

Crl.O.P.No.15465 of 2021

T.V.THAMILSELVI, J.

The petitioner, who apprehends arrest for the alleged offence under Sections 120b, 419, 468, 471, 420 and 506 part I of IPC in Cr.No.3 of 2018 on the file of the respondent police, seeks anticipatory bail.

2. The learned counsel appearing for the intervenor submit that Gnamambal/defacto complainant had given a complaint in the year 2018. As per the said complaint, the property original belongs to her husband, who executed a Will on 21.07.1987, by which both her sons viz. Selvam and Raja are equally entitled to half share in the property. Thereafter, her sons were enjoying the property and after the decision was taken by the family partition was affected. Her younger son Ilaya Raja married one Roselin Sagayarani and they got a girl child. The elder son, in order to grab the entire property, obtained signatures in the bond paper from the defacto complainant and her younger son Ilayaraja. Out of frustration, Ilayaraja committed suicide. According to the defacto complainant, their family property S.Nos.3589/2A, 3590/2A, 3590/1B, 3589/3A, 3592/2 is situated



near the Mannarkudi police station to an extent of 10 grounds (20500 Sq.ft) which is worth about more than 20 Crores. But to grab the entire property, the elder son Selvam, along with his sons conspired with this petitioner Amudha and her husband Manoharan (A4) and others gave a Power of Attorney on 25.02.2011 by giving a false certificate stating that the defacto complainant had already died. They had also fabricated false death certificate of the defacto complainant, and also created a sale deed with the help of this petitioner, by impersonating lady as wife of her younger son namely Roselin Sagayarani also created bogus ration card and Registered a sale deed on 21.06.2012 for an amount of Rs1,51,00,000/-. The property was registered in the name of Rajendiran and Chithra who are A6 & A7 in the said forged document. Thereafter, the said document was pledged with the bank. This petitioner and her husband, Manoharan had stated as if Rs.51,00,000/- was paid to the Raja's wife Roselin Sagayarani and her daughter towards their share. For creating all these fabrication of document, this petitioner along with her husband Manoharan and the purchaser of Chithra Rajendran and her husband Rajendran are the main culprits, who created all the documents and grabbed the property worth about Rs. 20



Crores. Based on the FIR, a case was registered in Crime No.3 of 2018 and investigation was conducted. During the pendency of the proceedings , out of 11 accused, A1 to A3 and A10 were arrested and released on bail without any condition and Manoharan, Rajendiran, Arivazhagan and Krishnaramanujam were granted anticipatory bail and A11 is the person impersonated Roselin Sagayarani. Final report is yet to be filed. But this petitioner was granted anticipatory bail by this Court after dismissal of the earlier application. The said order was challenged before the Apex Court in SLP.No.8124/21 wherein the Hon'ble Apex Court remitted the matter back and hence, this matter was taken up today.

3.The learned counsel appearing for the petitioner would submit that alleged execution of documents happened in the year 2012 and as a Power of Attorney, she only signed the document which was prepared by the purchaser viz., Chitra Rajendiran, who was ranked as A7 and this petitioner is innocent, she is no way connected with the alleged impersonation, as a power of Attorney, she signed in the alleged sale deed. Infact, that document was prepared by the purchaser and she only affixed her signature thereby



pleads her innocence.

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4. The learned counsel for the defacto complainant raised strong objection. Now as on date the original owner defacto complainant Gnanambal was passed away. Her daughter-in-law Roselin Sagayarani conducted the case. He further submits that this petitioner played an important role to create the sale deed in order to grab the property from the defacto complainant. It was also pointed out that the person, who impersonated as Roselin Sagayarani in the said sale deed is the wife of the driver of this Amudha/petitioner, and Manoharan. The investigating Agency also confirmed the said fact. In fact this Court also went through the sale deed and also records showing about the investigation so far done. As per the confession of A10, the person who was impersonated as Roselin Sagayarani, is the wife of the driver of Amudha/this petitioner and her husband, and A10 alone took the lady to the Registrar Office to accompany this petitioner and her husband. The facts reveals that based on the confession the impersonated lady A11 is the wife of the driver who is working under the custody of this petitioner. Further more, till date the



