IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED on : 30.07.2020

PRONOUNCED on : 06.08.2020

CORAM

THE HONOURABLE MR. JUSTICE A. D. JAGADISH CHANDIRA

Crl.O.P.No.4804 of 2020

and Crl. M.P.No.2994 of 2020

Azizul Kareem
S/o. Abdul Malick ... Petitioner

Vs.

State Rep. by
The Inspector of Police,
Central Crime Branch,
Forgery Team No.V
Chennai.
CCB. Crime No.68 of 2020 ...Respondent

Prayer: Criminal Original Petition filed under Section 438 of Cr.P.C., to enlarge the petitioner/accused on anticipatory bail in the event of his being arrest pending investigation before the respondent police in CCB, Crime No.68 of 2020 on the file of the respondent police, Chennai.

For Petitioners	:	Mr.Krishnamurthy for Mr.O.S.Vijaya Sarathi
For Respondent	:	Mr. M. Mohamed Riyaz, Additional Public Prosecutor
For Intervenor	:	Mr.B.Vijay

ORDER

(This case has been heard through video conference)

The petitioner who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 420, 419, 465, 467, 468, 471, 120 of IPC read with 109 IPC in CCB Crime No.68 of 2020, on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution as per the defacto complainant P.S.Kirubakaran is that he is a resident of Pichanoor, Gudiyattam, Vellore District and along with his family members he owns the property, a vacant site at Old No.129, N.No.98, Coral Merchant Street, Mannadi, Chennai-600 001. It was leased out to one Azizul Kareem/accused/petitioner herein on 15.12.2012 for monthly lease of Rs.20,000/- and the advance was fixed at Rs.2 lakhs. Right from entering into the lease, the accused/petitioner herein was not regular in making payments and thereby, the defacto complainant had asked him to vacate the premise and during February 2019, he had agreed to vacate the land in three months. While so, in contravention of the assurance to vacate, the accused had fabricated a bogus unregistered sale agreement dated 02.06.2014 as if, the owners of the property namely P.G.Sivagnanam, P.N.Venugopal, P.N.Annamalai, P.G.Sundaramurthy, P.S.Gurunathan, P.S. Kirubakaran, P.S.Anandan, P.S.Padma had agreed to sell the property for Rs.27 lakhs and had received advance of Rs.23 lakhs from him. In the fabricated sale agreement, the address of the owners of the property had been shown as No.4, Jaffer Syrang Street, Mannady, Chennai-600 001 which was the address of a TASMAC shop. Further in the sale agreement, it had been shown as if, the owners have received the advance consideration in the following manner; Rs.5 lakhs on 03.03.2014, Rs.4 lakhs on 05.04.2014 and Rs.5 lakhs on 02.06.2014 and the accused Azizul Kareem had also created fabricated vouchers as if, the owners have acknowledged the receipts of the amounts by affixing their signatures, while the actual fact remains that out of the eight persons, P.S.Padma had died on 29.12.1989 and P.S.Gurunathan had died on 31.10.2010. Without knowing that the said persons had died earlier, the accused had fabricated the unregistered sale agreement dated 02.06.2014 and thereby, attempted to usurp the property worth Rs.5 Crores from the defacto complainant and his family members. The further averment in the complaint is that, it is the habit of the accused to create fabricated documents based on which had filed cases before Court and encumbered the properties. Further, in the fabricated unregistered sale agreement, one K.Kannan and Ajith have signed as witnesses and one Devanathan, Advocate/Notary had notarized as if, all the alleged owners have signed in his presence. Based on the complaint, the respondent police registered the case against the petitioner/accused for offences under Sections 420, 419, 465, 467, 468, 471, 120 of IPC read with 109 IPC.

