



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

Date : 12/10/2020

PRESENT

WEB COPY

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN

CRL OP (MD) .Nos.9336 & 9281 of 2020

1. G.Athiyappan
2. A.Velmurugan

... Petitioners/Accused 1 & 2
in Crl.OP (MD) No.9336 of 2020

1. R.C.Krishnamoorthy,
2. Jegan

... Petitioners/Accused No.3 & 4
in Crl.OP (MD) No.9281 of 2020

-Vs-

State Rep.by
The Inspector of Police,
Sivakasi East Police Station,
Sivakasi, Virudhunagar District.
(Crime No.875 of 2020)

... Respondent/Complainant
in both OPs.

In Crl.O.P (MD) No.9336 of 2020:

For Petitioners: M/s.T.Lenin Kumar, Advocate.
For Respondent : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.Side)
For Intervener : Mr.E.Mareesh Kumar, Advocate

In Crl.O.P (MD) No.9281 of 2020:

For Petitioners: M/s.N.Mohideen Basha, Advocate.
For Respondent : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.Side)
For Intervener : Mr.E.Mareesh Kumar, Advocate

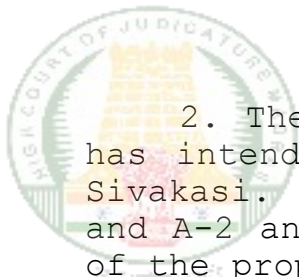
PETITIONS FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

COMMON PRAYER :- For an Anticipatory Bail in Crime No.875 of 2020
on the file of the respondent police.

COMMON ORDER : The Court made the following order :-

The petitioners who are arrayed as A-1 to A-4 apprehending
arrest at the hands of the respondent police for the offences
punishable under sections 420 and 506(i) of I.P.C., in Crime No.875
of 2020 on the file of the respondent police, seek anticipatory bail.

<https://hcservices0000ts.gov.in/hcservices/>



2. The case of the prosecution is that the defacto complainant has intended to purchase Plot Nos.16, 17 & 18 in Survey No.12 at Sivakasi. She has approached the first accused through one Anand and A-2 and they stated that A-3 and nine other persons are owners of the property and all the owners have executed a power of attorney in favour of A-3 and he has power to execute sale deed in favour of the purchasers. Accordingly, they fixed sale consideration as Rs.81,27,00/-and on 07.07.2018 the defacto complainant has paid a sum of Rs.5 Lakhs as advance to the first accused and thereafter, by way of DD for a sum of Rs.36,80,000/-in favour of A-3. Thereafter, she has also paid a sum of Rs.44,40,800/- by cash in several installments on various occasions. Thus, she has paid a sum of Rs.85,38,500/- and after receipt of the same, A-3 & A-4 evaded to execute sale deed in favour of the defacto complainant. Hence, the complaint.

3. Heard the learned counsel appearing for the petitioners and the learned Government Advocate(Crl. Side) appearing for the respondent.

4. The learned counsel appearing for A-1 & A-2 submitted that the property had measuring 2.4 acres comprised in survey no.12 situated Sivakasi, Virudhunagar District belongs to one Krishnamoorthy and Kesavamoorthy and Ramamoorthy and on behalf of them, their brothers have entered into a sale agreement with the first accused to sell the property. While entering into the agreement Rs.4 lakhs received as advance by A-3 and his brothers undertake to plot out the property who are intended to purchase the plots and pursuant to the agreement, the A-1 has plotted out the said property and entered into agreement with the respective purchasers. After receipt of the advance amount, A-1 handed over the same to the said Krishnamoorthy, namely; A-3. He further submitted that in the meantime, his brothers Kesavamoorthy and Ramamoorthy passed away and due to the said reason, A-1 was not able to execute sale deed in favour of the purchasers. Infact, on receipt of a sum of Rs.5 Lakhs from the defacto complainant A-1 handed over the said amount to A-3 and thereafter, the defacto complainant paid entire amount directly to the said Krishnamoorthy/A-3 and also got an endorsement in the sale agreement. Therefore, these petitioners are nothing to do with the offence as alleged by the prosecution and they never committed any offence. Hence, he seeks anticipatory bail.

