IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2021

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. Nos.8193 & 8195 of 2021
AND
CRL. M.P. No.4330 OF 2021

Shanmuga Sundaram ... Petitioner in Crl.O.P.No.8193/2021

1.Srinivasan
2.Elangovan ... Petitioners in Crl.O.P.No.8195/2021

Versus

The Inspector of Police,
Central Crime Branch, Vepery,
Poonamallee High Road,
Chennai.
(Crime No.302/2020) ... Respondents in both Crl.O.Ps.

Common Prayer: Criminal Original Petitions filed under Section 438 of the Code of Criminal Procedure praying to grant Anticipatory Bail in the event of arrest by the respondent police in Crime No.302/2020 pending investigation before the respondent.

For Petitioner in Crl.O.P.No.8193/2021 : Mr.N.Sivaraman

For Petitioner in Crl.O.P.No.8195/2021 : Mr.P.Vishnu

For Respondent : Mr.A.Gopinath
Government Advocate (Crl. Side)

For Intervener : Mr.Mohan

COMMON ORDER

The petitioners who apprehend arrest at the hands of respondent police for the offence punishable under Sections 406, 420 r/w 109 and 34 IPC in Crime No.302 of 2020, seek anticipatory bail.

2. The case of the prosecution is that the defacto complainant is the owner of the property and by misrepresentation and fraud, the signature of the defacto complainant was obtained in blank papers by the accused persons, which papers were conveniently used by the accused/petitioners for obtaining loan of Rs.1 Crore from the Canara Bank. It is the further case of the prosecution that the said transaction was entered into without the knowledge of the defacto complainant. It is the further case of the prosecution that though the defacto complainant was made to believe that loan for an amount of Rs.4 Lakhs was to have been obtained from the bank, however, the said amount was not paid to the defacto complainant. Further, the accused/petitioners have neither paid EMI on the said loan transaction to Canara Bank nor have settled the loan amount to the bank, which resulted in the bank initiating proceedings before the Debts Recovery Tribunal and pursuant to the said proceedings, the mortgaged property, belonging to the defacto complainant was auctioned to third parties. The defacto complainant had come to know of the fraud played on him only thereafter and inspite of the defacto complainant calling upon the accused/petitioners to pay the loan amount to the bank and get back the mortgaged property, since the same having not been paid and the property having not been redeemed and handed over to the defacto complainant. In furtherance to the discussions, settlement was entered into between the defacto complainant and the accused/petitioners on 31.01.2018 in and by which the accused/petitioners undertook to pay the loan amount to the bank and redeem the property and hand over the same to the petitioner. However, the said undertaking having not been complied with, left with no other alternative, the complaint had been filed before the law enforcing agency. no amount has been paid and thereafter only, the defacto complainant came to know about all these facts and approached the petitioner.

3. The learned counsel appearing for the petitioners submit that the petitioners did not commit any offence as alleged by the prosecution. It is the submission of the learned counsel for the petitioners that the property was mortgaged only with the consent of the defacto complainant to meet hhis financial needs and that the amount was shared between the defacto complainant and the accused/petitioners. However, the defacto complainant and the accused/petitioners were not able to settle the dues in time which led to initiation debt recovery proceedings by the bank in which the property was sold to third parties. It is the further submission of the learned counsel for the accused/petitioners that the defacto complainant partook in the debt recovery proceedings and was a party to the same and, therefore, he cannot feign ignorance about the proceedings. The present complaint lodged by the defacto complainant is only

to arm twist the petitioners to part with amount for redeeming the property in which loan transaction he was also a party. It is further submitted by the learned counsel for the petitioners that they are ready and willing to settle the dispute amicably with the defacto complainant and, therefore, prays that the this Court may grant anticipatory bail to the petitioners so that they can comply with the above undertaking before this Court for settling the dispute with the defacto complainant.

