



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Date : 07.01.2021

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD). No.146 of 2021

1.Raji
2.Senpagam

... Petitioners/Accused
Nos.2 & 5

Vs

The State rep by
The Inspector of Police,
Virudhunagar Police Station,
District Crime Branch,
Virudhunagar.
Crime No.13 of 2020.

... Respondent/Complainant

For Petitioners : Mr.J.Sulthan Basha,

For Respondent : Mr.M.V.Chandrasekaran
Government Advocate (Crl.Side)

PETITIONS FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

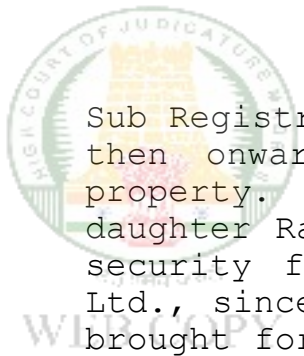
PRAYER :-

For Anticipatory Bail in Crime No.13 of 2020 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioners/A2 & A5, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 147, 148, 447, 294(b), 465, 468, 471 and 506(ii) of IPC seek anticipatory bail.

2.The case of the prosecution is that on 18.12.2020 the respondent received a complaint forwarded from the Superintendent of Police. The defacto complainant had purchased a property of Pelampatti Village, Survey No.11/6 on the Virudhunagar- Madurai High ways. Those properties were purchased by the defacto complainant and his wife by paying a sum of Rs. 1 Crore and 46 lakhs in the auction held by the State Bank of India under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and the sale was registered in the



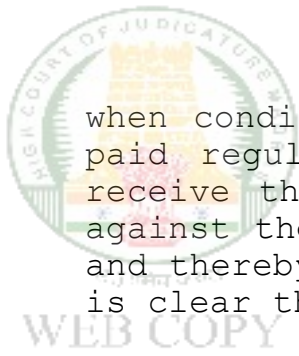
Sub Registrar Office, Virudhunagar vide document No. 5866/2013 from then onwards the defacto complainant was in possession of the property. Earlier this property belong to one Nirmala(A1) and her daughter Raji(A2) and Thirumagal (A3). The properties were given as security for their business namely M/s.Indumathi Refineries Pvt Ltd., since they could not repay the loan amount the property was brought for auction under the SARFAESI Act. In the said property A1 to A3 were running a petrol bunk in the name of Yes Pee Kay Agency.

3. After the defacto complainant purchasing the property, the accused 1 to 3 failed to vacate the premises stating that they have leased out the property to Indian Oil Corporation and the lease is valid up to 17.06.2031. The defacto complainant had approached the Indian Oil Corporation Officials and made representation about purchasing the property. The Indian Oil Corporation officials had taken signature from the defacto complainant and his wife in blank papers under the guise of changing licence of petrol bunk in the name of the defacto complainant. The Indian Oil officials with the connivance of other officers allowed previous owners to continue with the business and they never handed over the possession of the property. The licence was also not changed.

4. Therefore the defacto complainant sent a representation to the Indian Oil Corporation agency on 05.12.2020, further on the representation of the defacto complainant the District Collector, Virudhunagar cancelled the No Objection Certificate given to the Indian Oil Corporation and the operation of the petrol bunk was closed on 14.12.2020. The defacto complainant went to the petrol bunk to carry out some repair and maintenance work and at that time A1 to A5 along with some identifiable persons armed with stick and iron rod threatened and abused the defacto complainant stating that if the defacto complainant enters into the petrol bunk he will be done away. Further they claimed they had already given lease deed in favour of A1 to A5 and on the strength of the lease deed they are continuing the petrol bunk operations. These lease deed are created documents in connivance with the Indian Oil Corporation officials using the blank signed papers which was handed over to the Indian Oil Corporation officials, to change the licence of petrol bunk out let in the name of the defacto complainant.

5. Further the Indian Oil Corporation though promised to pay the tenancy amount they failed to make payment. Thus all the accused persons had formed into unlawful assembly, abused the defacto complainant by using forged documents claiming right over the property, hence the complaint came to be registered.

6. The learned counsel for the petitioners/ accused 2 and 5 would submit that the accused 3 & 4 along with one Nirmala and Raji had availed loan from the Nationalized bank for their other business, since they could not repay the same, the petrol bunk was purchased by the defacto complainant in as and



when condition. From the year 2013 to August 2017 rents have been paid regularly and thereafter the defacto complainant refused to receive the rent and also filed suit for eviction. The allegation against the petitioners is that they formed into unlawful assembly and thereby threatened the defacto complainant and others. Hence it is clear that the defacto complainant had foisted a false complaint.

7.The learned counsel appearing for the petitioners would submit that in the disputed site M/s.Yes Pee Kay Agency was running a retail outlet and the accused A1 to A3 are the erstwhile owners and the lease is valid upto 17.06.2031. It is true that the defacto complainant and his wife had purchased the said land from the bank auction sale. The property which is the petrol bunk situated is at Madurai- Virudhunagar Highways and the above property belongs to one Nirmala, Raji and Thirumagal/ A1 to A3 and they were running their business in the name of Indumathi Refineries Private Limited at Chennai for the same they have availed some credit facility from the State Bank of India by mortgaging the above said property and the loan was declared as NPA. The bank had initiated Sarfaesi proceedings against them.

