

CRL. O.P. NO. 5292 OF 2021

M.DHANDAPANI, J.

The petitioners, who apprehend arrest at the hands of the respondent police in Crime No.1 of 2021, seeks bail.

2. It is the case of the prosecution that the defacto complainant, viz., Mahendran, who is the son of A-2, lodged the complaint stating that his mother Kannammal was possessed of a vacant site in Natham Survey No.53/23 and the same was transferred to the name of the defacto complainant by executing a settlement deed dated 12.11.09 vide Doc. No.3605 of 2009 on the file of the Sub Registrar, Valikandapuram. It is the further case of the prosecution that A-2 created forged documents and executed a sale deed in favour of A-1 through Registered Document No.3519/2019 dated 16.10.19 with an intent to grab his property and that A-3 and A-4 are witnesses to the sale deed. Further, the defacto complainant is the second wife's son of A-2. Hence, the complaint was filed.

3. Learned counsel appearing for the petitioner submitted that originally, A-2 is the owner of the disputed property, which was sold in favour of the A-1

and only with ill-motive the present complaint has been filed by the defacto complainant. Further, the defacto complainant has no right in the said property and that Kannammal, only with ill motive had transferred the property in favour of the defacto complainant. The complaint filed by the defacto complainant is false and that at best the defacto complainant has any grievance, the same has to be addressed only before the civil court and resorting to filing of criminal case is only to arm twist the petitioners. Therefore, he seeks for anticipatory bail to the petitioners.

4. On the above contentions, this Court heard the learned Government Advocate (Crl. Side), who submitted that based on the complaint, the crime was registered and that investigation is going on.

5. This Court gave its anxious consideration to the submissions advanced on either side and also perused the materials available on record. A careful perusal of the FIR reveals that allegations have been made by the defacto complainant as to A-2, viz., his father, alienating his property fraudulently in favour of A-1. It is the case of the defacto complainant that the disputed property has been given to him by way of settlement deed by his mother

Kannammal, which has been fraudulently alienated by his father A-1. Even from a bare reading of the averments in the complaint, it is evident that the remedy of the petitioner insofar as the property is concerned lies with the civil court. However, the petitioner has made certain allegations, which gives a criminal colour to the case, which requires the attention of the law enforcing agency and an investigation is required in the matter. However, it should not be lost sight of that merely because some criminal colour is given in the complaint, the same cannot be allowed to act in detriment to the petitioners.

6. Considering the overall gamut of facts, as narrated above, this Court is of the considered opinion that the petitioners are entitled to anticipatory bail. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on their 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, Perambalur, 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 learned Magistrate 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 Court concerned 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 shall report before the respondent police on every Monday at 10.30 a.m. for a period of four weeks and thereafter as and when required for interrogation;

(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 petitioner 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 thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

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