4. The learned counsel appearing for the intervener submits vehemently objected to the relief sought for by the accused/petitioners and submitted that the defacto complainant had intended to avail loan from the financial institutions to take care of his financial needs and on knowing about the same, taking advantage of the ignorance and innocence of the defacto complainant, the accused persons, viz., A-1, who is also related to the defacto complainant, along with other accused persons, connived and cheated the defacto complainant by mortgaging the property with Canara Bank and obtained a sum of Rs.1 Crore after taking his signature in blank papers and obtained the loan amount of Rs.1 Crore. . It is the further case of the intervener that no amount was given to the defacto complainant and that fraud has been perpetrated upon him by the accused. It is the further submission of the learned counsel for the intervener that on coming to know about the fraud played on him by the accused, a quarrel ensued between the accused and the defacto complainant in which the accused undertaookk to pay the amount to the bank and redeem the mortgaged property and in furtherance to the same, an undertaking was executed by the accused on 31.01.2018, however, the accused have not acted as per the undertaking given by them, which necessitated the filing of the complaint before the respondent police.

5. Learned Government Advocate (Crl. Side) appearing for the respondent police also vehemently objected to the grant of anticipatory bail and submitted that the crime committed by the accused/petitioners is very serious in nature, in that the ignorance of the defacto complainant has been misused by the accused to reap financial gain by defrauding and cheating the defacto complainant and that investigation is going on and at the present point of time, extending the relief of anticipatory bail to the petitioners would work great hardship to the law enforcing agency in the collection of materials as there are much possibilities of the accused/petitioners indulging in activities, which would be not only in detriment to the investigation, but also detriment to the life of the defacto complainant, in view of the quantum of amount involved.

6. This Court paid its undivided attention to the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

7. The property mortgaged with the Canara Bank, which was brought to auction and sold to third parties in the debt recovery proceedings belongs to the defacto complainant is not in dispute. It is the allegation of the defacto complainant that he had signed in blank papers, which were utilised by the accused/petitioners to defraud the defacto complainant by mortgaging his property. Though it is admitted by the defacto complainant that he had signed the blank papers only on the premise that the accused/petitioners were helping him to obtain loan of about Rs.4 Lakhs from the bank, however, the petitioners/accused, connived and cheated the defacto complainant by mortgaging the property for a sum of Rs.1 Crore with the bank and walked away with the funds without giving any to the defacto complainant. The factum of availment of loan to the tune of Rs.1 Crore from Canara Bank stands revealed by the debt recovery proceedings taken by the bank to recover the sum of Rs.1 Crore, which has resulted in the conduct of auction and selling of the properties to third parties and challenging the said auction purchase, it is stated that litigations are pending before this Court.

8. From the above, it is amply clear that the property belonging to the defacto complainant had been mortgaged with the bank for a sum of Rs.1 Crore by the accused/petitioners. Though it is the contention of the petitioners/accused that the defacto complainant was oblivious of the loan transaction, however, it is disputed by the defacto complainant.

9. Whether the defacto complainant was oblivious to the said transaction, as projected to by the accused/petitioners is the moot question that falls for the determination of this Court, which would be suffice to decide the outcome of the relief sought for in this petition.

10. To answer the said issue, the undertaking entered into between the petitioners/accused and the defacto complainant assumes significance. A perusal of the undertaking dated 31.1.2018, entered into between the accused/petitioners and the defacto complainant reveals that the accused/petitioners have categorically undertaken that they will pay the amount of Rs.1 Crore, which was taken as loan from the bank and redeem the mortgaged property and hand over the documents back to the defacto complainant. The undertaking does not speak that the defacto complainant was in any way involved with the said loan transaction. This clearly fortifies the stand of the defacto

complainant that he had not obtained the amount of Rs.1 Crore from the bank nor any amount was paid to him by the accused/petitioners, as submitted by them before this Court.