8.The defacto complainant has purchased the land from the bank when they initiated tender cum auction sale as per the sale certificate issued by the bank dated 13.12.2013. The bank has specifically mentioned the land in favour of Indian Oil Corporation. The defacto complainant after purchase accepted the tenancy and received the rent as lessor from the Indian Oil Corporation Ltd till January 2019. The defacto complainant purchased the property and thereafter started harassing both the Indian Oil Corporation officials and the dealers by filing vexatious complaint by sending petitions to several authorities.

9. He had given petition to the District Collector to cancel the No Objection Certificate issued to the Corporation. Therefore the District Collector, Virudhunagar cancelled the license on 05.12.2020 which was in violation. Without conducting any proper enquiry against the order of District Collector, Writ Petition in W.P(MD) No.19111 of 2020 was filed before this Court and this Court by an order dated 22.12.2020, granted an order of interim stay.

10.The Indian Oil Corporation officials have not visited the petrol bunk on 14.12.2020. Admittedly they were not present in the scene of occurrence. The allegation against the Indian Oil Corporation officials is that they obtained signatures of the defacto complainant and his wife in blank papers and created lease deed in favour of other accused. He further submitted that the defacto complainant and his wife purchased the property and the same is leased out to Indian Oil Corporation as the provisions of the transfer of property Act. They have also given undertaking affidavit that they have received rent from the Indian Oil Corporation. The defacto complainant admitting dispossession of the



Indian Oil Corporation from the property and caused damage to the properties. Hence Thirumagal/A3 lodged complaint for illegal acts of trying to cause damage to the property of the Indian Oil Corporation Ltd. The police had conducted enquiry and advised the defacto complainant to follow due process of law.

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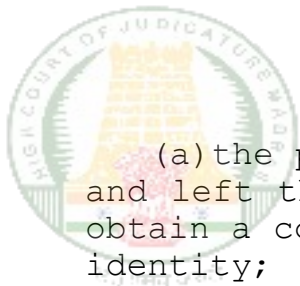
11.The Indian Oil Corporation has also filed suit in O.S.No. 163 of 2019 on the file of the District Munsif, Virudhunagar restraining the defacto complainant and his wife from any way interfering with the possession of the Indian Oil Corporation as statutory tenant and causing damage to his belongings in the property where the retail outlet is functioning till the expiry of the lease period. Further from January 2019 the defacto complainant refused to receive the rent and the Indian Oil Corporation is taking steps to deposit the rent in the Court. Thus the defacto complainant is attempting to use this complaint to get terminated the lease of Indian Oil Corporation valid upto 17.06.2031. In support of contention the learned counsel for the petitioners has filed a typed set of papers.

12.It is seen that the defacto complainant had purchased the property from the State Bank of India who had initiated Sarfaesi proceedings against the original owners of the land. The petrol bunk is being functioning in the said property in the name and style of M/s. Yes Pee Kay agencies and the said land is leased to Indian Oil Corporation which is valid up to 17.06.2031. In the tender cum auction sale of the bank it is specifically stated that the lease is subsisting in favour of the Indian Oil Corporation. It is seen that the defacto complainant had been receiving the rent for the property regularly upto January 2019 and thereafter refused to receive the rent. It is also seen that the defacto complainant has lodged a complaint as though A1 to A3 were present on 14.12.2020. It is submitted that A1 in this case expired in the year 2018 itself. The Indian Oil Corporation has filed a civil suit in O.S.No. 163 of 2019 and is pending.

13.It is stated that the accused 3 & 4 were granted Anticipatory Bail on 05.01.2021, vide order of this Court in CRL OP (MD) Nos.15875 and 16143 of 2020. Taking into consideration all the above facts and circumstances of the case this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

14. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or 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.II, Virudhunagar 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 to the Police Officer, who intends to arrest or to the satisfaction of the learned Judicial Magistrate concerned and on further condition that:

<https://hccservices.courts.gov.in/hccservices/>



(a) the petitioners and the sureties shall affix their 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 petitioners shall report 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 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/-
07/01/2021

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/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. THE JUDICIAL MAGISTRATE No. II,
VIRUDHUNAGAR.

2. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

3. THE INSPECTOR OF POLICE,
VIRUDHUNAGAR POLICE STATION,
DISTRICT CRIME BRANCH, VIRUDHUNAGAR.

<https://hcservices.ecourts.gov.in/hcservices/>



4.THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.J.SULTHAN BASHA, Advocate (SR-152[I] dated 08/01/2021)

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ORDER

IN

CRL OP(MD) No.146 of 2021

Date :07/01/2021

VRN

TK/PN/SAR.2/04.02.2021/6P/6C