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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Orders Reserved on : 11.03.2021

Pronounced on : 16.03.2021

PRESENT

The Hon'ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD). No.842 of 2021

1. Banumathi

2. Aravind Appadurai

... Petitioners/Accused Nos.1 and 2

Vs

The State Rep. by
The Inspector of Police,
Central Crime Branch Police,
City Police Commissioner Office,
Madurai.

(Crime No. 25 of 2020).

... Respondent/Complainant

For Petitioner : Mr.Deepak.F.,
Advocate.

For Respondent : Mr.R.Srinivasan,
Government Advocate (Crl.Side)

For Intervener : Ms.N.Rekha
For Mr.R.Gandhi, Advocate

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

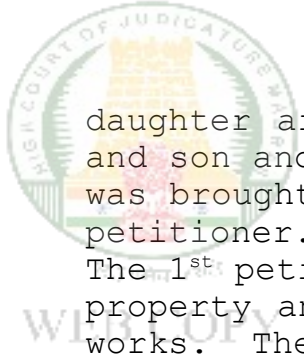
PRAYER :-

For Anticipatory Bail in Crime No.25 of 2020 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
419, 420, 465, 468, 471, 474, 506(i) and 120(b) of IPC., in Crime
No.25 of 2020, on the file of the respondent Police, seek
anticipatory bail.

2. The gist of the case is that the defacto complainant, who is
the owner of the property in R.H.No.242, S.S.Colony, Madurai-10,
lodge a complaint stating that due to his old age and his son and

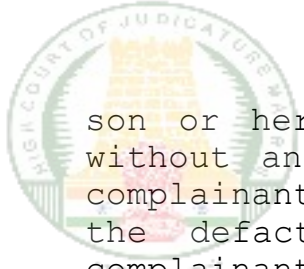


daughter are staying away, his wife used to stay with her daughter and son and he was alone and for domestic help, the first petitioner was brought from his native, the 2nd petitioner is the son of the 1st petitioner. Latter, the 1st petitioner's husband died in an accident. The 1st petitioner used to collect rent from the eight tenants in the property and was also helping the defacto complainant in his daily works. The defacto complainant was aged about 71 years.

2.1. The first petitioner, on 15.09.2019, represented that for the two portions of the house, a register tenant agreement to be executed, since it is the requirement of the tenants, who are working in Government Office. Believing the said representation of the 1st petitioner, on 17.09.2019, the defacto complainant along with the 1st petitioner, had gone to the Sub Register office, where one Ganesan and Ravi were there, they were identified as tenants and the defacto complainant had signed the documents for presentation. At that time, the Registrar informed about the lease deed and the Will, when the defacto complainant questioned the same, the 1st petitioner informed that the Registrar is mentioning about the previous registration and not about the present one. The defcto complainant, on suspicion, verified and found that the 1st petitioner, in conspiracy with A3 - Ganesan Advocate and A4-Praveen had prepared a lease deed, as though the defacto complainant had received Rs.18,00,000/- and had mortgaged his property to her and also a Will was executed in favour of the 1st petitioner's daughter.

2.2. Further on verification it was found that the original title deeds of the property is shown as though it was lost on 17.08.2019, within the jurisdiction of Srivaikundam Police Station and a complaint has been lodged on 21.08.2019 and receipt for the same was received and Public Notice issued and thereafter, non-traceable certificate obtained from the Police, using these documents, without the original document of the property, the mortgage deed created. The missing of originals, giving complaint, paper publication everything said to have taken place in Srivaikundam. The defcto complainant coming to know about the evil design of the petitioners, cancelled the will and was taking steps to cancel the release deed. Since the petitioner absconded it could not be done immediately. The defacto complainant had questioned A1 with regard to the same, he was threatened and warned. Further, on 24.09.2019, he was again threatened and the 1st accused herein claimed that the property belongs to her and if the defacto complainant makes any claim, he would be done away. Hence, a complaint came to be lodged.

