



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Date : 27/08/2020

PRESENT

The Hon`ble Mr.Justice V.BHARATHIDASAN

CRL OP(MD). No.8719 of 2020

Hariharan

... Petitioner/Accused-3

Vs

The State rep.by
The Inspector of Police,
Anti Corruption Branch,
Central Bureau of Investigation,
Madurai.
(RC2292020A0004).

... Respondent/Complainant

The Manager,
The Lakshmi Vilas Bank Limited,
Trichy Main Branch, Trichy.

...Petitioner/Intervener/
Defacto Complainant
in CRL MP(MD)No.4246 of 2020 in
CRL OP(MD)No.8719 of 2020

For Petitioner : Mr.S.Ravi, Advocate.

For Respondent : Mr.Vijayan
for CBI Counsel

For Intervenor : Mr.C.Jawahar Ravindran, Advocate.

PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

PRAYER :-

To enlarge the petitioner on bail in the event of his arrest in RC2292020A0004 pending on the file of the respondent police.

ORDER : The Court made the following order :-

Totally there are three accused in this case. The petitioner is arrayed as accused No.3, apprehending arrest at the hands of the respondent police for the offences punishable under Sections 120(B) and 420 of I.P.C., in RC2292020A0004 on the file of the respondent police, seeks anticipatory bail.

2.The allegation in brief is that one Sakthi Time Co(A1), a
<https://hcservices.ecourts.gov.in/hcservices/> partner in firm with Gopalakrishnan(A2), Thirunavukkarasu and two



others as partners and they had availed various credit facilities from Lakshmi Vilas Bank Limited, Trichy, in the year 1993. At the time, to secure the loan, A-2 in this case, who is the managing partner of the firm, has mortgaged the property to an extent of 2800 square feet to the bank. Subsequently, the company failed to repay the amount and the loan became NPA, the bank also filed a suit before the Debts Recovery Tribunal, for recovery of the outstanding amount in the year 1999, the suit was decreed in the year 2017 and the proceeding was also initiated for recovery of the amount before the Debts Recovery Tribunal and an order of attachment was passed on 24.01.2018. Thereafter, the de-facto complainant came to know that A-2 in this case sold the property in favour of this petitioner/A-3 on 29.10.1999. Alleging that the second accused, after mortgaging the property, sold the same in favour of A-3, thereby, cheated the bank, the criminal case has been registered and the matter was transferred to CBI by the order passed by this Court. Thereafter, the crime was registered and the petitioner was implicated as A-3.

3.The learned counsel appearing for the petitioner would submit that the petitioner is an 85 years old man. He purchased property in the year 1999 after paying entire sale consideration. At the time of purchasing the property, the petitioner was not aware of the mortgage and A-2 in this case, has not disclosed the said fact, and the petitioner is a *bonafide* purchaser for the value, only after the crime has been registered against the petitioner, he came to know about that the property purchased by him, was earlier mortgaged. The petitioner is the *bonafide* purchaser for valuable sale consideration, he cannot be implicated in the above said offence.

4.The learned counsel appearing for the de-facto complainant would submit that it is a deliberate act on the part of A-3, and knowing fully well that the property has been mortgaged with the bank, he purchased the property without even verifying the original document, the petitioner and A-2 are well known to each other and both of them conspired together and cheated the bank. That apart, the de-facto complainant petitioner got a decree in the suit in the year 1999, till now, the bank was not able to realise the amount from the borrower.

5.The learned counsel appearing for CBI would submit that the petitioner along with A-2 conspired together and deliberately purchased the mortgage property in the year 1999. At the time of mortgage, A-2 has deposited all the original title deeds in favour of the bank. Now, the petitioner without even obtaining the original title deeds, has purchased the property. Hence, the circumstances clearly reveal that the petitioner is also a part of the conspiracy in the transfer of the property.

6.I carefully considered the rival submissions and perused the materials placed on record.



7.It is seen that A-2 in this case borrowed money from the de-facto complainant bank and mortgaged disputed property in the year 1997, in the year 1999, he has committed default and the loan amount became NPA, thereafter, the bank filed a suit for recovery of the amount, in the meantime, A-2 in this case, sold the property in favour of A-3. Subsequently, in the year 2017, the suit was decreed and the property was also attached. It is the contention of the de-facto complainant that since the entire original title deed has been mortgaged in favour of the bank, the petitioner without even verifying the original document, has purchased the property and it can be inferred that the petitioner is conspired together with A-2. That contention cannot be accepted by the simple reason that merely because the petitioner purchased the property even without verifying the original sale deed, it cannot be inferred at this stage that the petitioner has also conspired with the other accused, in absence of any other material for the same. Even assuming that the petitioner has purchased the mortgage property, it does not create a criminal liability unless there are materials available on record to show that the petitioner has conspired with the other accused. Petitioner said to have purchased the property in the year 1999 and suit was decreed in 2017 only, it is also stated that petitioner has paid entire sale consideration to A-2.

8.Considering the above facts and circumstances of the case, I am inclined to grant anticipatory bail to the petitioner with certain conditions.

9.Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of four weeks from the date of receipt of a copy of this order, before the learned Chief Judicial Magistrate, Trichy, on condition that the petitioner shall execute a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) with two sureties each for a like sum to the satisfaction of the respondent Police or to the Police Officer, who intends to arrest or to the satisfaction of the learned Magistrate concerned 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 as and when required for interrogation;

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

(d)the petitioner shall not abscond either during investigation



(e) 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]**; and;

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

sd/-
27/08/2020

/ TRUE COPY /

/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. THE CHIEF JUDICIAL MAGISTRATE,
TRICHY DISTRICT.
2. THE INSPECTOR OF POLICE,
ANTI CORRUPTION BRANCH,
CENTRAL BUREAU OF INVESTIGATION, MADURAI.
3. THE SPECIAL PUBLIC PROSECUTOR FOR CBI CASES,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.8719 of 2020
Date : 27/08/2020

SJI
TK/JC/SAR.2/02.09.2020/4P/4C