3. The learned Counsel for the petitioner submitted that the petitioner is an innocent. In fact the petitioner entered in to a lease agreement with the defacto complainant on 15.12.2012 agreeing to pay monthly rent of Rs.20,000/- and had also gave Rs.2 lakhs as advance. While, the petitioner was in possession, the defacto complainant had approached the petitioner and offered to sell the property to him for a sale consideration of Rs.27 lakhs and had informed the petitioner that he along with seven other persons were the owners of the property. Believing that the defacto complainant was representing the other owners, the petitioner agreed to purchase the property and paid advance of Rs.23 lakhs by way of cash on various dates. Infact, the defacto complainant himself had prepared and brought the sale agreement with the signatures of the owners.

Believing the defacto complainant, the petitioner had paid the advance amount of Rs.23 lakhs at various dates. Thereafter, since the defacto complainant and his relatives did not come forward for registering the property as agreed upon, the petitioner had sent a legal notice through his Counsel on 01.03.2017 to register the property in favour of him after receiving the balance consideration. The owners neither replied the notice nor came forward to register the sale deed and thereby, the petitioner filed a suit for specific performance in C.S.No.212 of 2016 before the Hon'ble High Court and since the owners did not appear before the Court, despite service of notice this Court had passed an Ex-parte decree in favour of the petitioner. Later, the defacto complainant and his relatives on coming to know about the Ex-parte decree, had filed a petition to set aside the Ex-parte decree and while the litigation is pending, they have filed the present complaint with false averments to defeat the legal rights of the petitioner who has paid Rs.23 lakhs as advance. He would submit that the petitioner is also ready and willing to pay the balance amount and purchase the property and the entire case of the petitioner is borne out by documents and that the petitioner is prepared to appear before the respondent for investigation. He would further submit that since, civil suit is pending, a bar is created under Section 195(i)(b)(ii) to take cognizance of the offence on the complaint filed by the defacto complainant and in support of his contention, he relied upon the Judgement of the Hon'ble Supreme Court in the case of Iqbal Singh Marwah and another V. Meenakshi Marwah and another reported in (2005) 4 SCC 370. He would further submit that the defacto complainant has also taken proceedings against the petitioner for perjury and when the proceedings under Section 340 of Cr.P.C. are pending before the High Court, registering of the First Information Report would amount to double jeopardy and is hit by Article 20(2) of the Constitution of India. Further a civil dispute is attempted to be coloured as a case of fraud and it is attempted to be settled through police action. Hence, he prays for grant of anticipatory bail to the petitioner. In addition, a written submission has also been filed by the petitioner.

4. The learned Additional Public Prosecutor representing the respondent vehemently opposed stating that the petitioner has committed rank forgery by fabricating a unregistered sale agreement dated 02.06.2014 as if the defacto complainant and his relatives as co-owners of the property had entered into a sale agreement with him for selling their property and received Rs.23 lakhs as advance. By such fabrication, the accused attempted to knock down the property worth Rs.5 Crores. The fact remains that though the fabricated document is dated 02.06.2014, two persons out of the eight owners, were already dead on the alleged date. One P.S.Padma had died on 29.12.1989 and P.S.Gurunathan had died on 31.10.2010. Without knowing that two owners had died much earlier, the accused had fabricated the so called unregistered sale agreement dated 02.06.2014 and also fabricated vouchers as if they had acknowledged receipt of the amounts by affixing their signatures. Moreover, the owners are natives and residents of Gudiyattam in Vellore District whereas, the accused had shown their address as No.4 Jaffer Syrang Street, Mannadi, Chennai-600 001 which incidentally is the address claimed by

