



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

Date : 26/07/2019

WEB COPY

PRESENT

The Hon`ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD) . No.7992 of 2019

T. Selvarajesh

... Petitioner/Accused No.1

Vs

State rep.by,
The Inspector of Police,,
District Crime Branch,
(Land Grabbing Cell),
Tirunelveli.

... Respondent/Complainant

Batharsha

... Petitioner/
Defacto Complainant
in Crl.MP (MD) No.5972/2019

For Petitioner : M/s.D.Vijayaragavan, Advocate.

For Respondent : Mr.V.Neelakandan,
Additional Public Prosecutor

For Intervenor : Mr.N.Mohamed Asif, Advocate

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

PRAYER :-

For Anticipatory Bail in crime no.16/2019 on the file of the respondent police.

ORDER : The Court Made the following order :-

This petition has been filed by the petitioner, seeking anticipatory bail, for the alleged offences punishable under Sections 419, 420, 423, 465, 468 & 471 of I.P.C in Cr.No.16 of 2019 on the file of the respondent Police.

2.The case of the prosecution is that one Sabina Rafiq, daughter of the defacto complainant, is the owner of the property bearing plot Nos.602, 603 and 604 in S.No.49 at Parpakulam village



admeasuring 21.42 cents, by virtue of a registered sale deed dated 10.03.1995 said to have been executed by a power agent namely G.Mohanraj on behalf of the original owners viz., one Venkata Varathachariyar and others. The defacto complainant, for the purpose of obtaining a loan, applied for the encumbrance certificate and found that the accused Nos.1 & 2 have created a forged sale deed and registered in document No.1908/2018 on the file of the Sub-Registrar of Morappanadu. It is further stated that the property is worth about Rs.32 lakhs and sold to the first accused by impersonating the defacto complainant's daughter Sabina Rafiq, with a view to grab the land and hence, a complaint was lodged and case was registered in Cr.No.16 of 2019 on the file of the respondent Police under Sections 419, 420, 423, 465, 468 & 471 of I.P.C.

3.The learned counsel for the petitioner has submitted that the petitioner is a bonafide purchaser and there is no negligence on his part. He further submitted that if impersonation has been made, the most affected person is the petitioner only. He further submitted that before purchasing the property, the petitioner has verified the encumbrance certificate and only after satisfying that no encumbrance has been made, he has purchased the property for valuable consideration of Rs.31,05,900/-. He further submitted that at the time of executing the sale deed, other accused persons have produced original sale deed executed by the said Mohanraj, power of attorney in favour of Sabina Rafiq and the same has been verified by the Sub-Registrar, Morappanadu and signed as the said "document is verified" and only based on the said endorsement, the petitioner has purchased the property. He further submitted that the petitioner has not committed any offence and further, custodial interrogation of the petitioner is not necessary. He further submitted that the petitioner has already sent a complaint to the Superintendent of Police, Thoothukudi on 26.04.2019 against the persons who have executed the sale deed in his favour and also the persons who have attested the said document and also the Sub-Registrar, Morappanadu. But, sofar, no action has been taken on the said complaint. Therefore, he prayed to grant anticipatory bail to the petitioner.

4.Per contra, the learned counsel for the intervenor/defacto complainant has submitted that though the petitioner has stated in his complaint, which was said to have been sent by him to the Superintendent of Police, Thoothukudi that before purchasing the property, he has verified the encumbrance certificate, he has not produced the encumbrance certificate before this Court. He further submitted that a cursory look of the document said to have been produced by other persons to the petitioner dated 10.03.1995 would clearly show that the said document is not an original one. In the said document, though an endorsement has been made by the Sub-Registrar as 'verified', he has not stated that he has verified the said document with the copy available in his office. He further submitted that the said endorsement shows that he

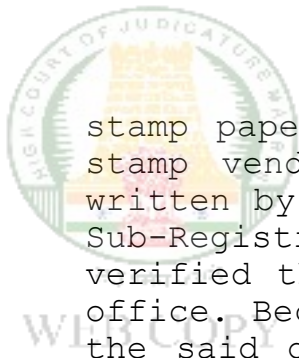


has verified the said document only. Even though the petitioner has stated that he has sent a complaint to the Superintendent of Police, Thoothukudi against other accused persons and the Sub-Registrar on 26.04.2019, thereafter, he has not taken any steps to register the case either by filing petition before this Court or before the Magistrate and the said act would show that only for the purpose of this case, he has sent the said complaint. He further submitted that if really the petitioner is not having any intention to retain the defacto complainant's daughter's property, after coming to know the fact that he has not purchased the property from the original owner, at least he should have come forward to retransfer the property to the defacto complainant or cancel the said document and that the conduct of the petitioner would show that he has intentionally committed the said offence. He further submitted that though the property is worth about more than Rs.32 lakhs, the sale deed dated 23.10.2018 would show that he had purchased the said property only for Rs.6,50,000/- and that the said fact also would show that he is not a bonafide purchaser and hence, he strongly opposed this petition.

5.The learned Additional Public Prosecutor appearing for the respondent has adopted the arguments advanced by the learned counsel for the intervenor/defacto complainant and he also opposed this petition.

6.In the complaint said to have been sent by the petitioner to the Superintendent of Police against five accused persons, dated 26.04.2019, he has categorically admitted that he has been cheated by the other accused persons. So, it appears that he has admitted that he has purchased the property from the persons, who are not having any valid title. But even thereafter, he has not come forward to transfer the property to the original owner or to cancel his sale deed.

7.In the said complaint, he has stated that before purchasing the property, he has applied for encumbrance certificate and verified the same and only after satisfying that the other accused persons have valid title to sell the property, he has purchased the said property, but he has not produced encumbrance certificate. Though the learned counsel for the petitioner has produced one document said to have been produced by the other accused persons dated 10.03.1995 (sale deed said to have been executed by one power agent namely G.Mohanraj on behalf of the original owners viz., one Venkata Varathachariyar and others), the petitioner has not stated about this fact in his complaint, which was sent by him to the Superintendent of Police. The learned counsel for the petitioner has produced the aforesaid document for perusal of this Court. A cursory look of the said document would clearly show that the said document is not a genuine one. In the stamp papers, the treasury seals are not clear and smudged. The



stamp papers themselves appears to be fake. The signature of the stamp vendor and endorsement made on the 2nd page appears to be written by the same person. Merely one endorsement was made by the Sub-Registrar, as 'verified', that does not mean that he has verified the said document with the copy which is available in his office. Because, he has not specifically stated that he has verified the said document with the copy available in his office. At the most, it can be said that the Sub-Registrar has verified the said document, while registering the sale deed dated 23.10.2018. Further, admittedly, the property is worth about Rs.32 lakhs, but the sale deed executed in favour of the petitioner shows that it was executed only for Rs.6,50,000/-.

8.Taking into consideration of the aforesaid facts, this Court is of the view that the petitioner has not made out a case for granting anticipatory bail. Hence, this Court is not inclined to grant anticipatory bail to the petitioner.

9.Accordingly, this petition is dismissed.

sd/-
26/07/2019

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

TO

1.THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
(LAND GRABBING CELL),
TIRUNELVELI.

2.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. CC to M/S.N.MOHAMED ASIF, Advocate SR.No.12407

ORDER
IN
CRL OP(MD) No.7992 of 2019
Date :26/07/2019

VS

PK/PN/SAR-4/07.08.2019 : 4P/4C