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

Reserved on : 29.03.2021

Pronounced on: 01.04.2021

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD). No.4290 of 2021

Ramesh ... Petitioner/Accused No.4

Vs

The State rep.by
The Inspector of Police,
Central Crime Branch,
Trichy City, Trichy.
Crime No. 05/2021. ... Respondent/Complainant

M.Amerudeen ...Intervener/Defacto complainant/ Petitioner in CRL MP(MD)No.2583 of 2021 in CRL OP(MD)No.4290 of 2021

For Petitioner : Mr.R.Gandhi, Advocate.

For Intervenor : Mr.A.Amal Antony, Advocate

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

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

PRAYER :-
For Anticipatory Bail in Crime No. 05/2021 on the file of the respondent Police

ORDER : The Court made the following order :-

The petitioner/A4, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 419, 420,465,467,468,471, 109 and 506(i) of IPC seeks anticipatory bail.

2.The case of the prosecution is that the defacto complainant is running a steel business in the name and style of Union Steel Company. Two persons who are brokers by name Maheswaran and

Palanivel during the month of September 2017 approached the defacto complainant and informed that a plot in Nagamangalam Village, Srirangam Taluk in Plot No.131 measuring 2773 sq.ft is for sale and the defacto complainant showed interest in purchasing the property for the purpose of investment. The two brokers had taken the defacto complainant to the petitioner/A3 who is running a finance company and doing real estate business, the petitioner explained the details of property and informed that his friend Ramesh/A4 and petitioner are doing real estate business and the property belongs to one C.Arockiyasamy/A1 who intend to sell the property through power agent/A2 for which he executed power of attorney in document No. 2779/ 2017 dated 01.09.2017. Further it was informed that the power agent Chidambaram would act according to the said Ramesh and he would execute the sale deed. This conversation took place in the presence of one Palanichamy and ligath Ali and the price was fixed @1340 per sq. ft and the total value comes around Rs. 37,15,820/-. The petitioner as well as A4 had demanded 2% as commission for the sale consideration.

3. Thereafter on 27.09.2017 A2 power agent of A1 executed sale deed in the Sub Registrar Officer of K. Sathanur, vide document No.3200/2017 and on the date of registration as promised the said Chidamabaram could not produce the original power deed and informed that he had kept it at home and the same would be handed over to the defacto complainant. On the date of registration the defacto complainant handed over a DD for the sum of Rs.3,10,000/- drawn on ICICI Bank in the name of A2 and the balance amount of Rs.1,05,000/- was withheld by him to be paid after the receiving the original title deeds. Earlier in installments he had paid a sum of Rs. 33,00,820/- to A4/Ramesh by cash. Thereafter during the month of January 2021 one Arockiasamy with Mobile No.94861 07335 contacted the defacto complainant and informed him that the property purchased by him belongs to Arockiasamy and he had not given power of attorney to any persons and informed that the defacto complainant was cheated by the accused person. On 21.01.2021 the defacto complainant approached the petitioner/A3 in his office and demanded back the money paid by defacto complainant and also enquired them about the forgery committed by the accused persons. A3 accepted that the forged documents has been created and the defacto complainant was cheated and he informed that the entire money was taken away by A4 and he left abroad. Further the petitioner threatened the defacto complainant not to disturb him and if he continues to demand money he will be dealt with. Hence the case came to be registered.

4. The learned counsel for the petitioner would submit that petitioner has not committed any offence as alleged by the prosecution and the petitioner is involved in manufacturing of water purifier units and one of his friend namely James is involved in real estate business. He would further submit that the petitioner was working in Dubati for sime time and thereafter he had come to India and doing the water purifier business. He would also submit

that the petitioner has not received any amount directly or indirectly from the defacto complainant. The transaction is of the year 2017 and all the documents are very much available with the defacto complainant and in the year 2021 this false complaint has been lodged against the petitioner. He would also submit that the entire case is based on documents hence custodial interrogation of the petitioner is not required. He would also submit that inorder to show his *bonafide* he has come forward to give his mother's property worth about more than Rs.10,00,000/- in document No.2809 of 2018 as security and hence he seeks anticipatory bail.