the accused to be his address in various litigations. Later, based on the false address shown in the fabricated document, he had sent notices through his Counsel and thereafter since the notices had returned, had filed a civil suit in CS.No.212 of 2016 before the High Court. But the fact remains that the address shown as that of the owners in the fabricated sale agreement is the address of a government TASMAC wine shop which was there in existence for about 25 years. Further the petitioner is a habitual offender engaged in similar offence of fabrication of documents. Earlier the petitioner had participated in an auction conducted by the Police Department and he was the successful bidder for taking the scrap belonging to Guindy Police Station whereas, he had furnished a bogus demand draft and taken away the scrap from Guindy Police Station. When the demand draft was produced before the bank for encashment, it was found that it was a fabricated one and based on a complaint given by the Inspector of Police, Guindy Police Station, a case in Crime No.76 of 2006 was registered against the petitioner and he was arrested and after filing of charge sheet, the case is pending trial in C.C.No.6339 of 2007 (New C.C.No.10020 of 2017). Further during the course of investigation, it has come to light that the petitioner in collusion with the Bailiff in the High Court, had shown as if, the notices were served on the owners at No.4, Jaffer Syrang Street, Mannady, Chennai-600 001 which as stated above is a wine shop. Later, based on the complaint given by the defacto complainant to the registry of the Court, an enquiry was conducted by the High Court and the Bailiff has been suspended. The petitioner had also filed a petition to quash the proceedings pending in C.C.No.10020 of 2017 pending on the file of the Learned Metropolitan Magistrate, CCB CID Cases, Egmore, Chennai. Strangely, in the quash petition, the petitioner has stated his address as No.4, Jaffer Syrang Street, Mannady, Chennai-600001. It is a clear case where the accused had not only fabricated documents but based on the fabricated documents played fraud on the Courts too. Further investigation reveals that the signature of the notary public in the fabricated sale agreement is also forged. The petitioner had by this ingenious method of fraud attempted to usurp the property worth Rs.5 Crores belonging to the defacto complainant. Knowingly very well the owners are not residents of Chennai, the petitioner had in all legal proceedings shown their address which is a wine shop. He would submit that the case relied on by the petitioner in Iqbal Singh Marwah and another V. Meenakshi Marwah and another reported in (2005) 4 SCC 370 regarding bar for taking cognizance on the complaint, will not be applicable to the present case, since, the fabrication of document has been done prior to filing of the suit. He would further submit that it is a case of rank forgery and that the custodial interrogation of the petitioner is very much essential since by forgery and fabrication of documents, the petitioner has attempted to knock down the property worth Rs.5 Crores. He would further submit that in a similar set of facts in a case reported in 2012 9SCC 235 in the case of Maruti Nivrutti Navale Vs. State of Maharashtra, the Hon'ble Supreme Court had dismissed the application for anticipatory bail. He would submit that in this case also the petitioner has not only committed fabrication of documents and forgery of signatures, but he has used those documents before the Court of Law and has also attempted to play fraud on Court and interfered with the administration of justice. Hence, he prays for the dismissal of the anticipatory bail.

