



WEB COPY

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

Reserved on	Pronounced on
21.04.2021	26.04.2021

PRESENT

The Hon`ble Mr.Justice G.CHANDRASEKHARAN

CRL OP(MD) . No.4441 of 2021

1.A.Rajan

2.R.Dhanalakshmi

... Petitioner /Accused 1 and 2

Vs

State represented by its
The Inspector of Police,
Boninayakanur Town Police Station,
Bodinayakanur,
Theni District.

(Crime No.153 of 2021)

... Respondent/Complainant

For Petitioner : Mr.S.Saravanakumar
Advocate

For Respondent : Mrs.M.Anantha Devi
Government Advocate

For Intervenor : Mrs.B.Bhuvaneshwari

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

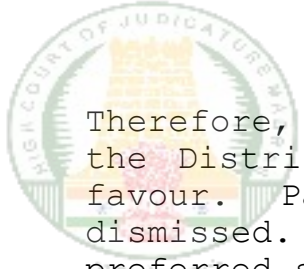
PRAYER :-

For Anticipatory Bail in Cr.No.153 of 2021 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioners, apprehending arrest at the hands of the respondent police for the alleged offences punishable under sections 294(b), 323 and 506(i) I.P.C., in Cr.No.153 of 2021 on the file of the respondent police, seek anticipatory bail.

2. The case of the prosecution is that the defacto complainant is the owner of the house bearing Door No.22, at Subramaniaswamy Services, Outer Perambalur Road, Bodinayakanur. She got this property through a Will executed by her father. Her brother Pavunraj had encroached one portion of the property and he was living there in his family.



Therefore, she filed a suit in O.S.No.332 of 1997, on the file of the District Munsif Court, Bodinayakanur. The suit ended in her favour. Pavunraj filed an appeal in A.S.No.4 of 1996 and that was dismissed. Against the dismissal of the first appeal, Pavunraj preferred second appeal in S.A.(MD)No.628 of 2007, before this Court and that was also dismissed on 25.09.2018. In the meanwhile, one Rajan, who is unknown to the defacto complainant filed O.S.No.200 of 2012 against the defacto complainant. The defacto complainant filed E.P.No.19 of 2019 for production of the property. However, the said Rajan obstructed the defacto complainant from taking possession. Subsequently, the possession of one portion of the property was delivered to the defacto complainant. When the defacto complainant approached the police against the said Rajan for preventing her from taking possession, the police cited the pendency of O.S.No.200 of 2012. Thereafter, after contest, O.S.No.200 of 2012 was dismissed on 25.01.2021. The defacto complainant is a senior citizen and she had fought for more than 25 years for taking possession of her property. Earlier by his brother and now by Rajan, she is prevented from taking possession of the property. When the defacto complainant visited the property on 12.03.2021, at about 01.30 pm., the petitioners and their henchmen prevented the defacto complainant from entering into the property belong to her, hit her and criminally intimidated her and not only that, the defacto complainant had been illegally confined inside the house and locked from outside.

3. The learned Counsel appearing for the petitioners submitted that the petitioners are falsely implicated in this case. In fact, they have been in possession and enjoyment of a portion of the property for several years and running a hostel in the name of Divya hostel. When the defacto complainant tried to evict them from the property, the first petitioner gave a representation dated 10.03.2021 to the respondent police and the respondent police has given CSR No.265 of 2021. Against the dismissal of the suit in O.S.No.200 of 2012, the first petitioner preferred an appeal in A.S.No.6 of 2021 and it is pending. The petitioners also produced EB card, income tax and Aadhar card, in support of their case that they are in possession of the disputed property.

4. The learned Counsel appearing for the intervenor submitted that the petitioners are influential persons in that locality. At the instigation of her brother Pavunraj and with his support, these petitioners created false documents as if they are in possession of the property. The petitioners tried to encroach the property of the defacto complainant. Though the petitioners had illegally trespassed into the house of the defacto complainant and caused violence, the police has not registered the case under proper provisions of law, especially under Section 441 I.P.C., for criminal trespass. Therefore, the defacto complainant gave a petition to the Superintendent of Police and the Deputy Superintendent of Police on 19.03.2021. She has also produced a copy of the representation sent to the Superintendent of Police and the Deputy Superintendent of



Police, copy of the judgment in O.S.No.200 of 2012 and Governance Hospital OP receipt of the defacto complainant and photographs and CD.

