

+IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Criminal Jurisdiction)

Monday, the First day of March Two Thousand Twenty One
PRESENT

The Hon`ble Mr Justice V. BHARATHIDASAN
CRIMINAL ORIGINAL PETITION No.2595 of 2021

1 MALLIKA
2 K.SARAVANAN
3 K.KRISHNAMURTHY

[PETITIONERS / ACCUSED]

Vs

STATE REP BY
THE INSPECTOR OF POLICE,
KOMARAPALAYAM POLICE STATION,
NAMAKKAL DISTRICT
(CRIME NO.78 OF 2020)

[RESPONDENT]

For Petitioner : M/S.R.MARUDHACHALAMURTHY Advocate

For Respondent : MR. S.KARTHIKEYAN, ADDITIONAL PUBLIC PROSECUTOR

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

ORDER : The Court Made the following order :-

The petitioner, who apprehends arrest for the alleged offence under Sections 420 and 506(i) of I.P.C in Crime No.78 of 2020, on the file of the respondent Police, seeks anticipatory bail.

2. Totally there are 4 accused in this case and the petitioner herein is A3. The allegation is that in the year 2012 the petitioners have entered into a sale agreement with the defacto complainant and received a sum of Rs.30,02,000/- as part of the sale consideration. Thereafter, the defacto complainant came to know that there was some encumbrance in the property and when he questioned the petitioners regarding the encumbrance, the petitioners did not answer properly and they have not come forward to clear the encumbrance and register the property and also failed to return back the advance amount and thereby cheated the defacto complainant. Hence the complaint.

3. The learned counsel for the petitioner would submit that the petitioners have informed the defacto complainant that the property was mortgaged and they will redeem the mortgaged property at the time of execution of sale deed, but the petitioner did not come forward to execute the sale deed. After 9 years, all of sudden the present complaint was lodged by the defacto complainant that the petitioners have cheated him. Hence, he plays for grant of anticipatory bail to the petitioners.

4. The learned Additional Public Prosecutor would submit that the petitioners without executing the sale agreement had received part of the sale consideration and failed to execute the sale deed and also had suppressed the fact that the property was mortgaged with the bank . He would further submit that investigation is pending. Hence, he opposed for grant of the anticipatory bail to the petitioners.

5 I have considered the rival submissions. Admittedly the sale agreement was executed in the year 2012. Now the allegation is that at the time of execution of sale deed, the petitioner agreed to measure the land and after measuring the land, within a period of 10 months they have to execute the sale deed, after receipt the balance of sale consideration. According to the defacto complainant so far the property was not measured. In the mean time they have said to have mortgaged the property with the bank. Now the sale agreement is of the year 2012, now after 9 years over, the present complainant has been filed. The petitioner, if at all have any grievance over the non execution of sale agreement, he can seek the remedy available before the civil forum and so far no action has been taken by the defacto complainant to got the sale agreement executed.

5.Considering the above facts and as it is predominantly a civil dispute between the parties, this court is inclined to grant anticipatory bail to the petitioner with stringent conditions.

6. Accordingly, the petitioner is ordered to be released on anticipatory bail in the event of arrest or on their appearance, within a period of fifteen days from the date on which the order copy made ready, before the Judicial Magistrate, Trichengode 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 the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which this petition for anticipatory bail shall stand dismissed and on further condition that:

[a] the petitioner and the sureties shall affix his 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 or trial.

[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].

[f] 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/-
01/03/2021

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,
TRICHENGODE.

2 THE CHIEF JUDICIAL MAGISTRATE
NAMAKKAL [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
KOMARAPALAYAM POLICE STATION,
NAMAKKAL DISTRICT

+1CC to M/S.R.MARUDHACHALAMURTHY Advocate on payment of
necessary charges SR NO.2606

CRL OP.2595/2021

Date :01/03/2021

MK:19/03/2021

MK:25/03/2021