



WEB COPY

CRL OP(MD). No.10066 of 2021

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

RESERVED ON : 09.11.2021

PRONOUNCED ON : 11.11.2021

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.10066 of 2021

1. Mydeen
2. Shakila Banu

... Petitioners/Accused No.1 and 2

Vs

The State rep.by,
The Inspector of Police,
District Crime Branch,
Virudhunagar District.
Crime No. 7/2020.

... Respondent/Complainant

Kandasamy ... Intervening Petitioner/ Defacto Complainant

For Petitioner : Mr.N.Mahideen Basha, Advocate.
For Respondent : Mr.RMS.Sethuraman,
Additional Public Prosecutor
For Intervenor : Mr.M.Chandrasekaran, Advocate.

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

PRAYER :-For Anticipatory Bail in Crime No.7/2020 on the file of the respondent Police.

ORDER : The Court made the following order :-

The petitioners/accused Nos.1 and 2, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 294(b), 406, 420 and 506(ii) I.P.C., in Cr.No.7 of 2020, seek anticipatory bail.

2.The case of the prosecution is that the defacto complainant is doing real estate business and the defacto complainant had agreed to purchase some property from the petitioners for a sale consideration of Rs.1.70 crores and gave a sum of Rs.25,00,000/- as advance. Thereafter, the petitioners did not execute the sale deed and when the defacto complainant demanded the money, the petitioners abused and criminally intimidated the defacto complainant. Hence, this complaint.

<https://hcservices.courts.mil/hcservices>



3. The learned counsel for the petitioners would submit that the petitioners are innocent and a false case has been foisted against them. Hence, he seeks anticipatory bail to the petitioners.

4. The learned Government Advocate (Crl. Side) would submit that due to a civil dispute between the parties, the petitioners abused and criminally intimidated the defacto complainant.

5. The learned Counsel for the intervenor would submit that the defacto complainant is doing real estate business and the petitioners approached the defacto complainant by stating that they are the power agent of one A.V. Parthiban, who is the owner of the property and the petitioners agreed to sell the property for a sale consideration of Rs.1.70 crores and received a sum of Rs.25,00,000/- as advance. Subsequently, the petitioners did not come forward to execute the sale deed, on receiving the remaining sale consideration. He would further submit that for the purpose of cheating the defacto complainant, the petitioners did not come forward to execute the sale deed. Hence, he would strongly oppose for granting anticipatory bail to the petitioners.

6. Heard the learned Counsel for the petitioners, the learned Additional Public Prosecutor appearing for the State and the learned Counsel for the intervenor and perused the materials placed on record.

7. It is evident that this Court, vide order dated 23.08.2021, has observed as follows:

"3. .. typed set of papers filed by the petitioners shows that there is an agreement entered into between the defacto complainant and the petitioners, in which, the petitioners agreed to pay a sum of Rs.25,00,000/-, out of which a sum of Rs.4,00,000/- was already paid and a balance amount of Rs.17,00,000/- has to be paid.

4. The learned Counsel for the petitioners wants time to get instructions from his clients."

Thereafter, this Court has passed the following order:

" At request of the learned Counsel for the petitioners, time is granted till 14.09.2021 to settle the amount. It is made clear that if the petitioners fail to settle at least half of the agreed amount by 14.09.2021, this petition would be dismissed."



8. As already pointed out, it is the specific case of the defacto complainant that the accused have approached him and agreed to sell the property on behalf of one A.V.Parthiban who is the owner of the said property as his power agent, that the defacto complainant had agreed to purchase the same for a sale consideration of Rs. 1.70 crores and gave Rs.25,00,000/- as advance and that subsequently when the defacto complainant had approached and requested the accused to execute the sale deed after receiving the balance sale consideration, they have assaulted the defacto complainant and threatened him with dire consequences.

9. Considering the rival contentions made by both parties, it is very much clear that there existed a civil dispute between the parties. The relief available to the parties has to be worked out before the competent civil Court, after adducing oral and documentary evidences. Recently, the Honourable Supreme Court has come down heavily on the bail Courts for imposing conditions for deposit of certain amount allegedly due by the accused to the complainant in ***Dilip Singh Vs. State of Madhya Pradesh and another*** passed in ***Crl.A.No.53 of 2021, dated 19.01.2021*** and it is necessary to refer the following passages in the said decision hereunder:

"3.Ex facie, the disputes in the instant case are civil in nature. It is the contention of the complainant that despite having paid Rs.41 lakhs to the appellant pursuant to an agreement for purchase of agricultural land, the appellant has not executed the deed of sale in respect of the same. It appears that the complainant has also filed a civil suit for specific performance of the said agreement, which is pending adjudication.

4. By imposing the condition of deposit of Rs. 41 lakhs, the High Court has, in an application for pre-arrest bail under Section 438 of the Criminal Procedure Code, virtually issued directions in the nature of recovery in a civil suit.

5. It is well settled by a plethora of decisions of this Court that criminal proceedings are not for realization of disputed dues. It is open to a Court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. The factors to be taken into consideration, while considering an application for bail are the nature of accusation and the severity of the punishment in the case of conviction and the nature of the



materials relied upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character behaviour and standing of the accused; and the circumstances which are peculiar or the accused and larger interest of the public or the State and similar other considerations. A criminal court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too, without any trial."

10. Very recently the Honourable Apex Court in **Dharmesh @ Dharmendra @ Dharmo Jagdishbhai @ Jagabhai Bhagubhai Ratadia and another Vs. The State of Gujarat**, passed in **Crl.A.No.432 of 2021, dated 07.07.2021** has reiterated the very same legal position and the relevant paragraphs are extracted hereunder:

" 17. We may hasten to add that we are not saying that no monetary condition can be imposed for grant of bail. We say so as there are cases of offences against property or otherwise but that cannot be a compensation to be deposited and disbursed as if that grant has to take place as a condition of the person being enlarged on bail.

18. Once we come to the aforesaid conclusion, the direction contained in the impugned order for deposit of compensation of Rs.2.00 Lakh for the legal heirs of the deceased naturally cannot be sustained and has to be logically set aside."

11. The above decisions are squarely applicable to the case on hand. In the present case, as already pointed out, the defacto complainant has only attempted to recover the amount allegedly due by the accused. Moreover, the defacto complainant, by lodging the above complaint, is attempting to give a civil dispute, a criminal flavour, but that cannot be entertained. The main requisition of the defacto complainant to direct the accused to pay the remaining amount cannot be accepted at all, in the present proceedings.

12. Considering the above facts and circumstances of the case, this Court is of the view that the custodial interrogation of the petitioners is not at all necessary. Hence, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.



13. Accordingly, the petitioners are ordered to be released on bail in the event of their 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.II, Virudhunagar on condition that the petitioners shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five 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 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 petitioners shall report before the respondent police daily at 10.30a.m., for period of one month and thereafter as and when required for interrogation.

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

(d)the petitioners 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 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;

(f)if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

sd/-

11/11/2021

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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.II,
VIRUDHUNAGAR.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

3 THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH,
VIRUDHUNAGAR DISTRICT.

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

+1 CC to Mr.M.CHANDRA SEKARAN, Advocate (SR-8022[I]dated 12/11/2021)

ORDER

IN

CRL OP(MD) No.10066 of 2021

Date :11/11/2021

SSL

MK/VR/SAR.IV/16.11.2021/6P/6C