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

Orders Reserved on: 18.02.2021

Pronounced on : 15.03.2021

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD). No.217 of 2021

1.Jesuraj
2.Kokiladevi ... Petitioners/Accused No.1 and 2

Vs

The State rep.by,
The Inspector of Police,
District Crime Branch,
Thoothukudi.
(Crime No.3/2021). ... Respondent/Complainant

Yogaraj ... Petitioner/Intervener
in Crl.MP(MD)No.897 of 2021
in Crl.OP(MD)No.217 of 2021

For Petitioner : Mr.R.Pon Karthikeyan, Advocate.
For Respondent : Mr.K.Suyambulinga Bharathi, Government Advocate (Crl.Side)
For Intervener : Mr.S.Ramasamy, Advocate.

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

PRAYER :-
For Anticipatory Bail in Crime No.3/2021 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioners/A1 and A2, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 406, 420, 294(b) and 506(i) of IPC., in Crime No.3 of 2021, on the file of the respondent Police, seek anticipatory bail.

2. The gist of the case is that the petitioners on 13.10.2016, had entered into a sale agreement to sell their property and sale consideration was fixed for Rs.70,00,000/-. On he same day,

Rs.50,00,000/- was given as advance and the balance to be paid in three months and sale to be executed. Thereafter it was found that the land was short of 22.387 square meters and therefore, proportionately Rs.6,46,514/- was reduced and finally, the sale agreement was concluded at Rs.63,53,486/- and Rs.4,50,000/- was paid on 29.07.2017 and another Rs.3,00,000/- was given to yet another tenant, in total, Rs.57,50,000/- had been paid. On receipt of such money, the petitioner had not executed the sale deed and had cheated and misappropriated the same.

2.1. On the contrary, on 02.06.2020, the petitioners herein has projected a case as though they have received Rs.10,00,000/- on interest for loan, for which, they have to pay around Rs.18,00,000/-. Making such claim, a legal notice has been sent to them and they are also filed caveat before the Principal District Munsif Court, followed by a complaint on 20.06.2020 before the South Police Station, Thoothukudi. Further, they had threatened the defacto complainant that the defacto complainant received the money on the terms as decided by the petitioners, in the process, the sale deed was not executed. Thereafter, the defacto complainant had lodged a complaint before the Superintendent of Police and enquiry was conducted by the District Crime Branch. During that time, the defacto complainant, on 04.12.2020, at about 5.00 p.m., had gone to verify the status of the property, at that time, the petitioners herein abused and threatened him. Hence, the above complaint came to be registered.

3. The learned counsel appearing for the petitioners contended that the petitioners had borrowed only Rs.10,00,000/- from the defacto complainant in the year 2016, at the rate of 1.5% interest per month. At that time, while borrowing, the defacto complainant had obtained signatures in unfilled stamp papers and promissory note. The petitioners had paid interest upto February, 2019, to the tune of Rs.2,85,000/-. The defacto complainant, thereafter pressurized the petitioners to settle Rs.15,00,000/- towards the loan amount, by charging exorbitant interest. The petitioners expressed their inability to pay such unreasonable exorbitant interest. Not heeding to the same, the defacto complainant started to exert pressure and insisted them to settle their house property. Due to which, the 1st petitioner was forced to sell the property in favour of the defacto complainant on 07.02.2019 vide Doc.No.446 of 2019.

4. The learned counsel for the petitioners would further contend that the defacto complainant, misusing the signature of the 2nd petitioner, created documents in his favour. Hence, the petitioners had sent a legal notice on 02.06.2020. On receipt of the legal notice, the defacto complainant, on 17.06.2020, came to the house of the petitioners with muscle men and threatened them. Hence, the petitioners, on 20.06.2020, lodged a complaint against the defacto complainant before the South Police Station, Thoothukudi,

which was assigned in CSR No.370 of 2020. During enquiry, the defacto complainant produced an unregistered sale agreement, dated 13.10.2016 and projected a new story, as if the 2nd petitioner entered into an unregistered sale agreement in respect of the petitioners' property, by fixing sale consideration of Rs.70,00,000/- and as though on the same day Rs.50,00,000/- has been received by them and latter some more amount had been paid.

5. The learned counsel for the petitioners further submitted that on the face of the sale agreement it would be seen that it is a created documents. The defacto complainant has filled up the blank signed document, which was received when the petitioner had taken a loan in the year 2016, wherein substantial amount had already been repaid and for the balance amount, the property was also settled in favour of the defacto complainant by the 1st petitioner. The defacto complainant, using his influence with the police, had been harassing the petitioners to settle the other properties of the petitioners.