police also has not taken any action to arrest A11 and still they are showing her as absconding. On perusal of the sale deed dated 21.06.2012 reveals that this petitioner/Amudha has signed as Power of Attorney, the purchaser Chithra and Rajendren have signed the sale deed and also the impersonated lady had signed as Roselin Sagayarani and that the husband of this petitioner Manoharan is one of the witness and the husband of the purchaser namely Rajendiran is shown as another witness. Thus, it is clear that all these persons are involved in fabrication of documents; Registry did before the authority in order to grab the property belongs to the defacto complainant. It is also surprising that the Mannargudi is a small Taluk where all these persons would be available. However, the police are not showing any progress in the investigation. As though there is a petition pending for postponing the investigation. There is no progress in the investigation all these years. But the learned counsel appearing for the petitioner relied upon the Judgement in the case of ***Satender Kumar Antil vs. Central Bureau of Investigation and another*** reported in (2022) 10 SCC 51 in Pare 19, 24 and 25 as reads as follows :

"19.The position in India is no different. It has been



the consistent stand of the Courts, including this Court, that presumption of innocence, being a facet of Article 21, shall inure to the benefit of the accused. Resultantly burden is placed on the prosecution to prove the charges to the Court of law. The weightage of the evidence has to be assessed on the principle of beyond reasonable doubt.

24.This provision mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record the reasons for arrest in writing. Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offence alleged is more than seven years, among other reasons.

25. The consequence of non- compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offence. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance



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would entitle the accused to a grant of bail.

And also relied upon the judgment in the case of **Joginder Kumar vs State of U.P.** reported in **(1994) 4 SCC 260** para no.20 reads as follows:

20.In India, Third Report of the National Police Commission at P.32 also suggested:

“An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

(i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken victims.

(ii) The accused is likely to abscond and evade the processes of law.

(iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.



It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines.....”

The above guidelines are merely the incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the Constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and



bonafides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the police Commission merely reflect the constitutional concomitants of the fundamental right to person liberty and freedom. A person is no liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest the Station House and not to leave the Station without permission would do.

and also relied upon the judgement in the case of ***Siddharth vs State of Uttar Pradesh and Another*** reported in **2021 SCC online SC 615** para nos.11 & 12 reads as follows:

11.We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 of



the Cr.P.C. that it does not impose an obligation on the officer-in-charge to arrest each and every accused at the time of filing of the chargesheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yet on the chargesheet being filed non-bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest the accused and produce him before the Court. We are of the view that if the investigating Officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word "Custody" appearing in Section 170 of the Cr.P.C does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the Investigating Officer before the Court while filing the chargesheet.

12. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of



influencing the witness or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.

5.Learned counsel for the petitioner would submit that though the offence charged against this petitioner is punishable for a period of 7 years, there is no necessity to arrest this petitioner as she has signed the document only as power of attorney and hence, prays for grant of anticipatory bail to her.

6.All the authorities cited by the counsel for the petitioner are not applicable to the fact of this case. On seeing the nature of the offence involved in the case, which has a chequered history of preparing forged documents namely the Death Certificate of the defacto complainant, Ration Card of Roselin Sagayamari, Legal heir Certificate etc. when the aid of the



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forged documents all the accused together had conspired and grabbed the property worth about Rs.20 Crores belonging to the defacto complainant and her younger sons family for a meagre amount of Rs.1,20,000/- by executing the sale deed without getting consent from the original owner and also by way of impersonation. When the defacto complainant was alive the investigating agency had not shown any progress in investigation though she is an 87 year old lady. She has approached the Station in the year 2018 and had been fighting for justice for her younger son's family. This shows that as pointed out by the learned intervenor, this petitioner, her husband and the purchaser chithra Rajendran and her husband are more powerful persons of the locality and that's how they have managed to stall the investigation. Thus, it is clear that there is lot of possibility of this petitioner and others threatening the witnesses, tampering the evidence, other investigation. Hence, this Court is not inclined to grant anticipatory bail to this petitioner.

7.In the light of the given circumstances has explained above, Registry is directed to call for report from the learned Magistrate, Thiruvarur, concerned as to whether Chithra Rajendiran/A7 in this case, was produced



before the Judicial Magistrate, Thiruvarur, and whether she was remanded or granted bail and if at all she was granted bail, on what

ground such report be produced before the Court on or before 02.02.2023.

The learned judicial Magistrate concerned shall also submit his/her remarks particulars.

8. Accordingly, this Criminal Original Petition stands dismissed.

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