



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

Date : 03/12/2020

PRESENT

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

CRL OP(MD). No.13417 of 2020

Kalpana ... Petitioner/Accused-2

Vs

State Rep. by
The Inspector of Police,
Central Crime Branch, Madurai.
Crime No. 59 of 2020. ... Respondent/Complainant

Manohari ... Petitioner/Intervener
in CRL MP(MD) No.6442 of 2020
in CRL OP(MD). No.13417 of 2020

For Petitioner : M/s.S.Ravi,
Advocate.

For Respondent : Ms.Ananthadevi,
Government Advocate (Crl.Side)

For Intervener :M/s.Mayilvahana Rajendran,
Advocate

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

PRAYER :- For Anticipatory Bail in Crime No.59 of 2020 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A2, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 465,467,468,471 r/w. 109 of IPC seeks anticipatory bail.

2.The case of the prosecution is that the defacto complainant is the close relative of A2 and her husband. Thereafter due to ill health and also the subject property situated in front of the house of the second accused power of attorney was executed in favour of the husband of the second accused for sale on 20.03.2000. Subsequently on 21.09.2020 due to ill health the husband of the second accused died. Thereafter the first accused mortgaged the property by forging the signature of the defacto complainant and



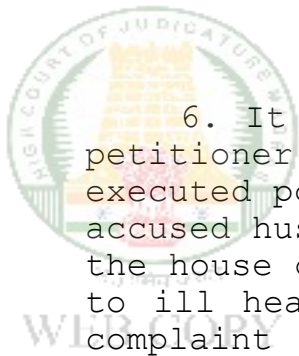
received a huge sum. Further suppressing the fact and to escape from the clutches of law filed a suit for not alienating the property and filed a suit is O.S.No. 257 of 2019 as if the defacto complainant borrowed a sum of Rs. 10 lakhs from the first accused on the file of the VI Additional District Court, Madurai.

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3. The learned counsel for the petitioner would submit that the petitioner is arrayed as A2. The defacto complainant being a close relative after receipt of Rs.6 lakhs in the total sale consideration of Rs.10 lakhs executed power of attorney in favour of her husband of the second accused on 20.03.2002. Thereafter the husband of the second accused died on 21.09.2013. Now the defacto complainant after a period of 18 years has lodged a complaint with the above said allegation. Infact the first accused also filed a suit in O.S.No. 257 of 2019 for not alienating the subject property on the file of the VI Additional District Court, Madurai as against the defacto complainant and the same is pending. On receipt of summons in the said suit the defacto complainant has come forward with the false allegations. He further submitted that even according to the defacto complainant the husband of the second accused is the power holder and he died on 21.09.2013. In so far as the petitioner is concerned he has nothing to do with the allegations as against the accused persons, hence he sought for bail.

4. Heard the learned Government Advocate (Crl.Side) appearing for the State.

5. The learned counsel for the intervenor would submit that the subject property was owned by the defacto complainant. The second accused and her husband are close relatives of the defacto complainant and executed power of attorney in favour of the second accused husband on 20.03.2002 for selling the property since the property was situated in front of the house of the second accused. While being so on 21.09.2013 the husband of the petitioner died and to their shock and surprise the defacto complainant received summons from the VI Additional District Court, Madurai I O.S.No. 257 of 2019. On perusal of the said plaint came to understand that their signature was forged and the property was mortgaged by the first accused and he refused to return back the original document to the defacto complainant. He further submitted that even in the bail petition he has categorically stated that the defacto complainant and her husband obtained Rs.10 lakhs from the petitioner's husband and due to which the defacto complainant executed power of attorney in favour of her husband. While being so, the first accused being the own brother of the second accused also stated that the defacto complainant had borrowed a sum of Rs.10 lakhs which was repaid by them and as such he has filed a suit in O.S.No. 257 of 2019 and to escape from the clutches of law. Since custodial interrogation of the petitioner is very much required, he opposed to grant service of process to the petitioner.



6. It is seen that there are four accused in this case and the petitioner herein is arrayed as A2. The defacto complainant executed power of attorney dated 20.03.2002 in favour of the second accused husband in respect of subject property situated in front of the house of the second accused herein. Thereafter on 21.09.2013 due to ill health he died. Now the complainant has filed the present complaint alleging that at the time of execution of power of attorney original document of the subject property were handed over to the husband of the second accused. After the death of power holder the petitioner colluded with other accused persons namely the first accused who is none other than the own brother of the petitioner herein mortgaged the subject property in the year 2010 and also filed suit in O.S. No.257 of 2019 on the file of the VI Additional District Court, Madurai . Admittedly the power was given in the year 2003 and due to ill health died in the year 2013 and only on 2020 the present complaint has been filed with the above said allegations. If at all the defacto complainant executed power of attorney for the purpose of selling the property she would have waited for 18 years even after the death of her husband. It is also seen that the first accused filed a suit in O.S. No. 257 of 2019 on the file of the VI Additional District Court, Madurai for not alienating the subject property and only after receipt of summons the present complaint has been lodged.

7. Taking into consideration the facts and circumstances of the case this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

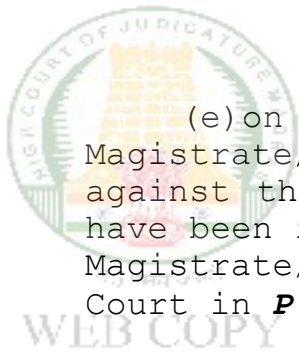
8. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or her appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate No.I, Madurai on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties each for a like sum to the satisfaction of the 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 accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

sd/-
03/12/2020

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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.I,
MADURAI.
- 2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI.
- 3 THE INSPECTOR OF POLICE,
CENTRAL CRIME BRANCH, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.13417 of 2020
Date :03/12/2020

aav
JM/PN/SAR II/08.12.2020/4P/5C