



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 14/07/2021

Pronounced on: 27.07.2021

PRESENT

The Hon`ble Mr.Justice G.CHANDRASEKHARAN

CRL OP(MD) . No.5212 of 2021

V.Palanichamy ... Petitioner/Accused No.2

Vs

The State Represented by
The Inspector of Police,
Devadanapatti Police Station,
Devadanapatti,
Periyakulam Taluk,
Theni District.

(Crime No.138 of 2021).. ... Respondent/Complainant

For Petitioner : Mr.T.Lajapathi Roy,
Advocate.

For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

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

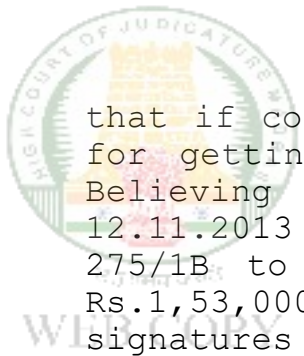
PRAYER :-

For Anticipatory Bail in Crime No.138 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

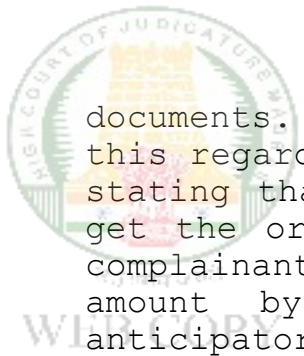
The petitioner/A.2 apprehending arrest at the hands of the respondent police for the offences punishable under sections 420, 294(b), 506(i) and 109 of I.P.C., in Crime No.138 of 2021 on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution is that the defacto complainant was informed by the accused Nos.1 and 2, who are President and Secretary of Genguvarpatti Agricultural Cooperative Gift Society



that if continuous mortgage deed is executed, she will be entitled for getting interest free agricultural loan, whenever she wants. Believing their words, she executed continuous mortgage deed on 12.11.2013 in respect of her properties in Survey Nos.4244 and 275/1B to an extent of 4.56 Ares. Thereafter, she was given Rs.1,53,000/- as agricultural loan on 12.11.2013. The accused got signatures from the defacto complainant in the loan documents and vouchers. The defacto complainant repaid the loan amount on 12.12.2014. Thereafter, she did not apply for any loan. On 11.02.2016, she pledged her 12 sovereigns of gold for Rs.1,65,000/- and she executed all the documents in connection with this loan. She was informed that there was no sufficient amount available in the society and she was asked to come on 14.02.2016 to collect the money. When she visited the society and asked about the jewel loan, it was informed that jewel loan amount was set off against her agricultural loan. She told them that she had already repaid the agricultural loan and thereafter, she did not apply for any loan. When she demanded for jewel loan amount, the accused scolded her in filthy language. The defacto complainant told her husband about this incident. After the enquiry, it came to be known that the defacto complainant's adjacent land owner Anbuselvam is a relative of A1 and friend of A2. There is a previous enmity between the defacto complainant and Anbuselvam. Anbuselvam and accused had colluded together with an intention to usurp the property of the defacto complainant. Therefore, they indulged in the aforesaid activities. The defacto complainant gave a police complaint on 17.02.2016 but no action was taken. She had sent complaints to higher officials. On 31.03.2018 at about 11.00 a.m, the defacto complainant visited the society and asked the accused and Anbuselvam as to why they have misused her mortgage deed and created mortgage for an amount which she has not borrowed. The accused told her that she is in Tirupur and why she keeps the property in this place and demanded her to sell the property in favour of Anbuselvam, otherwise using the continuous mortgage deed, they would usurp her property. They also criminally intimidated her. Since her complaint was not acted upon, she filed a complaint before the learned Judicial Magistrate, Periyakulam under Section 156(3) of Criminal Procedure Code and the same was forwarded to the file of the respondent and the present case came to be registered.

3. The learned Counsel for the petitioner submitted that the petitioner is innocent and he has been falsely implicated in this case. He further submitted that on 11.02.2016, jewel loan to the tune of Rs.1,65,000/- was disbursed to the defacto complainant and that was repaid on 10.02.2017. On the same day, she obtained normal jewel loan to the tune of Rs.1,65,000/-. On 13.03.2017, on the basis of her application seeking conversion of normal jewel loan as agricultural jewel loan, as per the resolution passed by the Society, a mirror account was created, in which, Rs.1,65,000/- was credited. The said amount could be drawn by the defacto complainant. The petitioner provided she closes the other account and signed in the



documents. An affidavit sworn by the petitioner has been filed in this regard. He also submitted that a notice was sent on 15.04..2021 stating that she had discharged the loan and that she can seek to get the original document from the Society. However, the defacto complainant has not chosen to receive the document and withdraw the amount by complying the formalities. Therefore, he seeks anticipatory bail to the petitioner.

4. The learned Additional Public Prosecutor appearing for the State opposes this petition on the ground that the investigation is not yet completed. The letter requesting the defacto complainant to get back her documents was issued only on 15.04.2021, after registration of this complaint. Therefore, he seeks dismissal of this petition.

5. Heard the learned Counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State and perused the materials placed on record.

6. Narration of facts shows that the defacto complainant had obtained loan and repaid. It is also seen that she had given her documents believing the accused. With an intention to cheat her properties, they said to have created loan documents and failed to pay money. Now it is submitted by the learned Counsel for the petitioner that the defacto complainant can receive Rs.1,65,000/- after complying certain procedural formalities and she can also get back her original documents. The allegations in this case have to be proved through oral and documentary evidence. In view of the submission made by the learned Counsel for the petitioner that the petitioner can receive Rs.1,65,000/-, after complying certain procedural formalities and she can also receive her original documents, this Court is of the considered view that the custodial interrogation of the petitioner is not necessary. Therefore, the petitioner is ordered to be released on anticipatory bail with conditions.

7. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance before the learned Judicial Magistrate, Periyakulam, Theni, within a period of fifteen days from the date of receipt of a copy of this order, 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 said Magistrate 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 report before the respondent police station, until further orders.



[c]the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.

[e] 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]**.

[f] If the accused/petitioner thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-

27/07/2021

/ TRUE COPY /

/ /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,
PERIYAKULAM, THENI.

2.DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THENI.

3.THE INSPECTOR OF POLICE,
DEVADANAPATTI POLICE STATION,
DEVADANAPATTI,
PERIYAKULAM TALUK,
THENI DISTRICT.

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

+1. CC to M/S.T.LAJAPATHI ROY, Advocate SR.No.4878 dated 28/07/2021.
ORDER
IN
CRL OP(MD) No.5212 of 2021
Date :27/07/2021