

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENATESH

Crl OP No.5187 of 2020

B.Kumaresan, (Age 46 years),
S/o Balashanmugham,
Proprietor, Ganesh Electricals,
No.1, New Street, Sakthi Nagar,
Porur, Chennai 600 116.

..Petitioner

/versus/

The State,
Represented by the
Inspector of Police,
K-3, Police Station,
Anna Nagar(East),
Chennai 600 040.

..Respondent

Prayer: Criminal Original Petition has been filed under Section 438 of Criminal Procedure Code to enlarge the petitioner/accused on bail in the event of his arrest in Crime No.144 of 2020 pending on the file of the respondent police.

For Petitioner :M/s Rupert Joshua Barnabas
For Respondent :Mr.M.Mohammed Riyaz,
Additional Public Prosecutor

ORDER

The petitioner, who apprehends arrest at the hands of the respondent police for the offence punishable under Sections 406 and 420 of IPC in Crime No.144 of 2020 on the file of the respondent, seek anticipatory bail.

2. The case of the prosecution is that one Munusamy was the power agent of A2. The defacto complainant intended to purchase the subject property and he is said to have paid a sum of Rs.15,00,000/- to A2 through the said Munusamy. The further case of the prosecution is that A2 had later cancelled the power of attorney and had settled the property in the name of his wife (A3). A3 is said to have in turn sold the property to A1. The further allegation that has been made in the complaint is that A1 had issued a cheque for a sum of Rs.15,00,000/- to the defacto complainant and when this cheque was deposited by the defacto complainant, it was dishonoured on the ground that stop payment instructions were issued by A1. On the complaint given by the defacto complainant, First Information Report was registered by the respondent police against all the three accused persons.

3.The learned counsel for the petitioner submitted that the petitioner has been added as A1 in this case. The learned counsel submitted that the petitioner had already given a complaint that one of his cheque leaf is missing. When this complaint was under enquiry, the defacto complainant had illegally misused the cheque leaf and filled it up and has proceeded to give a false case against the petitioner. The learned counsel submitted that it is the petitioner, who is the victim in the present case and unfortunately the respondent police without making any enquiry have proceeded to make the petitioner as an accused in the present case. The learned counsel concluded his argument by submitting that a case which is otherwise purely civil in nature has been given a criminal colour and it is a clear abuse of process of law.

4.Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that the petitioner was aware of the fact that the defacto complainant had paid an advance amount of Rs.15,00,000/- to A2 and the property which was supposed to be sold in favour of the defacto complainant, came to be sold ultimately in favour of the petitioner. Pursuant to the same, the petitioner had issued a cheque for

a sum of Rs.15,00,000/- in favour of the defacto complainant and conveniently had given stop payment instructions to the bank.

5.This Court has carefully considered the submissions on either side and the First Information Report registered by the respondent police.

6. It is seen from the complaint that the petitioner was nowhere in the scene, when the initial transaction took place between the defacto complainant and Munusamy, who is said to be the power agent of A2. Admittedly, the amount was also paid only to A2 and not to the petitioner. The petitioner came later in the scene when he purchased the property from A2. The petitioner has given a complaint that his cheque leaf is missing and therefore, stop payment instructions were given. There are completely two different independent transactions that had taken place in the present case and at the best, even if the allegation is taken to be true, it is only a case of dishonour of cheque in sofaras the petitioner is concerned.

6.Taking note of the fact and circumstances, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on

his appearance, within a period of fifteen days from the date on which the order copy made ready, before the learned Judicial Magistrate No.1, Poonnamallee and on condition that the petitioner shall execute a separate 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 the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which the petition for anticipatory bail shall stand dismissed and on further condition that:

(a) the petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass book to ensure their identity.

(c) the petitioner shall report before the respondent police, as and when required for interrogation.

(d) the petitioner shall not tamper with evidence or witness either during investigation or trial.

(e) the petitioner shall not abscond either during investigation or trial.

(f) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner 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).

