

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2020

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.16317 of 2020

and

M.P.No.6443 of 2020

S.Karunakaran

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Central Crime Branch-I,
Chennai-600 007.
Cr. No.187 of 2019

... Respondent

Prayer: Criminal Original Petition filed under Section 439 Cr.P.C., praying to enlarge the petitioner on bail pending investigation in Crime No.187 of 2019 on the file of the respondent police.

For Petitioner : Mr.N.R.Elango (Senior Counsel) for
Mr.K.Thilageswaran

For intervenor : Mr.M.Nandhakumar.

For Respondent : Mr.T.Shunmugarajeswaran
Government Advocate (Crl. Side)

O R D E R

(The case has been heard through video conference)

The petitioner, who was arrested and remanded to judicial custody on 25.09.2020 for the offences punishable under Section 409, 465, 468 & 471 of IPC in Crime No.187 of 2019 on the file of the respondent police, seeks bail.

2.The case of the prosecution as per the defacto complainant, namely, one Prakash is that he along with his father, elder brother and sister are the joint owners of the property comprised in survey No.362/1B, Patta No.71, admeasuring 26 cents at Medavakkam Village, Sholinganallur Taluk, Kancheepuram District. The market value of the property is about Rs. 4 Crores. In respect of the above mentioned property, they have executed a registered a power of attorney in favour of their son, Mr. Prakash, on 23.08.2006 which was registered as a

document No.2085 of 2006 and that he had also promised to develop this property along with adjacent properties and pay the sale consideration for their property after such development. The further allegation is that the said G.Shanmugam did not pay the consideration and later fabricating a life certificate of the defacto complainant, based on the general power of attorney executed a sale deed favour of one Karunakaran/his son/the petitioner herein and cheated them. The sale consideration was shown as Rs.1,90,03,500/- and the sale deed has been registered as document No.9415 of 2018 on the file of the Sub Registrar, Saidapet. On verification it was found that the signatures of the defacto complainant's father in the life certificate were forged and fabricated. Hence the compliant.

3. The learned senior counsel appearing for the petitioner submitted that the petitioner is an innocent person and a false complaint has been foisted as against the petitioner and his father. He further submitted that the defacto complainant and his parents only after receiving the major part of the sale consideration executed a power of attorney in favour of the petitioner's father during the year 2006, as per the practice in real estate trade. Now the value of the property has increased several folds and only in order to extract more money from the petitioner and his father and false complainant has been given. The learned Senior Counsel would further submit that the petitioner was arrested on 25.09.2020 and he is in custody for more than 46days, he would further submit that entire case of the prosecution is borne out by documents and further judicial custody of the petitioner may not be required and thereby would seek for bail. The learned senior counsel would further reiterate that the facts remains that earlier the father of the defacto complainant entered into an unregistered sale agreement dated 13.04.2005 and received more than a sum of Rs.40lakhs till 22.08.2006 and the defacto complainant and his family members are refusing to execute the sale deed demanding more money and the false complaint has been given.

4.The learned Government Advocate (crl.side) would vehemently oppose stating that petitioner's father and the defacto complainant are relatives and believing the petitioner's father, the defacto complainant executed a power of attorney for developing the lands. The petitioner's father by fabricating a life certificate of the defacto complainant's father had based on the power of attorney of the year 2006 executed sale deed in favour of the petitioner during 2018 and knocked off the property belonging to the defacto complainant's family. He would submit that the investigation is pending and the father of the petitioner who is the main accused in this case is absconding.

5.The learned Counsel for the intervenor submitted that the petitioner and the defacto complainants are relatives. The defacto complainant and his family members believing the petitioner's father had executed the power of attorney in favour of him in the year 2006. Thereafter, the accused had not paid

any amount and later by fabricating a life certificate with forged signature of the defacto complainant's father had executed a sale deed in favour of the second petitioner in the year 2018. He further submitted that the petitioner and his father earlier approached this Court by way of filing quash petition in Crl.O.P.No.28113 of 2020 and the same was dismissed on 03.03.2020 with direction to the petitioner to produce all the documents connected to the power of attorney, life certificate issued by the doctor and also the sale deed to the investigating agency. He further submitted that the petitioner had also filed an anticipatory bail petition before this Court in Crl.O.P.No.12528 of 2020 and the same was also dismissed and a direction was issued to the petitioner to comply with the condition imposed by this Court in Crl.O.P.No.28113 of 2020. He further submitted that as against the order of this Court in Crl.O.P.No.12528 of 2020, the petitioner has filed a SLP before the Supreme Court and no stay has been granted. He would submit that there is every possibility of the petitioner to destroy the crucial documents. Hence, he prays a direction may be issued by this Court to the petitioner to produce the documents before the concerned Magistrate at the time of executing sureties.