3. The learned counsel appearing for the petitioners would submit that the defacto complainant was residing at Ellis Nagar. The wife of the defacto complainant had two children a daughter, settled in USA and son settled in Mumbai. Both of them are married and residing with their respective family. The wife of the defacto complainant is a retired teacher, during her service, she was posted at various places and after her retirement, she visits either her

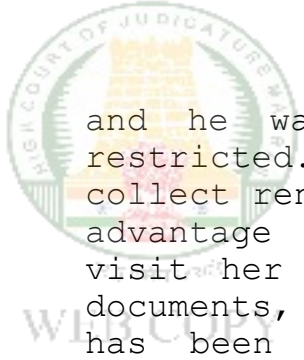


son or her daughter and the defacto complainant was left alone without any care. The 1st petitioner, who belong to the defacto complainant's native, was brought from his native to take care of the defacto complainant, from 1998. In 2001, the defacto complainant fell in sick and she was nursing him and taking care. The property is a three story building, where eight tenants were there and the petitioner was collecting rent and maintaining the entire property. Further, the petitioners were asked to stay in one portion of the property.

4. The learned counsel for the petitioners further contended that the defacto complainant's mother were taken care by the 1st petitioner. In the year 2004, the 1st petitioner delivered a special child. Hence, the defacto complainant took pity and supporting the defacto complainant in all means possible. He had also stood as a guardian to the child. On 24.04.2012, the defacto complainant had collected a sum of Rs.10,00,000/- from the 1st petitioner, which was paid through State Bank of India, as hand loan to one Muthupandi. In the said transaction, the defacto complainant stood as a witness. When the defacto complainant had bought the property in the year 2006, the petitioner had also contributed to purchase of the property. Further, the defacto complainant had opened LIC saving accounts in favour of the special child and stood as a guarantor. The defacto complainant had executed an unregistered document in favour of the 1st petitioner to manage and take care of the house property. The defacto complainant was residing in Ellis Nagar. The defacto complainant's wife was residing separately at Melamasi Veethi and whenever she used to visit the defacto complainant, picked up quarrel with the defcto complainant and the petitioner. In one such incident, there was a dispute with one Money, who happens to be an occupant in the Apartment and relative of the defcto complainant's wife Kasturi, and there was a police complaint. The defacto complainant had come to the S.S.Colony Police Station on 02.08.2018 and had supported the petitioner much against his wife Kasturi and Money.

5. It is his further contention that the 1st petitioner's husband died in a road accident in the year 2019 and thereafter, the defacto complainant was taken care of the petitioner and his family. The petitioner had made a savings and also received accident claim compensation for her husband, which was given to the defacto complainant on 17.09.2019 and now, to deny the same and evict the petitioners from the property, a false complaint has been lodged. Further, the defacto complainant after lodging the complaint since passed away. The wife of the defacto complainant taking advantage of the same some how wanted to evict the petitioners.

6. The learned counsel appearing for the intervener filed a petition and submitted that her husband had eight row house in Ellis Nagar. The petitioner hails from their native and taking confidence on them, they were brought from the native, to be of some help. Further, her husband defacto complainant was not keeping good health



and he was a chronic Asthmatic patient and his movement was restricted. Hence, the first petitioner was given authorisation to collect rent and maintain the property with proper accounts. Taking advantage of the health condition and the intervener is used to visit her son and daughter, the petitioner had created a forged documents, as though the original title deed of Ellis Nagar property has been lost in Srivaikundam, on 17.08.2009 and thereafter, complaint sent on 21.08.2018 at Srivaikundam Police Station, which is impossible, as the defacto complainant is a sick person, aged about 71 years and he was mostly confined to bed.

