



WEB COPY

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

Reserved on	Pronounced on
24.06.2021	29.06.2021

PRESENT

The Hon'ble Mr.Justice G.CHANDRASEKHARAN

CRL OP(MD) . No.7409 of 2021

1. Govindaraj
2. Nirubha @ Niruba

... Petitioners/Accused No.1&2

Vs

The State Rep. by
The Inspector of Police,
Koodal Pudur Police Station,
Madurai City
Crime No.318/2021.

... Respondent/Complainant

Muthuselvam

... Intervene Petitioner/
Defacto Complainant
in Crl.MP(MD)No.3953/2021
in Crl.OP(MD)No.7409/2021

For Petitioner : M/s.Jinnah.S.M.A., Advocate.
For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor
For Intervenor : Mr.M.Maran, Advocate

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

PRAYER :- For Anticipatory Bail in Crime no. 318 of 2021 on the file of the respondent Police

ORDER : The Court made the following order :-

The petitioners/A.1 and A.2 who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 294(b), 406, 420 and 506(i) I.P.C., in Cr.No.318 of 2021, on the file of the respondent police seek anticipatory bail.

2. The case of the prosecution is that the defacto complainant is a Civil Engineer and doing construction work. The accused in this case entrusted the work of finishing the second floor centring work on a partly raised construction. The defacto complainant told them that the construction would cost at Rs.3,00,000/-. The accused accepted his proposal orally and asked him to commence the construction work. He completed the work. He was paid a sum of Rs.1,00,000/- through bank and a sum of Rs.2,00,000/- by cash in

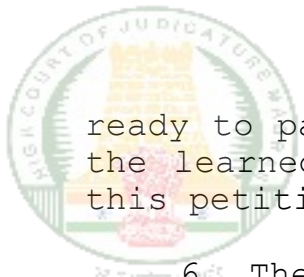


installments. Subsequently, the accused asked the defacto complainant to complete the remaining work in the second floor. Believing their words, the defacto complainant entered into oral agreement with the accused for construction of 1300sqft at Rs.1,500/- per sqft and started the work. The defacto complainant raised funds by pledging his wife's jewels and getting loan for procuring materials and labour and completed the construction by spending a sum of Rs.14,50,000/-. When he demanded the money spent by him, the accused did not pay the money. The first accused criminally intimidated him by saying that he is working in police department and if he asked money, he would foist ganja case against him and would eventually kill him. Therefore, a case was given. In spite of an estimate given by the Engineer's Association with regard to the amount expended on the construction, the accused have not paid the amount. Therefore, this case is registered.

3. The learned Counsel for the petitioners submitted that the allegations made against the petitioners are false. In fact, the construction was earlier started by one Engineer and due to some misunderstanding, he did not complete the construction. Subsequently, the defacto complainant was engaged. For the construction made by the defacto complainant, the petitioners paid more than Rs.9,00,000/- There was some misunderstanding between the defacto complainant and the petitioners with regard to the manner in which the construction was made and the quality of the materials used. Therefore, the defacto complainant left the work midway. Without any alternative, the petitioners had engaged another mason for completing the work.

4. It is the case of the petitioners that they had paid the amount due to the defacto complainant. Therefore, they seek anticipatory bail. They have produced typed set of papers along with records to show the payment made. It is also claimed by the learned Counsel for the petitioners that the date of alleged incident with regard to criminal intimidation was on 23.12.2020. It is alleged that the accused criminally intimidated the defacto complainant. However, on that day, the petitioner was on duty and he also produced a copy a general dairy in support of his case. He also produced a copy of the agreement entered into between one Balaji with regard to construction and settlement reached between them and certain purchase bills, photos and letter given by one Ponnalagan in support of the case of the petitioners.

5. On the other hand, the learned Counsel for the defacto complainant strongly opposed this petition on the ground that the petitioners paid only a sum of Rs.3,00,000/-. The balance amount remains to be paid. The petitioner, during the enquiry by the police, accepted to abide by the value assessed by the Engineer's Association, Madurai and they valued at Rs.12,70,000/-. After giving due consideration for the work done by the accused by engaging other person and the materials supplied, this value was arrived. Even after this valuation report, the petitioners are not



ready to pay the amount due to the defacto complainant. Therefore, the learned Counsel for the defacto complainant seeks dismissal of this petition.

6. The learned Additional Public Prosecutor appearing for the State opposed this petition on the ground that the investigation in this case is pending and the F.I.R. was registered on 02.06.2021.

7. Consideration of the F.I.R., and the materials produced by both parties show that the construction in the second floor of the petitioners was started by one Balaji. He left midway and then, the defacto complainant was engaged for laying roof. He was paid a sum of Rs.3,00,000/- for that work. After completion of that work, he was asked to do other work. It appears that the parties did not enter into any written agreement. The defacto complainant's case is that there was an oral agreement for the construction of 1300 sqft at rate of Rs.1500/- per sqft. That was not accepted by the petitioners. Both parties filed documents like agreements, purchase bills, whats app messages, bank account copies. However, both denied the genuineness and veracity of the documents filed by each other. The considered view of this Court is that the genuineness, admissibility and relevancy of these documents can be considered only by the trial Court during the trial. Since the allegations made against the petitioners have to be proved on the basis of oral and documentary evidences, this Court is of the considered view that the custodial interrogation of the petitioners is not necessary. In this view of the matter, this Court is inclined to grant anticipatory bail to the petitioners, of course, with certain conditions to safeguard the interest of both the parties.

8. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate No.IV, Madurai, on condition that the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each 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 petitioners shall deposit a sum of Rs.6,00,000/- (Rupees Six Lakhs only) towards Court deposit to the credit of Cr.No.318 of 2021 without prejudice to their defence and only on such deposit the learned Magistrate shall accept the sureties. On such deposit being made, the learned Magistrate is directed to the deposit the same in any one of the Nationalized Banks within his jurisdiction, in an interest bearing fixed deposit scheme. The learned Judge, at the conclusion of the trial, is directed to pass appropriate orders with regard to the disbursement of this amount either directing payment to the defacto complainant or to the accused on the basis of merits of the case;



(b) the petitioners 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;

(c) the petitioners shall report before the respondent police daily at 10.30 a.m., until further orders;

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

(e) the petitioners 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 petitioners in accordance with law as if the conditions have been imposed and the petitioners 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/-

29/06/2021

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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 JUDICIAL MAGISTRATE No.IV, MADURAI.
2. DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE, MADURAI DISTRICT.
3. THE INSPECTOR OF POLICE, KODAL PUDUR POLICE STATION, MADURAI CITY.
4. THE ADDITIONAL PUBLIC PROSECUTOR, MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN

CRL OP(MD) No.7409 of 2021

Date : 29/06/2021