5. The petitioners have also produced photographs to show that a hostel is being run in the name of Divya Hostel in that property.

6. The learned Government Advocate (Crl.Side) submitted that there are civil disputes between the parties and the investigation in this case is still pending.

7. Heard the learned Counsel for the petitioners, the learned Governance Advocate appearing for the respondent and the learned Counsel appearing for the intervenor and perused the materials placed on record.

8. It is seen from the materials produced and the submissions of the parties, that the defacto complainant filed O.S.No.332 of 1997 seeking for the declaration that the suit "A" schedule property belongs to her and for permanent injunction restraining the defendant or his men from interfering her possession in "A" schedule property and for possession of "B" schedule property. That suit was decreed on 03.12.1997. Thus it is clear from the decree filed by the petitioners, the title of the defacto complainant to the "A" schedule property and her possession was confirmed and that the defendant was directed to hand over the possession of "B" schedule property. "B" schedule property is a part of "A" schedule property. "A" schedule property is situated in Bodinayakanur municipal town in Old Ward No.8, New Ward No.11, Subramaniaswami Kivil North street. The Door numbers of "B" schedule property are 23 and 24. As already narrated, the defcto complainant's brother Pavunraj filed A.S.No.4 of 1996 against the judgment and decree passed in O.S.No.332 of 1997 and that was dismissed on 19.12.2006. The second appeal in S.A.(MD) No.628 of 2007 was also dismissed on 25.09.2018. Thus all the three Courts confirmed the tile and right of the defaco complainant in the suit A and B schedule properties in O.S.No.332 of 1997.

9. The incident in this case had happened when the defacto complainant executed the decree by filing E.P.No.19 of 2019. The petitioners said to have prevented her from executing the decree on the ground that they are the tenants in the property and there is a suit in O.S.No.200 of 2012 is pending. The defacto complainant filed a judgment in O.S.NO.200 of 2012. Reading of this judgment shows that though the first petitioner claimed that the Rajammal Trust on whcih the first petitioner is a director, is a tenant under the defacto complainant, the trial Court found that the petitioners have not produced any material to show that the alleged payment of Rs.two Lakhs, as advance and payment of Rs.500/- as monthly rent to the landlord. The trial Court has also held that the documents filed by the petitioners to show that they are running a hostel named "Divya Hostel" in the suit property do not relate to the suit property. The address of the Divya Hostel differs from the



address of the suit property. Taking note of all these facts, the trial Court dismissed the suit. Of course, it is now claimed by the petitioners that they preferred an appeal in A.S.No.6 of 2021 and it is pending. These are the materials for the civil Court to take into consideration while deciding the claim and counter claim of the petitioners. However, as seen from the documents produced by the petitioners, they produced documents only with reference to Door No.18/22, Kaliammankoil street, behind Vetri threatre, Bodinayakanur. But the address of the suit property is different. The address of the suit property is at Door No.22, at Subramaniaswamy Koil Street, Bodinayakanur. Therefore, it is clear that the petitioners especially Rajammal Trust, in which the first petitioner is the Director, have not made out *prima facie* case that they are statutory tenant and entitled for protection under law. Records so far available and produced before this Court show that the petitioners can only be considered as encroachers and the encroachers cannot seek the relief of permanent injunction or any other relief against the true owner. It is sad that even after three Courts had found in favour of the defacto complainant, she is not able to take the possession and enjoy of the property. It is also clear from the representation dated 19.03.2021 given by the defacto complainant to the Superintendent of Police and Deputy Superintendent of Police, Bodinayakanur that the police has not registered this case under proper provisions of I.P.C. This case is only under investigation stage. The police have still time to rectify whatever mistakes committed by them so far and file final report in accordance with law.

10. As discussed above, this Court finds that these petitioners claimed the property without any legal right and they have prevented the defacto complainant from taking possession as per the order of the Courts and committed violence against her. Therefore, this Court is not inclined to grant anticipatory bail to the petitioners.

11. In such view of the matter, this Criminal Original Petition is dismissed.

sd/-
26/04/2021

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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.



1. The Inspector of Police,
Boninayakanur Town Police Station,
Bodinayakanur,
Theni District.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC to M/s.S.SARAVANAKUMAR, Advocate (SR-3369[I] dated
26/04/2021)

ORDER
IN
CRL OP(MD) No.4441 of 2021

Date :26.04/2021

VB VR SAR I(18/05/2021) 5P / 4c