IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twenty Sixth day of March Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice V. BHARATHIDASAN

CRIMINAL ORIGINAL PETITION No.57 of 2021

AND CRL.MP.NO.2401 OF 2021

S.VADIVELU [PETITIONER / ACCUSED]

Vs

STATE OF TAMILNADU [RESPONDENT]
REP BY THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH (DCB) THIRUVALLUR,
CRIME NO.12/2020 DATED 05.03.2020

AARYAL ..PETITIONER/DEFACTO COMPLAINANT
ORDERED AS PER ORDER OF THIS COURT DATED 26/03/2021 MADE IN CRL.MP.NO.2401 OF 2021

For Petitioner : M/S.V.P.SENGOTTUVEL Advocate

For Respondent : M/S.S.KARTHIKEYAN, Additional Public Prosecutor

For Intervenor : M/S R.RAJARAJAN Advocate

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

ORDER : The Court Made the following order :-

(The case has been heard through video conference)

The petitioner, who apprehends arrest at the hands of the respondent police in connection with a case registered in Crime No.12 of 2020 for the alleged offence punishable u/s 419, 420, 465, 468, 470, 471 of IPC, seeks anticipatory bail.

2. There are totally three accused involved in this case and the petitioner has been arrayed as A2. The allegation is that a landed property measuring an extent of 4 acres comprised in S.Nos.108/2, 108/7, 108/3B, 108/4 of Aaladu Village in Ponneri Taluk was originally owned by one Selvavinayagam, the son of the de facto complainant and he was living in Malaysia. Taking advantage of the situation, A1 impersonated himself as Selvavinayagam and created a power of attorney deed in favour of the petitioner(A2) in the year

2006 to deal with the property owned by Selvavinayagam and based on such forged document, A2 had sold out the entire property in favour of A3 in 2007.

3. While so, due to property dispute, the son of the de facto complainant viz., Selvavinayagam was murdered in the year 2014 and the in the murder case one Rajendran, the son in law of the de facto complainant was implicated as main accused. Subsequently, the de facto complainant lodged a complaint on 28.03.2019 alleging that A1 and A2 created a bogus power of attorney and sold the property to A3 thereby committed an offence, upon which the present case has been registered on 05.03.2020 for the offences as already stated above. Seeking anticipatory bail, the petitioner who has been arrayed a sA2 is before this court with this petition.

4. The learned counsel for the petitioner submitted that when Selvavinayagam, the son of the de facto complainant, was alive he himself had executed a power of attorney on 04.10.2006 in favour of the petitioner/A2 to deal with this property after receiving the entire consideration for the property and thereafter, with knowledge of the principal, A2 had dealt with the property in question and conveyed it to A3 for valuable consideration on 21.02.2007. After the purchase, A3 had, in fact, made some development in the property. Subsequently, in 2014, the principal was murdered. Now, the mother of the principal making false allegations as if A1 had impersonated her son and had dealt with the property.

5. The learned counsel further submitted that the power of Attorney was of the year 2006 and the transfer was made in the year 2007 when the deceased Selvavinayagam was very much alive. The said Selvavinayagam was murdered only in 2014 and during his life time, the deceased never disputed the power of attorney, even after his death, the de facto complainant also did not raise any dispute till February 2020. Both the deceased and the de facto complainant were very well aware of the existence of the power of attorney and they never disputed the same. While so, all of a sudden, the de facto complainant made a false complaint in order to gain unlawfully accused.

6. The learned counsel for the petitioner lastly submitted that the entire allegation is borne out by registered documents and no custodial interrogation would be required. The petitioner is a permanent resident of Ponneri Village in Tiruvallur District and he is ready to co-operate with the investigation and abide by any conditions that may be imposed by this court in the event of granting anticipatory bail.

7. The learned counsel appearing for the intervenor stoutly opposed the petition for anticipatory bail stating that the documents placed before this court would clearly reveal that A1 and A2

colluding with each other created a forged power of attorney by impersonating A1 as Selvavinayagam, the son of the de facto complainant and had dealt with the property worth more than four crores of rupees and enriched themselves unlawfully. The son of the de facto complainant who was residing in Malaysia at the relevant point of time was not aware of those illegal transactions and very recently, the de facto complainant came to know about the forgery and fraud and immediately complained to the police and the respondent police having found that there has been a prima facie case for forgery and cheating registered the case.

8. The learned counsel for the intervenor further submitted that the custodial interrogation of the petitioner is necessarily required to unearth the forgery and cheating on the part of the petitioner.

9. The learned Additional Public Prosecutor opposed the petition stating that investigation is pending. A1 impersonated himself as Selvavinayagam in the year 2006, created a forged power of attorney in favour of A2 and A2, in turn, dealt with a vast extent of property owned by the deceased Selvavinayagam and custodial interrogation is necessary to elicit the truth.

10. I have considered the rival submissions carefully.

11. It is an admitted fact that the alleged General Power of Attorney in favour of the petitioner came into being in 2006 and it is a registered one. On the strength of the above said power of attorney, A2 had sold the property in favour of A3 in 2007. Thereafter, A3 is said to have mortgaged the property with a financial institution and subsequently made some developments in the property. While so, the principal of A2 was murdered in the 2014 due to som eproperty dispute. During his life time from 2006 to 2014, the deceased never questioned the alleged power of attorney. Even his death, his mother, the de facto complainant herein did not dispute the alleged power of attorney she kept quiet all along till February, 2020. Admittedly, till date she had not initiated any civil proceedings questioning the validity of the alleged power of attorney and the subsequent sale. All most 14 years have elapsed after the alleged power of attorney came into existence and therefore, this court is of the prima facie view that custodial interrogation of the petitioner for carrying out further investigation is not required at this stage. The petitioner is a permanent resident of Ponneri Village and therefore, there is no chance of absconding and fleeing from justice. The entire transaction is borne out of the records and thus, this court is of the view that granting anticipatory bail to the petitioner would not in any way hamper the investigation. Considering all the above, this court is inclined to grant anticipatory bail to the petitioner subject to the following conditions :-

a) Accordingly, the petitioner is ordered to be released on bail, in the event of arrest or on his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate-II, Ponneri, Tiruvallur District, on executing 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 the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[b] 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.

[c] the petitioner shall report before the respondent police as and thereafter as and when required by the police for the purpose of interrogation.

[d] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[e] the petitioner shall not abscond either during investigation or trial.

[f] 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 himself /Trial Court as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

With the above directions, this Criminal Original Petition is ordered.

-sd/-
26/03/2021

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 JUDICIAL MAGISTRATE,
NO.II, PONNERI, TIRUVALLUR

2 THE CHIEF JUDICIAL MAGISTRATE
TIRUVALLUR(FOR INFORMATION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH (DCB)
THIRUVALLUR.

+3 CC to M/S.V.P.SENGOTTUVEL Advocate on payment of necessary charges SR.NO. 4261

CC to M/S.R.RAJARAJAN Advocate on payment of necessary charges SR.NO. 4207

CRL OP.57/2021

and CRL.MP.NO.2401/2021

Date :26/03/2021

rvr 07/04/2021