take the defence that primary document is not available and also with regard to the contents and particulars, which are available in the original document. The affidavit filed by the petitioner will form part of this order.

9. Considering the rival submissions and on the specific undertaking affidavit filed by the petitioner that he would not dispute the genuineness, its contents and particulars in any proceedings including the civil proceedings, this Court is inclined to grant bail to the petitioner, subject to certain conditions;

10. Accordingly, the petitioner is ordered to be released on bail on his executing 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 Special Court for Land Grabbing Cases, Theni and on further condition that:

[a] the petitioner shall appear before the respondent police daily at 10.30 a.m., until further orders, for interrogation.

[b] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[c] the petitioner shall not abscond either during investigation or trial.

[d] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner 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]**.



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

sd/-  
11/01/2019

WEB COPY

/ TRUE COPY /

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

TO

- 1 THE SPECIAL COURT FOR LAND GRABBING CASES,  
THENI.
- 2 THE INSPECTOR OF POLICE,  
LAND GRABBING SPECIAL CELL, THENI.
- 3 THE SUPERINTENDENT,  
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

- +1. CC to M/S.S.ALAGUSUNDAR Advocate SR.No. 833  
+2. C.C. to M/S.D.MALAICHAMY, Advocate SR.No. 836 & 837

ORDER  
IN  
CRL OP(MD) No.21430 of 2018  
Date :11/01/2019

JM/VR/SAR 3/11.01.2019/4P/8C