

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

Date : 08/07/2019

PRESENT

The Hon`ble Mr.Justice P.RAJAMANICKAM

CRL OP (MD) . No.9422 of 2019
and
CRL MP (MD) No.6187 of 2019

1. Muniasamy
2. Ganesh @ Vigneshkumar
3. Thilagavathi
4. Jothi
5. Hariharajegan Petitioners/Accused 1 to 5

Vs

State rep.by,
The Inspector of Police,
Vilathikulam Police Station,
Thoothukudi.
Crime No.116/2019. Respondent/Complainant

Sivamuthukrishnan Petitioner/Intervener/
Defacto Complainant
in Crl.MP (MD) No.6187/2019

For Petitioners: M/s.V.Nirmal Kumar,
Advocate.

For Respondent : Mrs.M.Anantha Devi,
Government Advocate (Crl.Side)

For Intervenor : Mr.K.P.Krishnadoss,
Advocate

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

PRAYER :-

For Anticipatory Bail in Crime No.116/2019 on the file of the respondent police.

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 147, 148, 452, 294 (b), 427, 379 and 506 (ii) of IPC, in Crime No.116 of 2019, seek anticipatory bail.

2. Heard both sides.

3.The learned counsel appearing for the petitioners has submitted that the first petitioner was originally a tenant under the defacto complainant and one Harihara Jegan in respect of entire portion of the shop. He further submitted that subsequently, the first petitioner had purchased the share of Harihara Jegan and only in respect of remaining portion, the defacto complainant is the owner/landlord. He further submitted that even though the tenancy was expired on 21.06.2016, the first petitioner continues to be a tenant in respect of portion which belongs to the defacto complainant and also paid the rent through Demand Draft. He further submitted that since the defacto complainant has accepted the rent, it has to be presumed that the first petitioner is in possession of the said portion as a tenant by holding over and only through process of law, the first petitioner can be evicted. He further submitted that instead of filing suit or control proceedings, the defacto complainant tried to take the possession by force and hence, the first petitioner has filed a suit in O.S.No.16 of 2019 on the file of the District Munsif Court, Vilathikulam, and also filed an application in I.A.No.2 of 2019 and obtained ad-interim injunction on 26.06.2019 and thereafter, the defacto complainant gave a false complaint on 30.06.2019 as if the petitioners herein have assaulted him. He further submitted that the petitioners have not committed any offence. He further submitted that already a same kind of complaint was lodged by the defacto complainant against the petitioners herein and the same was registered in Crime No.106 of 2019 and a counter case also has been registered in Crime No.107 of 2019. He further submitted that the defacto complainant is frequently giving false complaints against the petitioners with a view to take the possession of the property forcibly and therefore, he prayed to grant anticipatory bail to the petitioners.

4.The learned counsel appearing for the Intervenor has submitted that originally the lease agreement was entered between the defacto complainant and his cousin namely, Harihara Jegan as one party and the first petitioner as another party on 21.07.2015 for a period of 11 months and the said period was already expired and even thereafter, the first petitioner refused to hand over the possession to the defacto complainant. However, he fairly conceded that the first petitioner has purchased half of the property from the co-landlord namely Harihara Jegan and only in respect of remaining half share, the defacto complainant is the owner. He further submitted that the petitioners refused to vacate the said portion and when the same was questioned by the defacto complainant, the petitioners have assaulted the defacto complainant and criminally intimidated him. He further submitted that the petitioners have damaged the dividing wall and also caused a loss to the tune of Rs.45,000/- and therefore, he strongly opposed this petition.

5. The learned Government Advocate (Criminal side) has adopted the argument advanced by the learned counsel for the defacto complainant. She also opposed this petition for granting

anticipatory bail to the petitioners.

6. It is seen from the copy of the lease agreement produced by the learned Government Advocate (Criminal side), the first petitioner entered into a lease agreement with the defacto complainant and one Harihara Jegan on 21.07.2015 in respect of the shop bearing Door No.57/c for Rs.18,000/- as rent per month and the said tenancy will expire after 11 months. Admittedly during the subsistence of the said tenancy, the first petitioner had purchased half of the property from the co-landlord namely, M. Harihara Jegan and the remaining portion is concerned, the defacto complainant is the landlord. It is seen from the copy of the order passed by the learned District Munsif, Vilathikulam, the first petitioner herein has filed a suit in O.S.No.16 of 2019 against the defacto complainant and one Sethuramasamy and also filed an application in I.A.No.2 of 2019 seeking interim injunction. The learned District Munsif has granted ad-interim injunction on 26.06.2019 against the defacto complainant and another. Only thereafter, it appears that, the defacto complainant has lodged a complaint on 30.06.2019. Since already the matter has been seized by the Civil Court and injunction also has been granted, the defacto complainant instead of approaching the said Court to evict the said interim order, it appears, he straight away approached the petitioner and demanded for delivery of possession. Taking into consideration of the aforesaid facts, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

7. 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 of receipt of a copy of this order, before the learned Judicial Magistrate, Vilathikulam, Thoothukudi District, on condition that the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties each for a like sum to the satisfaction of the respondent Police or to the Police Officer, who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

(i) If the petitioners fail to surrender before the concerned Magistrate within a period of 15 days, this order shall stand automatically cancelled.

(ii) the petitioners shall report before the respondent police daily at 10.30 a.m for a period of three weeks and thereafter, as and when required before the respondent police for interrogation.

(iii) the petitioners shall not tamper with evidence or witness either during investigation or trial.

(iv) the petitioners shall not abscond either during investigation or trial.

(v) 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].

(vi) If the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

sd/-
08/07/2019

/ TRUE COPY /

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

TO

1. THE JUDICIAL MAGISTRATE
VILATHIKULAM, THOOTHUKUDI DISTRICT
2. DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE,
TUTICORIN DISTRICT.
3. THE INSPECTOR OF POLICE
VILATHIKULAM POLICE STATION,
THOOTHUKUDI.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. CC to M/S.V.NIRMAL KUMAR Advocate SR.No.11341

ORDER
IN
CRL OP (MD) No.9422 of 2019
and
CRL MP (MD) No.6187 of 2019
Date : 08/07/2019

dss
PK/VR/SAR-4/15.07.2019 : 4P/6C