BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 14/08/2019
PRESENT
The Hon'ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD). No.10709 of 2019

1.P.G.Sankaranarayanan
2.S.Jothi ... Petitioners/Accused Nos.2 & 5

Vs

State rep.by
The Inspector of Police,
District Crime Branch,
Dindigul District,
(in Crime No.20/2019). ... Respondent/Complainant

V.S.Ganesan ...Internening Petitioner/Respondent/ Defacto Complainant in Crl.M.P.(MD)NO.7175 of 2019

For Petitioners: M/s.C.Arul Vadivel @ Sekar, Advocate.

For Respondent : Mr.A.P.G.OHM CHAIRMA PRABHU, Government Advocate(Crl.side)

For Intervenor : M/s.S.Vijayakumar, Advocate

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

PRAYER :-

For Anticipatory Bail in Crime No. 20 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 120 B, 406 and 420 of IPC, in Crime No. 20 of 2019, seek anticipatory bail.

2.Heard both sides.

3.The learned counsel appearing for the petitioners has submitted that the the first petitioner (A2) is the brother of A1 and the second petitioner (A5) is the wife of the first petitioner. He further submitted that one house property bearing Door No.34

situated in 1st Street, M.V.M Nagar, Chettinaickanpatti, Dindigul Taluk, was originally owned by one K.P.Ganesan, who is the father of the first petitioner and A1. He further submitted that after the death of the said Ganesan, the first petitioner and A1 succeeded to the said property and each of them entitled to half share in the said property. He further submitted that the first petitioner and A1 had mortgaged the said property with the State Bank of India, Nehruji Nagar Branch and subsequently, the first accused entered into a sale agreement with the defacto complainant on 25.02.2015 for selling his half share in the aforesaid house for Rs.1,10,00,000/- and received a sum of Rs.35,00,000/- as advance. He further submitted that since the mortgage was not discharged, the Bank has issued possession notice and the first petitioner has prepared to pay his share of debt, but the first accused could not pay his share and he instructed the defacto complainant to pay a sum of Rs.5,00,000/- to the first petitioner, so that, the first petitioner can pay the said amount to the Bank. and accordingly, the defacto complainant has issued a cheque for Rs.5,00,000/- dated 30.01.2017 in favour of the first petitioner and the first petitioner has encashed the said amount and paid loan to the Bank.

4.The learned counsel for the petitioners has further submitted that on 05.06.2015 itself, the first petitioner has issued a Lawyer's Notice to the first accused and also to the defacto complainant and subsequently, he has made a paper publication on 08.06.2015 giving caution to the public that he is having half share in the said property. But, his brother (A1) is trying to create encumbrance over the entire property. He further submitted that as per the FIR, the petitioners and the first accused have cllouded together and received a sum of Rs.40,00,000/- by cheating the defacto complainant by suppressing the earlier mortgage which was made with the Bank. He further submitted that since, the agreement itself was entered between the defacto complainant and the first accused and that too with regard to only half share of the aforesaid house, the petitioners are in no way connected with the said sale agreement. He further submitted that even as per the FIR, the defacto complaiant has paid a sum or RS.5,00,000/- through a cheque on 30.01.2017 to the first petitioner only as per the instructions given by the first accused and therefore, there is no privity of contract with the defacto complainant and the first petitioner. He further submitted that already two civil suits are pending in respect of aforesaid property and the petitioners have not committed any offence and only at the instigation of first accused with a view to grab the entire property, the defacto complainant has lodged a false complaint against the petitioners and therefore, he prayed to grant anticipatory to the petitioners.

5.Per contra, the learned counsel for the Intervenor/defacto complainant has submitted that after entering into a sale agreement by A1 with the defacto complainant on 25.02.2015, he has received a sum of Rs.35,00,000/- as advance. He further submitted that on 30.01.2017, the first petitioner has received a sum of Rs.5,00,000/-

from the defacto complainant and that itself would show that the petitioners herein have colluded with the accused No.1 and suppressed the mortgage which was created in favour of the State Bank of India and entered into a sale agreement with the defacto complainant and cheated the defacto complainant and received a sum of Rs.40,00,000/- and therefore, he prayed to dismiss the petition.

6.The learned Government Advocate (Crl.Side) has adopted the arguments advanced by the learned counsel for the Intervenor/defacto complainant and he also opposed this petition.

7.It is seen from the typed-set of papers filed by the learned counsel for the petitioners that on 25.02.2015, the first accused entered into a sale agreement with the defacto complainant in respect of half share in the aforesaid house for Rs.1,10,00,000/- and also received a sum of Rs.35,00,000/- as advance, from the defacto complainant. Subsequently, on 05.06.2015, the first petitioner has issued a Lawyer's Notice to the first accused as well as to the defacto complainant stating that he is having half share in the aforesaid house and also made a paper publication on 08.06.2015.

8.It is also to be pointed out that in the FIR, the defacto complainant has stated that before entering into a sale agreement with the first accused, he has verified the Encumbrance Certificate and in such a case, he would have had the knowledge with regard to the mortgage which was created in favour of the Bank. Therefore, the contention of the defacto complainant that the accused have suppressed the earlier mortgage, cannot be accepted. Further, even in the year 2015 itself, the first petitioner has issued a Lawyer's Notice and also a public notice and in such case also, the defacto complainant would have had knowledge that the first petitioner is having half share in the aforesaid house. Even in the FIR, it is stated that on 30.01.2017 only at the request of the first accused, the defacto complainant had issued a cheque for Rs.5,00,000/- in favour of the first petitioner. In the FIR, the defacto complainant, nowhere, has stated that he entered into a sale agreement with the first petitioner also.

9.Taking into consideration of all the aforesaid facts, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

10.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, No.II, Dindigul, 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 first petitioner 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. Considering the submission made by the learned counsel for the petitioners that the second petitioner is having a small child, she appearing before the respondent police for a period of three days and thereafter, as and when required before the respondent police for interrogation.

(ii) 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/-
14/08/2019

/ TRUE COPY /

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

TO
1 THE JUDICIAL MAGISTRATE NO.II,
DINDIGUL

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

3 THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
DINDIGUL DISTRICT

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

+1 CC to M/s.C.ARUL VADIVEL @ SEKAR,Advocate
(SR-13507[I] dated 14/08/2019)

ORDER IN
CRL OP(MD) No.10709 of 2019
Date :14/08/2019

DSS
ES/JC/SAR 1/22.08.2019/5P/6C