7. The learned counsel for the intervener further submitted that A3 in this case is an Advocate and created such forged documents, obtained non-traceable certificate and thereafter, the mortgage deed had been executed on 17.09.2019. The defacto complainant was not in good health and was not fully conscious. Latter it was found that not only lease deed, Will also executed in favour of the 1st petitioner's special daughter. Thereafter, the will was immediately cancelled on 23.09.2019. The mortgage deed could not be cancelled immediately, since the parties to the document have to be present. The petitioners had absconded, unable to contacted, the defacto complainant took steps to cancel the lease deed. The petitioner was brought as a domestic help, she has no source of income and was taken care by the defcto complainant, she become greedy, in connivance with the other accused, had created a forged document and wanted to take away the entire property of the defacto complainant. The defacto complainant on 29.10.2020 had died due to old age and sickness, the intervener has now stepped into the shoe of the defacto complainant and pursue the complaint. The petitioners had threatened the defacto complainant and also intervener. Further, the documents produced by the petitioners are all created documents, which would clearly show and prove her mensrea.

8. The learned Government Advocate (crl.side) appearing for the State, on instructions, would submit that the defacto complainant lodged a complaint on 18.03.2020 against four persons. The petitioners are A1 and A2. A3 is an advocate, who had created forged documents viz., mortgage deed and Will, thereafter, the same was registered before the Sub Register office. The defacto complainant was forcefully taken there on the guise of executing the tenancy agreement and in a deceitful manner his signatures were obtained. On suspicious and on enquiry, the defacto complainant found that forgery has been committed, and immediately, cancelled the Will. With regard to mortgage deed, the petitioners have not co-operated for cancellation of the deed. The investigation is in progress, documents have been collected, the documents produced by the petitioners are all created documents. The 1st petitioner taking advantage of the health condition and her close proximity with the defacto complainant had created forged documents and now makes a claim over the property. The custodial interrogation of the petitioners are necessary to find out the role played by each of the



accused and forged documents. Hence, the learned Government Advocate strongly opposed the petition.

9. I have heard the learned counsels appearing on either side and perused the materials available on record.

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10. Considering the rival submissions and on perusal of the materials it is seen that that the petitioners had been brought from the native of the defacto complainant to be of domestic help, the defacto complainant was aged person with severe Asthmatic problem, the defacto complainant's wife is a retired teacher and posted at various places, his son and daughter are settled in their respective family and hence, the 1st petitioner was taking care of the defacto complainant, further feeling pity, the defacto complainant permitted the petitioner to stay in one portion of the property. There are eight houses in the property and rents were permitted to be collected by the petitioners. Taking advantage of the situation, false documents had been created, as though the defato complainant lost the document in Srivaikundam and far of place in Madurai, where the defacto complainant had never visited during the relevant time and created documents as though the originals of the property had been lost there, false complaint has been given, public notice issued, non traceable certificate obtained, on the strength of the mortgage deed, without originals, title deed had been created, which are form part of the mortgage deed. The 1st petitioner having access to the personal details and personal documents of the defacto complainant, in conspiracy and connivance with other accused, more particularly, A3 in this case, who is an advocate, had created forged documents and also forged Will. The Will was cancelled immediately, but the mortgage deed could not be cancelled due to non-availability of the petitioners. The petitioners taking advantage of the ill-health and old age, had created forged documents. The documents produced by the petitioners, to substantiate their claim, are all created documents. In view of the same, this Court is not inclined to entertain the petition. Hence, this petition is dismissed.

sd/-

16/03/2021

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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 INSPECTOR OF POLICE,
CENTRAL CRIME BRANCH POLICE,
CITY POLICE COMMISSIONER OFFICE,
MADURAI.

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

+1 CC to Mr.F.DEEPAK, Advocate (SR-2144[I] dated 16/03/2021)

+1 CC to Mr.R.GANDHI, Advocate (SR-2141[I] dated 16/03/2021)

ORDER

IN

CRL OP(MD) No.842 of 2021

Date :16/03/2021

MPK

TE/JC/SAR-III : 19/03/2021 : 6P/5C