6. It his further submission that the petitioners had filed a petition in Crl.O.P(MD)No.12995 of 2020, before this Court, seeking protection and direction, restraining the Sub Inspector of Police (Appadurai), not to interfere in the civil dispute. This petition was disposed of by this Court on 18.11.2020, referring the case of D.K.Basu. Thereafter too, the Sub-Inspector of Police continued his harassment. Hence, the petitioners was constrained to make representation to higher officials and filed another petition in Crl.O.P(MD)No.15750 of 2020, seeking a direction. In the said petition the Sub-Inspector of Police, Appadurai was arrayed in his personal capacity. The said petition was filed on 17.12.2020. On 22.12.2020, the Sub-Inspector of Police, after coming to know about filing of the petition, registered an FIR on 01.01.2021. When Crl.O.P.(MD)No.15750 of 2020, was listed for hearing, it was informed that already FIR has been registered and recording the same, the Criminal Original Petition was disposed. Thus, the defacto complainant in connivance with the Sub-Inspector of Police, caused harassment, threatened and conducted a gangaroo court to settle the properties of the petitioners, by charging exorbitant interest. The petitioners had filed a typed set enlisting the sale deed, legal notice, CSR, summons issued by the respondent, orders of this Court and also his representation. The learned counsel submitted that the petitioners, in order to prove their bonafide, the petitioners are ready to pay a sum of Rs.2,00,000/- (Rupees two Lakhs) to the Credit of Crime No.3 of 2021.

7. The learned counsel appearing for the intervenor had filed a petition along with a typed set and submitted that the 2nd petitioner, on 13.10.2016 had taken a loan of Rs.70,00,000/- from the defacto complainant for which, she executed a sale agreement for three properties pertaining to Document No.592 of 2008, Document No.680 of 2008 and Document No.696 of 2008. On the same day, she received Rs.50,00,000/- and also agreed to complete the sale deed

within three months. Thereafter, by citing one reason or other, there have been delay in executing the sale deed. Further, on 27.09.2017, Rs.4,50,000/- and subsequently Rs.3,00,000/- had been paid to the tenants, who were in the property, totally, Rs.57,50,000/- had already been paid. Suppressing these facts, the petitioners intend to sell the property to the 3rd person and cheat the defacto complainant. Hence, the defacto complainant had several negotiations and finally lodged the complaint. During pendency of the enquiry,, the defacto complainant had visited the property, the petitioners threatened and assaulted, thereafter a complaint came to be registered.

8. The learned counsel for the intervener further submitted that the petitioner had sent a legal notice making false allegations. To substantiate the same, they have also filed a caveat before the civil Court. Further, the sale deed executed by the 1st petitioner in Document No.446 of 2019 pertains to a separate transaction and the petitioners have clubbing both the transactions and projected as though the entire loan amount has been settled and strongly opposed to grant anticipatory bail to the petitioners.

9. The learned Government Advocate (crl.side) appearing for the respondent Police, on instructions, would submit that the defacto complainant had lodged a complaint before the Superintendent of Police, which was forwarded to the respondent Police. Initially, enquiry was conducted and thereafter, getting satisfied about the genuineness of the complaint, FIR was registered on 01.01.2018. Immediately, the petitioners had rushed to this Court and filed this petition on 05.01.2021. Since the investigation is in initial stage, he opposed the anticipatory bail application.

10.Heard the learned counsel appearing for the petitioners and the learned Government Advocate(Crl. Side) appearing for the respondent.

11. Considering the submission and on perusal of the materials it is seen that the petitioners and the defacto complainant had entered into a sale deed on 13.10.2016 and as per the sale agreement, within three months, the sale to be completed and for the reasons best known, it could not be completed. On perusal of the sale deed it is seen that there has been some insertions, which is not authenticated. Further, during pendency of the sale deed, the 1st petitioner had also executed a sale deed for yet another property on 07.02.2019. The 2nd petitioner had sent a legal notice on 02.06.2020, which is acknowledged by the defacto complainant, but he has not chosen to deny the same and sent any reply. Further, the crux of the issue is based on the sale agreement. It is also strange to note that a huge amount of Rs.50,00,000/- is said to have been given in cash on 13.10.2016.

12. Considering the facts and circumstances of the case and finding that the dispute is with regard to non-fulfilment of the sale obligations as per the agreement, the allegations are predominantly civil in nature, this Court is inclined to grant anticipatory bail to the petitioners, of course, with certain conditions.

13. 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.IV, Thoothukudi, on condition that the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) 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 Magistrate concerned and on further condition that:

(a)the petitioners shall deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) to the credit of Crime No.3 of 2021,

(b)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;

(c)the petitioners shall report before the respondent police daily at 10.00 a.m., for a period of two weeks, and thereafter, as and when required, for interrogation.

(d)the petitioners shall not tamper with evidence or witness either during investigation or trial;

(e)the petitioners shall not abscond either during investigation or trial;

(f)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;

(g)if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

sd/-
15/03/2021

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

TO

1.THE JUDICIAL MAGISTRATE NO.IV. THOOTHUKUDI

2.DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THOOTHUKUDI DISTRICT.

3.THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH, THOOTHUKUDI.

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

+1. CC to Mr.R.PON KARTHIKEYAN, Advocate SR.No.2086

ORDER
IN
CRL OP(MD) No.217 of 2021
Date :15/03/2021

MPK
PK/SMA/SAR-II/18.03.2021 : 6P/6C