



WEB COPY

CRL OP(MD) . No.9825 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 02/08/2019

PRESENT

The Hon`ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD) . No.9825 of 2019

1. Mohamed Ibrahim
2. Mohamed Asarap Ali
3. M.M.Sirajidheen @ Sirajudeen

... Petitioners/Accused Nos.1,2,3

Vs

State Rep by
The Inspector of Police,
District Crime Branch ,
Ramanathapuram District
(Crime No. 17 of 2019).

... Respondent/Complainant

Syed

... Intervene Petitioner/Petitioner

For Petitioners : M/s.Rm.Arun Swaminathan,
Advocate.

For Intervenor : Mr.T.Lajapathi Roy
Advocate

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

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

PRAYER :-

For Anticipatory Bail in Crime No.17 of 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
465,468,461,420,419 r/w.120-B of IPC seeks anticipatory bail.

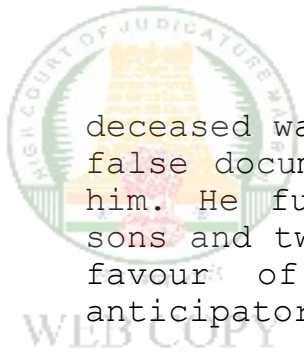
2. Heard both sides.

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3. The learned counsel appearing for the petitioners has submitted that one Mohamed Haneefa was under the care and custody of the first petitioner. He further submitted that the said Mohamed Haneefa got four sons and two daughters, except one daughter all others are settled at Malayasia and no one is taking care of the deceased and hence the deceased Mohamed Haneefa himself had appointed the first petitioner as his care taker for him. He further submitted that on 21.02.2018, the said Mohamed Haneefa has executed a Hiba document in favour of the first petitioner in respect of the property situated in Perungalam Village. He further submitted that though Mohamed Haneefa got so many properties he executed Hiba only in respect of two properties considering the service rendered by the first petitioner. He further submitted that on 21.02.2019 due to his ill health he was admitted in a private hospital namely Vadamalayan Hospital, Madurai at 07.30 p.m by the first petitioner and subsequently he died on 05.03.2018 in the hospital itself. He further submitted that in pursuance of the said Hiba the first petitioner has transferred the said Patta in his name in respect of the aforesaid properties and subsequently the first son had lodged two complaints before the Anti Land Grabbing Special Cell, Ramanathapuram and those complaints were closed after enquiry and thereafter claiming that he is the power of attorney of all the legal heirs one Syed (defacto complainant) lodged a complaint before the Judicial Magistrate No.II, Ramanathapuram and he same has been forwarded to Uchipuli Police Station under Section 156(3) Cr.P.C and based on the same First Information Report has been registered in Crime No.178 of 2019 under Sections 465, 468, 461, 420, 419 r/w. 120-B of IPC on 29.03.2019 and later the said First Information Report has been transferred to the respondent police and new crime number has been assigned by the respondent Police as Crime No.17 of 2019. He further submitted that the petitioners have not committed any offence. Hence, he prayed to grant anticipatory bail to the petitioners.

4. Per contra the learned counsel for the Intervenor/defacto complainant would submit that the first petitioner was appointed only as care taker for which he was paid Rs.15,000/- per month. He further submitted that on 21.02.2019 the deceased was admitted in the hospital at Madurai, but the first petitioner claims that on the very same day, the deceased had executed a Hiba document at Ramanathapuram before a Notary Public, that would create doubt over the genuineness of the said document. He further submitted that after creating the said document, the first petitioner within two months has got transfer of the patta in his name. Subsequently on appeal by the defacto complainant, the said patta was cancelled by the RDO on 05.12.2018. He further submitted that on 21.02.2018, one of the daughters of the deceased who is residing at Ramanathapuram has admitted the deceased in the hospital in Vadamalayan Hospital at Madurai. He further submitted that taking advantage that the



deceased was in the custody of the first petitioner, he has created false documents as if the deceased had executed Hiba in favour of him. He further submitted that since the deceased is having four sons and two daughters he could not have executed such document in favour of the first petitioner. Hence he opposed to grant anticipatory bail to the petitioners.

5. The learned Additional Public Prosecutor adopted the arguments advanced by the learned counsel for the intervenor/defacto complainant.

6. Admittedly the deceased appointed the first petitioner as his care taker and accordingly he discharged his duties as care taker till the death of the deceased. The documents produced by the learned counsel for the petitioners would show that on 21.02.2018 the first petitioner alone admitted the deceased in the Vadamalayan Hospital at Madurai. According to the learned counsel for the petitioners on 21.02.2018, the deceased had executed Hiba document at Ramanathapuram before Notary in the morning and only in the evening he developed some illness and hence he was taken to hospital and admitted there.

7. Taking into consideration the aforesaid facts and also the fact that even though two complaints were lodged by one of the sons of the deceased were closed by the Anti Land Grabbing Cell and the power of attorney has filed a complaint before the Judicial Magistrate No.II, Ramanathapuram and the same has been forwarded to the Uchupuli Police Station under Section 156(3) Cr.P.C and based on the same the Uchupuli Police Station, First Information Report has been registered and thereafter it was transferred to the file of the Anti Land Grabbing Special Cell and also the fact that even though First Information Report was registered on 03.07.2019, so far the respondent police has not taken any steps to secure the said document and sent the same to the forensic lab for getting expert's opinion, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

[8] Accordingly, the petitioners are ordered to be released on bail in the event of arrest or his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate No.II, Ramanathapuram on condition that the petitioners 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 to the Police Officer, who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

[a] if the petitioners fail to surrender before the concerned Magistrate within a period of 15 days, this order shall stand automatically cancelled.



[b] 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 for the interrogation.

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

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

[e] 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].

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

sd/-

02/08/2019

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

TO

1 THE JUDICIAL MAGISTRATE NO.II, RAMANATHAPURAM

2 DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE,
RAMANATHAPURAM DISTRICT.

3 THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH , RAMANATHAPURAM DISTRICT.

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

+1. CC to M/S.RM.ARUN SWAMINATHAN Advocate SR.No.12857

+1. CC to Mr.T.Lajapathi Roy, Advocate/Intervenor SR.No.12935

ORDER

IN

CRL OP(MD) No.9825 of 2019

Date :02/08/2019

AM/PN/SAR-1/14.08.2019/4P-7C

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