5. Mr.B.Vijay, learned Counsel appearing for the Intervenor would submit that the defacto complainant along with his relatives who are normal residents Guidiyattam in Vellore District are the owners of the property at Old No.129, N.No.98, Coral Merchant Street, Mannadi, Chennai-600 001. The vacant site was leased out to the petitioner accused on 15.12.2012 for monthly lease of Rs.20,000/- and the advance was fixed at Rs.2 lakhs. The petitioner was not regular in making lease amount and thereby, the defacto complainant had asked him to vacate the premises. The accused being well aware that the defacto complainant and his relatives are residents of Gudiyattam in Vellore, created a fabricated sale agreement as if, the owners of the property are residing at No.4, Jaffer Syrang Street, Mannady, Chennai-600 001. The fact remains that the address is that of a wine shop which is there for about 25 years and it is not a residential place. Further, though the sale agreement is dated 02.06.2014, it is stated in the sale agreement that the owners have received advance amounts from 10.02.2014. The fact remains that two of the persons mentioned in the sale agreement namely P.S. Padma and P.S.Gurunathan have died much earlier i.e. on 29.12.1989 and 31.10.2010 respectively. The defacto complainant and his other relatives were not served with any legal notices since, the address in the notices were that of a wine shop and thereafter, the accused had also filed a suit in C.S.No.212 of 2017 for specific performance and he had managed with the Bailiff of the Court to show as if, the notices were also served on the dead persons and by that he had clandestinely obtained an ex-parte decree by playing fraud on the Court. On the complaint given by the defacto complainant, his relatives and legal heirs of the co-owners who have died, enquiry was initiated and the Bailiff has been suspended. He would submit that while the civil suit in C.S.No.212 of 2017 was pending before the High Court, the accused filed a suit for permanent injunction before the 1st Assistant City Civil Court, Chennai, in O.S.No.1385 of 2019 against the defacto complainant through the very same Counsel and strangely in that suit, the address of the defacto complainant has been given as No.86, Nari Murugappa Mudali Street, Pichanoor, Gudiyattam, Vellore District. By providence the defacto complainant came to know about the fraud committed by the accused and thereafter, necessary applications have been filed before the Hon'ble High Court to set aside the ex-parte dcree and the ex-parte decree has been set aside. He would submit that in that suit, the accused has given his address as Old No.129, N.No.98, Coral Merchant Street, Mannadi, Chennai-600 001 whereas, in the other proceedings, he has shown his address as No.4, Jaffer Syrang Street, Mannady, Chennai-600 001 which he has shown as the address of the defacto complainant and his relatives in the fabricated sale agreement and this fact will go to prove that the sale agreement is fabricated by the petitioner/accused. The accused given different addresses in different proceedings and that the allegation that the defacto complainant prepared the sale agreement is absolute falsity. He would submit that the petitioner is a habitual offender and he has been earlier arrested by the Chennai City police for furnishing a fake demand draft and removing the scrap

from the premises of the Guindy Police Station and the criminal case is pending against him.

6 . Heard the Counsels and perused the materials on record.

7. It is a case where a fraud is not only played on the defacto complainant and his family members but fraud has been played on the Court based on fabricated documents. Though some of the the alleged signatories have died much earlier, the unregistered sale agreement dated 12.06.2014 has been fabricated as if, dead persons received advance. By the fabricated document, the property worth Rs.5 Crores has been attempted to be knock down. Further when this Court had enquired the learned Counsel for the petitioner that how the advance amounts were paid, the learned Counsel is unable to produce even a scrap of paper to show that amount of Rs.23 lakhs was paid and no explanation is forth coming with regard to the address of the owners in the fabricated sale agreement which the accused claims to be his address in subsequent proceedings. Later, by using the fabricated documents, the petitioner has also played fraud on the Court and clandestinely obtained an ex-parte decree. The allegation against the petitioner/accused is for serious fraud, and moreover the petitioner is involved in a similar offence in respect of which, he is facing trial in C.C.No.10020 of 2017. Further, the decision in Iqbal Singh Marwah and another V. Meenakshi Marwah and another referred above, will not be applicable to the facts of the case since, the fabrication of the document has been done prior to the initiation of the suit and not during the proceedings. Moreover, the facts in this case are similar to the facts of the case in Maruti Nivrutti Navale Vs. State of Maharashtra, where the Apex Court held that custodial interrogation of the accused is necessary for further investigation.

8. In the opinion of this Court, custodial interrogation of the petitioner is very much required for further investigation. Therefore, this Court is not inclined to grant anticipatory bail to the petitioner.

9. Accordingly, this Criminal Original Petition stands dismissed. Subsequently, connected miscellaneous petition is closed.

-sd/-
06/08/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE CCB CB CID METROPOLITAN
MAGISTRATE, EGMORE,CHENNAI

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 STATE BY THE INSPECTOR OF POLICE,
CENTRAL CRIMEBRANCH FORGERY TEAM NO.V,
CHENNAI

CC to M/S.O.S.VIJAYA SARATHI Advocate on payment of necessary charges

CRL OP.4804/2020

and Crl. M.P.No.2994 of 2020

Date :06/08/2020

RD 18/08/2020