



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 04/11/2020

PRESENT

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

CRL OP(MD) . No.12368 of 2020

1. R.C.Krishnamoorthy

2. Jegan

... Petitioners/Accused Nos.3 & 4

Vs

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

... Respondent/Complainant

For Petitioners: Mr.A.Saravanan,
Advocate.

For Respondent : Mr.KR.Bharathi Kannan,
Government Advocate (Crl.Side)

For Intervener : Mr.F.Mareeshkumar, Advocate

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

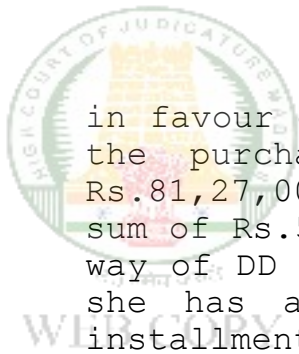
PRAYER :-

For Anticipatory bail in Crime No. 875 of 2020 on the file of the respondent Police

ORDER : The Court made the following order :-

The petitioners who are arrayed as A-3 and 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.

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 the petitioners 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.

5.Per Contra, the learned counsel appearing for the intervenor submitted that all the accused conspired together and cheated the defacto complainant to the tune of Rs.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.



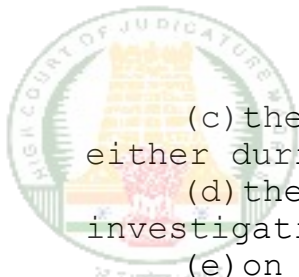
6. Heard the learned Government Advocate (criminal side) appearing for the respondent police.

7. 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.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.36,80,000/- by way of DD in favour to A-3. Since the petitioner are being the owners of the property and they have received a sum of Rs.36,80,000/- from the defacto complainant, the petitioner are ready and willing to pay a sum of Rs.36,80,000/- by way of DD in favour of the defacto complainant, hence, this Court is not inclined to grant anticipatory bail to the petitioners.

8. Accordingly, the petitioners are directed to jointly pay a sum of Rs.36,80,000/- (Rupees thirty Six Lakhs and Eighty Thousand Only) by way of Demand Draft in favour of the defacto complainant within a period of three weeks and on such payment, the petitioners are ordered to be released on bail in the event of arrest or their appearance, within a period of three weeks from the date of receipt of a copy of this order, before the learned Judicial Magistrate No.II, Sivakasi, Virudhunagar District, on condition that the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each 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 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 daily at 10.30 a.m for a period of two weeks and thereafter as and



(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]; and;

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

sd/-

04/11/2020

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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 JUDICIAL MAGISTRATE NO.II,
SIVAKASI, VIRUDHUNAGAR DISTRICT.
- 2.DO THRO'THE CHIEF JUDICIAL MAGISTRATE,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.
- 3.THE INSPECTOR OF POLICE,
SIVAKASI EAST POLICE STATION,
VIRUDHUNAGAR DISTRICT.
- 4.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL OP(MD) No.12368 of 2020

Date :04/11/2020

vsg

AE/SMA/SAR-III (11.11.2020) 4P 5C