6.At this Juncture the learned Senior Counsel appearing for the petitioner submitted that the SLP filed by the petitioner is pending before the Supreme Court. He further submitted that the documents are under the custody of the petitioner and without prejudice to his defence and contentions, the petitioner is prepared to produce the original documents namely the power of attorney, the alleged forged life certificate stated to be issued by the Doctor and the sale deed, before the concerned Judicial Magistrate and in order to protect the interest of the petitioner, a direction may be issued to the learned Magistrate to keep them in a sealed cover so that in the event of the petitioner succeeding in the SLP, the sealed cover may be returned back to the petitioner as it is or else it may be handed over to the investigating officer for investigation.

7.Heard both sides and perused the materials available on record.

8. The allegation against the petitioner and his father is that based on a power of attorney and a fabricated life certificate, they have knocked off the property belonging to the defacto complainant without paying the consideration. The case of the prosecution rests on the alleged fabricated life certificate stated to contain the forged signature. The learned counsel for the intervenor had expressed an apprehension that the documents may be destroyed. The petitioner had earlier filed a quash petition and anticipatory bail and this Court while dismissing the petitions had directed the petitioner to handover the power of attorney, alleged fabricated life certificate and also the subsequent sale deed to the investigating agency. Against the order passed by this Court, the petitioner has filed SLP, however, no stay has been granted.

9. The accused is in custody from 25.09.2020. This Court has to make a balance between liberty of the accused and the right of the victim. This Court has a duty to protect the interest of the accused as well as the defacto complainant. The apprehension of the defacto complainant is also well founded.

10. The learned senior counsel appearing for the petitioner has submitted that the petitioner is prepared to handover the custody of the documents to the learned Magistrate in a sealed cover. In the event of the petitioner succeeding in the SLP the same may be returned to him and in the event of him failing in the SLP the documents have to be handed over to the investigating officer for the purpose of investigation.

11. Taking into consideration of the facts and circumstance of this case and also the submissions of the learned counsels and also considering the period of incarceration undergone by the petitioner from 25.09.2020, this Court is inclined to grant bail to the petitioner subject to the following conditions:-

(a) Accordingly, the petitioner is ordered to be released on bail on condition to execute a 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 learned Special Metropolitan Magistrate, Egmore, Chennai, and on further conditions that:

(b) The petitioner shall through his counsels produce and hand over the documents namely (i) the power of attorney dated 23.08.2006 registered as Doc.No.2085 of 2006, (ii) the alleged fabricated life certificate stated to be issued by Dr.M.J.Gopal, and (iii) the sale deed dated 27.08.2018 registered as document No.9415 of 2018 before the concerned Magistrate. The learned Magistrate after verification shall retain it in a sealed cover in his custody in connection with the Crime No.187 of 2019, until further orders. (Further action in respect of the above document shall be taken after the outcome of the SLP filed by the petitioner herein).

(c) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(d) the petitioner shall report before the respondent police everyday at 10.30 a.m., for a period of two weeks and thereafter every Monday and Friday at 10.30 a.m., until further orders.

(e) the petitioner shall not commit any offences of similar nature;

(f) the petitioner shall not abscond either during investigation or trial;

(g) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(h) on breach of any of the aforesaid conditions, the learned Judicial 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];

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

10. With the above directions, this Criminal Original Petition is ordered. Consequently, connected miscellaneous petition is closed.

-sd/-
10/11/2020

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 SPECIAL METROPOLITAN MAGISTRATE,
EGMORE.

2 THE CHIEF METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI [FOR INFORMATION]

3 THE SUPERINTENDENT,
PRISON CENTRAL JAIL,
CHENNAI.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
CENTRAL CRIME BRANCH - I,
CHENNAI - 600 007.

+2CC to M/S. K.THILAGESWARAN Advocate on payment of
necessary charges SR NO.7497

CRL.OP.NO.16317/2020
& CRL.MP.NO.6443/2020

Date :10/11/2020

MK:11/11/2020