5. The learned counsel appearing for A-3 & A-4 submitted that for the purpose of their business they vested to sell their property total extent of 2 acres and 4 cents, thereby they entered into an agreement for sale deed dated 28.11.2015 with A-1 along with his brothers for total sale consideration of Rs.8,01,00,000/-and also paid a sum of Rs.4 lakhs as advance and thereafter, A-1 did not pay balance sale consideration and as such the agreement for sale become void. He further submitted that, thereafter, A-1 sub-divided the property into various plots and promoted the real estate and



therefore, A-3 and A-4 are nothing to do with the offence committed by A-1. Insofar as these petitioners concerned, they never met the defacto complainant or her husband or any other purchasers as alleged by the defacto complainant. He further submitted that on the basis of the agreement entered with A-1 he has received some amount and thereafter, A-1 failed to settle the entire amount to them. He further submitted that A-3 and other owners of the property never executed any power of attorney in favour of A-1 and on false representation only deceived the defacto complainant and other purchasers by showing the void sale agreement as if the said agreement is the power of attorney document and received amount from various persons and cheated them and Therefore, they are nothing to do with the offence as alleged by the defacto complainant. Hence, he seeks anticipatory bail.

6. Per Contra, the learned counsel appearing for the intervener submitted that all the accused conspired together and cheated the defacto complainant to the tune of Rs.85,38,500/- and on 07.07.2018 the defacto complainant has paid a sum of Rs.5 Lakhs as advance to A-1 and thereafter, by way of DD for a sum of Rs.36,80,000/- in favour of A-3 and thereafter, she has also paid a sum of Rs.44,40,800/- by cash in several installments on various occasions. Infact, the defacto complainant has paid a sum of Rs. Rs.85,38,500/-. Even, after receipt of the same, all the accused persons have failed to execute any sale deed in favour of the defacto complainant.

7. Heard the learned Government Advocate (criminal side) appearing for the respondent police.

8. It is seen that there are totally four accused in this case. The said property belongs to A-3 & A-4 and brothers of A-3. While being so, A-1 entered into an agreement for sale with A-3 on 28.11.2015. In turn, A-1 entered into a sale agreement with the defacto complainant to sell the house plot Nos.16, 17 & 18 comprised in survey No.12 at Sivakasi. The defacto complainant has paid a sum of Rs.5 lakhs as advance to A-1 and thereafter, by way of DD for a sum of Rs.36,80,000/- in favour of A-3 and thereafter, she has also paid a sum of Rs.44,40,800/- by cash in several installments on various occasions. Infact, the defacto complainant has paid a sum of Rs. Rs.85,38,500/-. Though, the defacto complainant alleged that remaining amount also through by way of cash and other transactions, the defacto complainant did not produce any proof for the same. In respect of other amounts paid through RTGS and by way of DD. The first accused has entered into an agreement with the defacto complainant as if the original owners of the property executed a power of attorney and therefore, he has power to sell the property and received amount. On the other hand, A-1 reported that the property belongs to 10 persons and as such the major consideration to be paid to A-3 and believing his words the defacto complainant paid a sum of Rs. Rs.36,80,000/- by way of DD in favour to A-3. Even



after receipt of the same, no sale deed was executed in favour to the defacto complainant. Therefore, all the accused persons have conspired together and cheated the defacto complainant. Though, this Court had given ample opportunity to the accused persons to execute sale deed in favour of the defacto complainant, even till date, they have not executed any sale deed in favour of the defacto complainant. Therefore, custodial interrogation of these petitioners is very much required and hence, this Court is not inclined to grant anticipatory bail to the petitioners.

9. Accordingly, these Criminal Original Petitions are dismissed.

sd/-
12/10/2020

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/ /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 INSPECTOR OF POLICE,
SIVAKASI EAST POLICE STATION,
SIVAKASI, VIRUDHUNAGAR DISTRICT.
- 2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER IN
CRL OP(MD).Nos.9336 & 9281 of 2020
Date :12/10/2020

MS/PN/SAR-2/15.10.2020/4P.3C