

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2020

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CrI.O.P.No.12453 of 2020

1.Elumalai

S/o.Thoppala Kounder

2.Subramaniam

S/o.Thoppala Kounder

... Petitioners

Vs.

The State Represented by,
The Station House Officer,
Tirukoilur Police Station,
Villupuram District.

Crime No.167/2020.

...Respondent

Prayer: Criminal Original Petition filed under Section 438 Cr.P.C. to grant Anticipatory bail to the petitioners in the event of their arrest by the respondent police in Crime No.167 of 2020 on the file of the respondent police.

For Petitioners : Mr.N.Suresh

For Respondent : Mr. M. Mohamed Riyaz,

Additional Public Prosecutor

O R D E R

(The case has been heard through video conference)

The petitioners who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 423, 467, 468, 471 of IPC and Under Section 82 (d) of the Indian Registration Act in Crime No.167 of 2020 on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution as per the defacto complainant is that he filed a suit in O.S.No.919 of 1987, on 09.01.1997 and the same was decreed in favour of his father. Thereafter, on 27.10.1997, against the order of injunction, the father of the petitioners filed A.S.No.146 of 2000 before the principal Sub Court, Villupuram and the appeal was dismissed on 20.09.2001 by the Sub Court and

thereafter the defacto complainant had been cultivating the property. While so, he had applied for EC and found that the accused had sold the property by fabricating documents. Hence the compliant.

3.The learned counsel for the petitioners submitted that the petitioners are the sons of one Thopalla Gounder. His father was in the possession and enjoyment of the property from the time immemorial. The father of the defacto complainant, without the knowledge that the petitioner's father had purchased the property, had filed a suit in O.S.No.919 of 1987 and the suit was for a bare injunction and obtained a decree in his favour and thereafter the father of the petitioners filed A.S.No.146 of 2000 before the principal Sub Court, Villupuram and the appeal was dismissed on 20.09.2001. He would submit that though the appeal was dismissed during the year 2001, the defacto complainant did not take any steps either to evict the petitioners from the suit property or to get the title approved by filing a declaration suit. More over the suit filed by the defacto complainant's father is only for a bare injunction and the dismissal of the appeal filed by the petitioners has nothing do with the possession and as per the revenue records the petitioners are in the possession of the property and they have been cultivating the property and they have also been issued patta by the revenue authorities. while so, based on the patta, the petitioners have sold the property by the sale deed dated 03.07.2019 to one Anbazhagan and Muthu, who have been arrayed as A3 and A4. The learned counsel would submit that the petitioners have been in continuous enjoyment and that they have not suppressed any fact or impersonated and the petitioners have claimed right only based on the patta and they have sold the property to Anbazhagan and Muthu. Now the false complaint has been given against the petitioner. He would further reiterate that, subsequent to the dismissal of the appeal in 2001, the defacto complainant has not taken any steps either to evict the petitioners or to get the title approved by filing the declaration suit.

4. The learned Additional Public Prosecutor submitted that the property belongs to the father of the defacto compliant and the petitioners' father one Thoppala Gounder was in the possession of the same as a cultivating tenant and the father of the defacto complainant had obtained a decree in the suit filed by him restraining the petitioners and their father from entering into suit property and it was also confirmed by the Appellate Court. While so, knowing fully well that the they have no right in the property, the petitioners sold to the property to A3 and A4. Hence he opposed for grant of anticipatory bail to the petitioners.

5. Taking into consideration the facts and submissions of the learned Counsel, this Court is inclined to grant anticipatory bail to the petitioners subject to the following conditions;

6. Accordingly, the petitioners are directed to be released on bail in the event of their arrest or on their 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 Sessions and District Judge, Villupuram, on condition that the petitioner shall execute a separate 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 petitioners 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 petitioners shall report before the respondent police every day at 10.30 a.m., until further orders.

[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 abscond, a fresh FIR can be registered under Section 229A IPC.

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

-sd/-

22/09/2020

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

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TRUE COPY

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

TO

1 THE SESSIONS AND DISTRICT
JUDGE, VILLUPURAM

<https://hcservices.ecourts.gov.in/hcservices/>

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

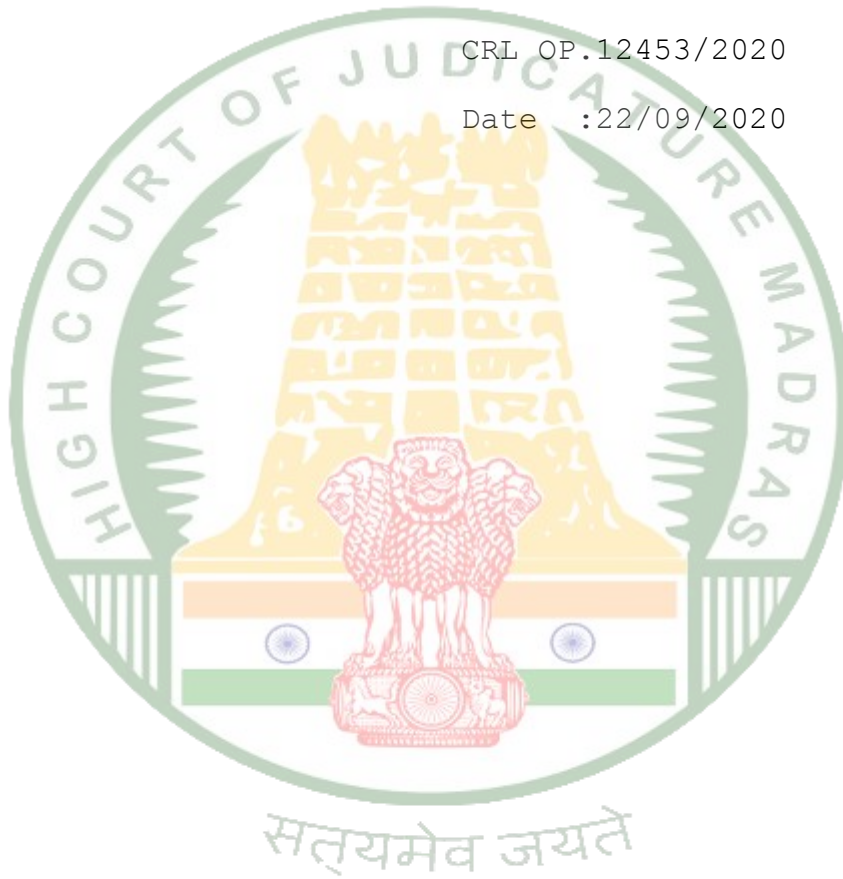
3 THE STATION HOUSE OFFICER,
TIRUKOIUR POLICE STATION,
VILLUPURAM DISTRICT.

CC to M/S. N.SURESH Advocate on payment of necessary charges
sr no.

CRL OP.12453/2020

Date :22/09/2020

RD 29/09/2020



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