5. The learned counsel for the defacto complainant/ intervenor would submit that it is the petitioner who had represented that A2 is the power holder to sell the property. Further the petitioner had demanded a sale price of Rs. 37,15,820/-@ Rs.1340 per sq.ft and 2 % commission. This negotiation had taken place in the office of the petitioner in the presence of one Palanichamy and Ligath Ali. The petitioner had assured that A2 would bring and hand over the original documents at the time of registration and believing the said representation the defacto complainant had parted huge sums of money and in turn he was handed over with forged documents. This had happened in collusion with the other accused and also in the office of the Registration Department. Thorough investigation has to be carried out and it is the duty of the registering authority to verify the genuineness of the documents. He would also submit that some of the accused persons in this case are still absconding and only on their arrest the role played by each of the accused can be ascertained. Further it is admitted by the petitioner herein that the transaction had taken place in his office and he had acted in the transaction for 2 % commission and the entire cash has been handed over to A4 and the role played by the petitioner is inseparable. Further the petitioner had abetted and participated in the crime with the other accused in the commission of offence, hence he opposed to grant bail to the petitioner.

6. The learned Government Advocate(Crl.Side) would submit that after registration of the case investigation commenced. There are totally six accused in this case. A1 is the impersonator, A2 is the power of attorney of A1, A3 and A4 are the mediators, A5 and A6 are the witnesses to the forged document No.3200/2017. During investigation some of the witnesses examined and the original Arockiasamy including the defacto complainant were also examined. During enquiry the said Arockiasamy had stated that he had purchased the property on 07.03.2007 vide document No.1160/200 and the original document is with him and he had also produced the same. On 06.01.2021 when he intended to sell his property he made search with the encumbrance and to his shock he found that the power of attorney registered in his name vide document No. 2779/2013 and thereafter using the forged document sale deed was executed by the accused persons in document No.3200/2017 on 27.09.2017. Thereafter the said Arockiasamy had given complaint to the Sub Registrar Officer on

13.01.2021 and following it with objections on 20.01.2021 and CSR No.33/2021 was assigned.

7. When the enquiry was going on the respondent police had enquired him and during enquiry original Arockiasamy produced all the documents to prove his ownership and identity. The documents received from the said Arockiasamy was sent to the Sub Registrar Office, K.Sattanur who examined the same and sent a report. From the materials so far collected, it is clear that the petitioner along with other accused had created forged documents and committed forgery and using the same not only cheated the defacto complainant and also caused encumbrance. Further some of the accused persons are still absconding and if the petitioner was released on bail it would deter and hamper the investigation, hence he opposed to grant bail to the petitioner.

8. From the perusal of the material it is seen that though the petitioner claims that he had acted only as mediator along with A3 the material produced and available are otherwise. The petitioner along with other accused, created forged documents and used the same as genuine thereby cheated the defacto complainant and also caused encumbrance to the original Arockiasamy. Further the entire case is based on the documents only. In this case no amount has been recovered and the encumbrance has to be removed and this to be done by the parties to the forged documents

9.Taking into consideration the facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

10. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or his 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, Tiruchirapalli on condition that the petitioner 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 petitioner 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 petitioner shall deposit photostat copy of the property document No.2809/18 as security before the concerned Court. While executing sureties he shall produce the original and the mother of the petitioner who is the owner of property to file an affidavit to that effect that the property shall not be alienated and no encumbrance will be made.

(c)the petitioner shall report before the respondent police daily at 10.30 am., until further orders.

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

(e)the petitioner 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 petitioner in accordance with law as if the conditions have been imposed and the petitioner 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/-
01/04/2021

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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, TRICHY.
2.DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TRICHY DISTRICT.
3.THE INSPECTOR OF POLICE,
CENTRAL CRIME BRANCH, TRICHY CITY, TRICHY.
4.THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to Mr.R.GANDHI Advocate SR.No.2716
+2. C.C. to Mr.A.AMAL ANTONY Advocate SR.No.2857

ORDER IN
CRL OP(MD) No.4290 of 2021
Date :01/04/2021

AAV
TK/PN/SAR.1/01.04.2021/5P/8C