11. Further, it is to be pointed out that the undertaking had been entered into on 31.1.2018 and the said undertaking reveals that the accused/petitioners would redeem the mortgaged property within a period of 15 days by paying the amount to the bank. However, three and a half years have passed since the said undertaking was entered into between the defacto complainant and the accused/petitioners. In the interregnum, the bank had brought the mortgaged property to auction by initiating debt recovery proceedings and the property had been auctioned to third parties.

12. True it is that the defacto complainant, as submitted by the accused/petitioners had partaken in the debt recovery proceedings. However, it is only to be inferred by this Court that the said act of the defacto complainant in partaking in the debt recovery proceedings would have been only in the hope of the accused/petitioners settling the loan amount to the bank and redeeming his property. However, the accused/petitioners, in total abdication of the agreement entered into with the defacto complainant, had refrained from paying the loan amount to the bank resulting in the auctioning of the property in favour of third parties. However, this Court is not dwelling deep into the said aspect for the simple reason that litigations are pending before this Court relating to the said auction.

13. The act of the accused/petitioners in defrauding the defacto complainant of his property and also going back on the undertaking given by them to have the property redeemed, had prompted the defacto complainant to file the complaint before the law enforcing agency in which investigation is underway.

14. It is further to be pointed out that though an attempt has been made by the learned counsel for the petitioners to appeal to the mercy of this Court to offer a chance to the accused/petitioners to settle the dispute with the defacto complainant, however, it is to be pointed out that one such undertaking was entered into between the accused/petitioners and the defacto complainant way back on 31.1.2018 and even after a passage of three and a half years, the same has not yielded any fruitful result, except to the detriment of the defacto complainant, who is being made to litigate the matter in the debt recovery proceedings and further before this Court. If really the intention of the accused/petitioners were to settle the dispute amicably with the defacto complainant, the accused/petitioners should have shown their bona fides by

atleast partly settling the issue with the defacto complainant. However, there is nothing on record except the undertaking dated 31.1.2018, which undertaking has been thrown to the winds by the accused/petitioners. Therefore, the submission advanced on behalf of the accused/petitioners praying for time to settle the dispute with the defacto complainant is nothing but an attempt by the accused/petitioners to gain more time and in the light of the fact that investigation is still underway and the amount involved in the present case is huge, acceding to the request of the petitioners/accused for grant of an opportunity to settle the dispute with the defacto complainat would be of no avail, in the backdrop of the facts and circumstances, as narrated above and, therefore, the said contention put forth on behalf of the accused/petitioners deserves does not merit acceptance.

15. It is to be pointed out that of late, instances of this nature in which the ignorance of very many persons are being utilised by unscrupulous elements to feather their coffers, has come to the attention of this Court. Amounts are being swindled by unscrupulous persons and the ignorant individuals are pushed into the forefront to face the music. Unless the Courts come down heavily upon such individuals, who indulge in such nefarious activities, the trust of the people on the judiciary would have a drastic downfall and the common man would be a easy prey for such wicked individuals. The fraudsters should be dealt with iron hands and the scales of justice cannot even for a single moment tilt in favour of such wicked individuals by acceding to their request, such as the prayer made in this case, as otherwise, the faith reposed on the judiciary by the public would be heavily eroded. In such a scenario, as depicted above, this Court is of the considered view that the plea made by the petitioners/accused for grant of anticipatory bail does not merit acceptance.

16. For the reasons aforesaid, this Court is not inclined to grant anticipatory bail to the petitioners as sought for and, accordingly, these Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petition is closed.

-sd/-
09/06/2021

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 INSPECTOR OF POLICE
   CENTRAL CRIME BRANCH, VEPERY,
   POONAMALLEE HIGH ROAD,
   CHENNAI.

2. THE PUBLIC PROSECUTOR
   HIGH COURT MADRAS 104.

CC to M/S.N.SIVARAMAN Advocate on payment of necessary charges

CRL OP.8193/2021

Date :09/06/2021

SP(28/06/2021)