



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2021

CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

CRL.O.P.Nos.23384 and 23385 of 2021

1. M. Mohammed Hakkim

2. Jothi

... Petitioners

(In O.P. No.23384 of 2021)

1. Hakkim

... Petitioner

(In O.P. No.23385 of 2021)

Versus

State Rep by
The Inspector of Police
District Crime Branch,
Coimbatore.
(Crime No.20 of 2021)

... Respondent

Common Prayer:-Criminal Original Petitions are filed under Section 438 of the Code of Criminal Procedure seeking to enlarge the petitioners on anticipatory bail in the event of their arrest in Crime No.20 of 2021 pending investigation on the file of the respondent police.

For Petitioners : Mr.C.D. Sugumar

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

For Intervenor : M/S.M.Velmurugan

COMMON ORDER

The petitioners, who apprehend arrest for the alleged offences under Section 419, 420, 423, 468, 120(B) of IPC r/w Section 83 of Registration Act, in Cr.No.20 of 2021 on the file of the respondent police, seek anticipatory bail.



2.The case of the prosecution is that the petitioner in Crl. O.P. No.23385 of 2021 has executed a forged power of attorney dated 04.12.2019 in Document No.14066 of 2019 on the file of the Sub-Registrar Office, Sullur, as one of the power agent for a woman by name Jovitha Benjamin, W/o. Jerome Benjamin, wherein the petitioners in Crl. O.P.No.23384 of 2021 signed as witnesses in the said power of attorney. Actually, while the said women namely, Jovitha Benjamin died in the year 2015, the impersonator person has given power to sell the properties of the original Jovitha Benjamin to the petitioner herein in Crl. O.P. No.23385 of 2021. Pursuant to the power of attorney, the petitioners have sold the properties of original Jovitha Benjamin to four other individuals. Therefore, the petitioners are liable for the above offences. Hence this complaint.

3.The learned counsel appearing for the petitioners submit that one Jerome Benjamin had approached the petitioner Crl. O.P. No.23385 of 2021/Accused No.1 and Accused No.2 namely Muthuramalinga Pandi, to sell away the properties which stands in the name of his wife Jovitha Benjamin for a valid consideration. Accordingly, Jerome Benjamin introduced a woman to the A1 and A2 as his wife and thereafter, the Power of Attorney was executed in favour of the A1 and A2. As per Power of Attorney, the A1 and A2, in the capacity of the Power Agents of the said woman, have sold away the property to other four person on various sale deeds on various dates by producing the Original title deed before the Sub-Registrar Office, Sullur. However, the said Jerome Benjamin refused to hand over the title document either to the power agent or to the purchasers. Now, the petitioners have been implicated as accused in this case as if they have forged the power of attorney on their own and defrauded the purchasers of the properties belonged to original Jovitha Benjamin. Further, he submits that after knowing the fact that the original owner of the property died in the year 2015, the petitioner in Crl. O.P. No.23385 of 2021/Accused No.1 and Accused No.2 namely Muthuramalinga Pandi, have cancelled all the sale deeds and the power of attorney executed by the said fake Jovitha Benjamin and Original Suit in O.S. No.104 of 2020 has also been filed by the petitioners before the District Munsif Court, Coimbatore against the Jerome Benjamin for the relief of declaration and injunction. The same is pending for trial. Hence, the petitioners have not committed any offence as alleged by the prosecution and they have been falsely implicated in this case. Hence, the learned counsel prays to grant anticipatory bail to the petitioners.

4.The learned Government Advocate (Crl.side) submits that the Accused 1 and 2 cancelled all the sale deeds and the power of Attorney after coming to know that they had fabricated such a false and forged power of attorney especially when the owner of the said property died in the year 2015. Further, the investigation in this case has just commenced and a number of documents have to be collected from various offices from various departments.



5. It has been further submitted that all the four accused including the petitioners filed anticipatory bail petitions in C.M.P. No.4157 of 2021 and C.M.P. No.4133 of 2021 before the District Principal and Sessions Court, Coimbatore and they were dismissed by its order dated 25.11.2021. As the original documents of the said case property have to obtain from the petitioners herein and they may create an encumbrance in revenue and registering records, the petitioners have to be arrested and interrogated in custody. Hence, he vehemently opposed for granting anticipatory bail to the petitioners.

6. Considering the facts and circumstances of the case and submissions made by the learned counsel on either side, it is seen that the impersonated person as a real owner namely, Jovitha Benjamin of the property, has given Power of attorney to the Accused No-2 wherein the Accused Nos.3 and 4 have signed as witnesses. Further, it is said that the petitioners have not created any forgery document in respect of the properties belonged to original owner and they have acted upon as an agent and witnesses in the document of Power of Attorney. Further it is said that Original Suit in O.S.No.104 of 2020 has been filed before the District Munsif Court, Coimbatore for declaration and injunction against the Jerome Benjamin and the petitioners are ready to withdraw the said suit, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

7. 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 Judicial Magistrate, Sulur, Coimbatore District, 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 respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned 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 on every Tuesday and Saturday at 10.30 a.m. until further orders and thereafter, as and when required for interrogation and the 1st and 2nd petitioners shall appear before the respondent police 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 petitioners in accordance with law as if the conditions have been imposed and the petitioners released on anticipatory 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.

-sd/-
22/12/2021

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,
SULUR, COIMBATORE DISTRICT.

2 THE CHIEF JUDICIAL MAGISTRATE
COIMBATORE [FOR INFORMATION].

3 THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH,
COIMBATORE.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+2 CC to M/S. C.D.SUGUMAR Advocate on payment of necessary charges SR.NOs.15529 & 15528

CRL OP.23384 & 23385/2021

Date :22/12/2021

JPA 03/01/2022