(g) if the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

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Index:yes/no

Speaking order/non speaking order
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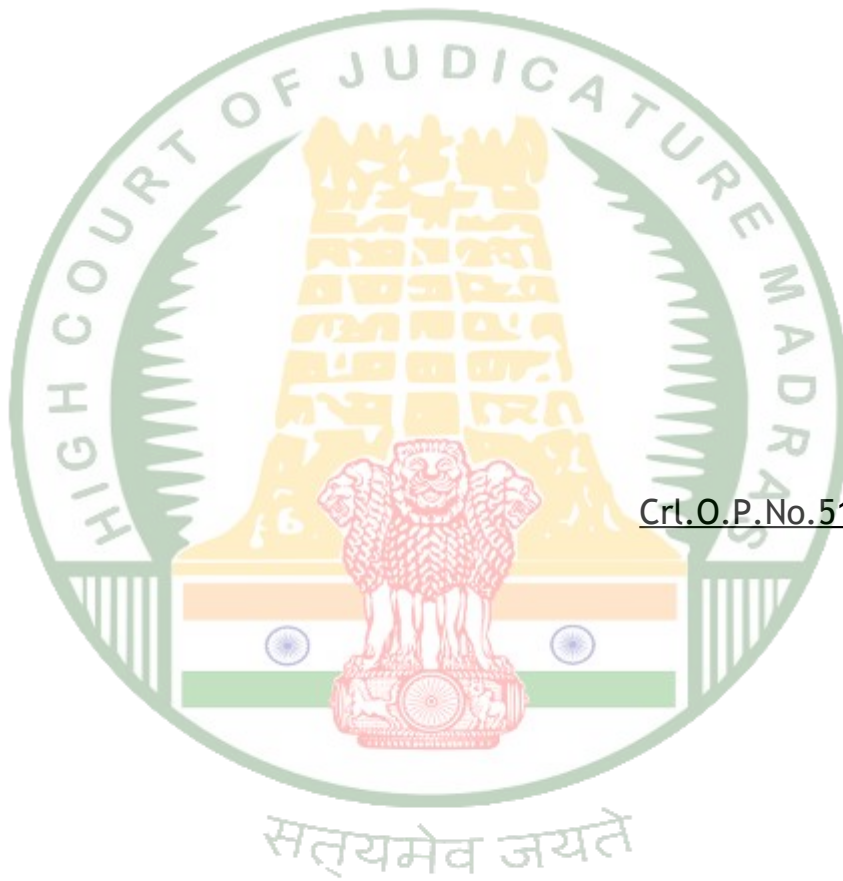
- 1.The Judicial Magistrate Court No.1, Poonamallee.
2. Inspector of Police,K-3, Police Station,Anna Nagar(East),Chennai 600 040.
- 3.The Public Prosecutor, High Court, Madras.



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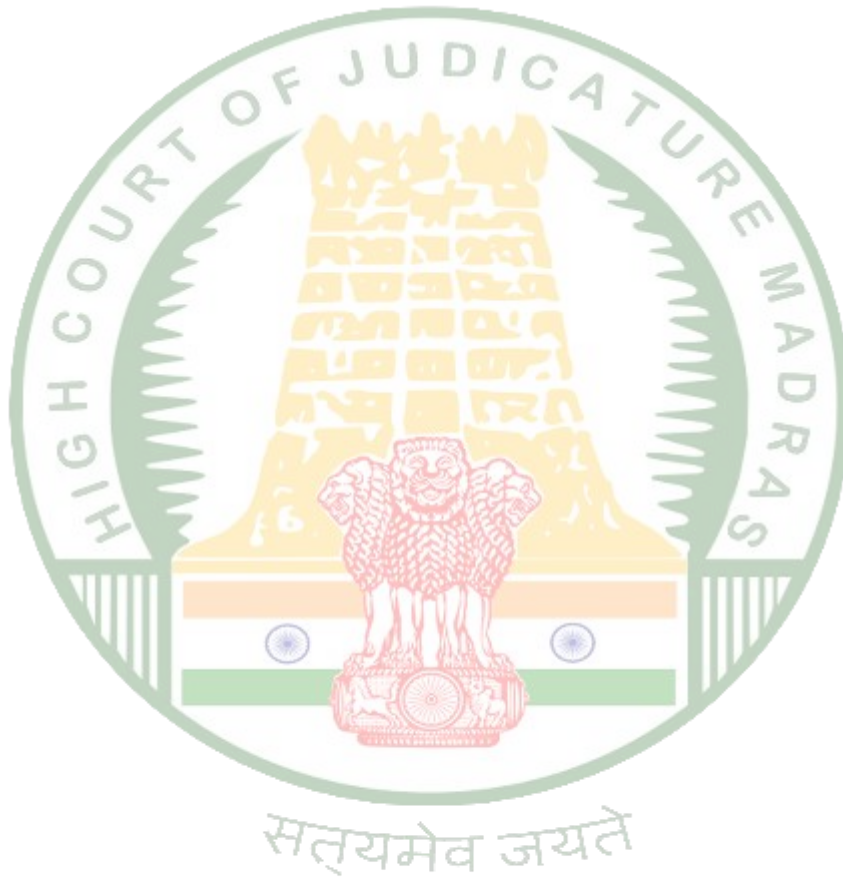
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