

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.08.2020

CORAM :

THE HON'BLE MR. JUSTICE A. D. JAGADISH CHANDIRA

Crl.O.P.No.10947 of 2020

D.Hemakumar

...Petitioner

Vs.

The State Represented by,
The Inspector of Police,
Team-XV, Central Crime Branch,
Anti Land Grabbing Cell,
Vepery, Chennai - 600 007.
(Crime No. 462 of 2013)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 438 of Criminal Procedure Code to grant anticipatory bail to the petitioner in the event of his arrest in Crime NO.462 of 2013 on the file of the Inspector of Police, Central Crime Branch, Team-XV, Anti Land Grabbing Cell, Vepery, Chennai - 600 007.

For Petitioner : Mr. J.Milton Arul Rajendran

For Respondent : Mr. M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

(The case has been heard through video conference)

The petitioner apprehends at the hand of the respondent for the offence punishable under Section 406, 465, 468, 420 r/w 120(B) IPC in Crime NO.462 of 2013, seeks anticipatory bail.

2. The case of the prosecution as per de facto complainant P.P. Sundara Moorthy is that he is the absolute owner of plot No.12, and his wife is the owner of the plot No.5 and he is holding the power of attorney of plot No.11, of Survey No.59/A (Part) Madura thathankuppam Village, Korattur, S.R.O. Villivakkam. All these plots were purchased from one Varadhammal in the year 1992 and thereafter, the de facto complainant and his family members are in absolute possession. He had applied for encumbrance certificate for the said plots from the year 1954 to 2011 and encumbrance certificate was satisfactory in his favour. Later the de facto complainant had intended to apply patta for the said plots and shocked to see that the encumbrance shows that the property was purchased by one D.Hemakumar and later he has sold the property to one T.Usharani, wife of P.R.Thangavel. Thereafter, the defacto complainant filed a complaint seeking action against accused Hemakumar and Usharani for having grabbed his properties.

3. Learned counsel for the petitioner would submit that the civil dispute has been wrongly projected as a case of land grabbing. He would submit that the petitioner purchased the property from A1 Soundararajan, and sold the property to A6 on 19.05.2011. He had duly verified the encumbrance and since the encumbrance certificate did not reflect any previous sales, the petitioner has purchased the property belonging A1 and thereafter, he was holding the property for four years and only after four years he had sold the property to A6. He would submit that in respect of the very same property, a civil suit is pending before the City Civil Court in O.S. No.237 of 2013 and the de facto complainant has also filed a petition in W.P. No.3339 of 2018 seeking mandamus to cancel the sale deeds done in respect of the property and it is still pending. The first application for anticipatory bail was dismissed as early as on 06.12.2013 in Crl. O.P. No.30726 of 2013. and the respondent has not arrested the petitioner so far. He would further submit that the petitioner believed A1 and he had hold the property for 4 years and sold it later. It is not a sham transactions and the entire case of the prosecution is born out by documents. The investigation has been completed and the final report has also been filed before the concerned Court. He would submit that the petitioner is prepared to appear and contest the case and also prepared to co-operate for the progress of trial.

4. Learned Additional Public Prosecutor would submit that the properties in plot No.12,5 and 11 in Survey No.59/A (Part) Madurathathankuppam Village, Korattur, S.R.O. Villivakkam, were purchased by the defacto complainant and his family members in the year 1992 from one Varadhamal. The petitioner, in the year 2007, based on fabricated documents had encumbered the property. He would further submit that the investigation has been completed and final report has been filed before the learned Land Grabbing Special Court II, Chennai.

5. Taking into consideration and the submissions made by the learned counsels and that the investigation in this case has been completed and the final report has also been filed before the Concerned Court and that despite the earlier dismissal of the anticipatory bail application during the year 2013, the respondent had not taken any steps to arrest the petitioner so far. Therefore, this Court is inclined to grant of anticipatory bail to the petitioner with certain conditions.

6. Accordingly, the petitioner is directed to be released on bail in the event of arrest or on his appearance, within a period of fifteen days after lifting of lockdown or the commencement of the Court's normal functioning whichever is earlier, before the learned Vth Metropolitan Magistrate Court, Egmore, Chennai, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties, 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;

[b] the petitioner shall report before the respondent police daily at 10.30 a.m for a period of three (3) weeks and thereafter, appear before the Special Court for Land Grabbing-II, Chennai, on the 1st working day of every Month at 10.30 a.m., until further orders;

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial;

[d] the petitioner 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 abscond, a fresh FIR can be registered under Section 229A IPC.

7. With the above directions, this Criminal Original Petition is ordered.

-sd/-

25/08/2020

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 VTH METROPOLITAN MAGISTRATE
COURT, EGMORE, CHENNAI

2 THE SPECIAL COURT FOR LAND
GRABBING-II, CHENNAI

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 INSPECTOR OF POLICE,
TEAM-XV, CENTRAL CRIME BRANCH,
ANTI LAND GRABBING CELL,
VEPERY, CHENNAI-600 007.

CC to M/S.J.MILTON ARUL RAJENDRAN Advocate on payment of
necessary charges

CRL OP.10947/2020

Date :25/08/2020

RVR 21/09/2020