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.4406 of 2021

James @ Samimuthu ... Petitioner/3rd Accused

Vs

The State rep.by
The Inspector of Police,
City Crime Branch,
Trichy City.
Crime No.5 of 2021. ... Respondent/Complainant

M.Amerudeen ...Intervener/Defacto complainant/ Petitioner in CRL MP(MD)No.2665 of 2021 in CRL OP(MD)No.4406 of 2021

For Petitioner : Mr.R.Pon Karthikeyan, Advocate.
For Respondent : Mr.R.Srinivasan, Government Advocate (Crl.Side)
For Intervenor :Mr.A.Amal Antony, Advocate

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :-

For Bail in Crime No.5 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A3, who was arrested and remanded to judicial custody on 29.01.2021 for the offences punishable under Sections 419, 420,465,467,468,471, 109 and 506(i) of IPC on the file of the respondent police seeks 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 the petitioner has no role in the alleged transaction and he is not aware of the dispute between the defacto complainant and his vendor Chidambaram. He would also submit that the petitioner is a real estate broker and he had only arranged for a meeting of the defacto complainant with A2 for 2% commission and he is not aware of the creation of any documents or making any false representation to the defacto complainant. Since the petitioner is in the finance business and having resource and the other accused persons are known to him he is falsely implicated in this case. Further the complaint of the defacto complainant is highly doubtful and the alleged sale had taken place in the year of 2017 and after four years, now the complaint has been lodged and no reason has been given for the delay. Further the payments said to have been made appears highly artificial .

5. He would also submit that the defacto complainant has to be enquired and verified with regard to the payment made by him and his source. He would also submit that the defacto complainant had some dispute with the petitioner for which is falsely implicated in this case. He would also submit that the petitioner is made a scapegoat. The admitted case is that the entire money has been handed over to A4 and not to the petitioner herein. He would also submit that the petitioner was arrested on 29.01.2021 and he is still in judicial custody, hence he seeks bail.

6. 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.

7. 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.

8. 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.

9. From the perusal of the material it is seen that though the petitioner claims that he had acted only as mediator along with A4 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

10. Taking note of the above facts and circumstances of the case and also taking into consideration the period of incarceration this Court is inclined to grant bail to the petitioner subject to the following conditions:

11.Accordingly, the petitioner is ordered to be released on bail on his executing 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 learned Judicial Magistrate No.II, Tiruchirapalli.

i) the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate/concerned court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity

ii) the petitioner shall report before the respondent police daily at 10.30 a.m until further orders.

iii)the petitioner shall not tamper with evidence or witness.
iv) the petitioner shall not abscond during trial.

v)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].

vi) If the accused thereafter absconds, a fresh FIR can be registered under Section 229A 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,
CITY CRIME BRANCH, TRICHY CITY.

4.THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

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

+1. CC to Mr.R.PON KARTHIKEYAN Advocate SR.No.2816
+2. C.C. to Mr.A.AMAL ANTONY Advocate SR.No.2856

ORDER
IN
CRL OP(MD) No.4406 of 2021
Date :01/04/2021

AAV
TK/PN/SAR.1/01.04.2021/5P/9C