



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

Date : 15/11/2021

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI
CRL OP(MD) . Nos.12929 and 13720 of 2021

WEB COPY

1. T.R.Dhinakaran,

2. T.R.D.Nirmala,

3. T.R.D.Kothai,

... Petitioners in both petitions
/A1 to A3

Vs

State Rep. By
The Sub Inspector of Police,
District Crime Branch,
Virudhunagar.

(Crime No.12 of 2021) in CRL OP(MD) . Nos.12929 of 2021

(Crime No.14 of 2021) in CRL OP(MD) . Nos.13720 of 2021

... Respondent / Complainant
in both petitions

For Petitioners : Mr.Sricharan Rangarajan, Advocate
in both for M/s.Santhoshkumar P.
petitions Advocate.

For Respondent : Mr.T.Senthilkumar,
in both Petitions Government Advocate (Crl.Side)

For Intervenor : Mr.N.R.Ilango, Senior counsel
in both Petitions

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

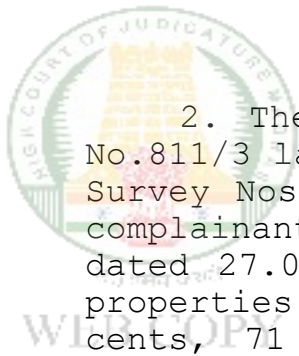
COMMON PRAYER :-

For Anticipatory Bail in Crime Nos.12 and 14 of 2021 on the
file of the Respondent Police.

COMMON ORDER : The Court made the following order :-

Crl.O.P.(MD)No.12929 of 2021

The petitioners/A1 to A3, who apprehend arrest at the hands of
the respondent Police, for the offence punishable under Sections
120B, 465, 467, 468 of IPC in Crime No.12 of 2021, on the
file of the respondent Police, seek anticipatory bail.



2. The case of the prosecution is that the property in Bimas No.811/3 later assigned as Survey No.219/2 and further subdivided as Survey Nos.219/2A and 219/2B, was settled in favour of the defacto complainant, namely, T.R.V.Ramkumar, vide Document No.1131/1975 dated 27.03.1975 by his father Varadharajan from the 'E' schedule properties that he had bequeathed. In Survey No.219/2B, out of 84 cents, 71 cents were taken for road by the Government and the compensation was given to his father since the defacto complainant was minor. Thereafter, in the year 2010, 6.5 cents out of the remaining 13 cents in the said Survey No.219/2B was again taken for road. The remaining 6.5 cents have to be in the name of the defacto complainant. But, he found that A1 in conspiracy with other accused including A3 had settled the property measuring about 13 cents in Survey No.219/2B in the name of his wife/A2, vide Document No.1069 of 2013 dated 06.03.2013 without any title over the property in order to get unlawful enrichment.

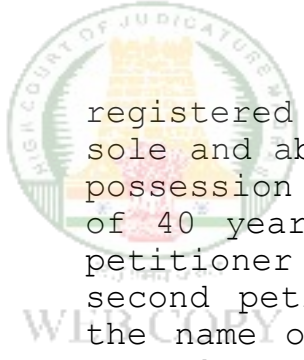
Crl.O.P.(MD)No.13720 of 2021

3. The petitioners/A1 to A3, who apprehend arrest at the hands of the respondent Police, for the offence punishable under Sections 465, 468, 471 and 120B in Crime No.14 of 2021, on the file of the respondent Police, seek anticipatory bail.

4. The defacto complainant, namely, T.R.S.Viajayaram filed a complaint against the petitioners that his grandfather Mr.T.Ramasamy Naicker had executed a Will dated 18.02.1973 in respect of 'A' schedule properties that after his death, the properties have to be enjoyed by his wife Aavudaiyammal and after her life time, it ought to be partitioned among his five sons. The said Ramasamy Naicker expired on 15.08.1973 and Aavudaiyammal expired on 01.03.1986. Thereafter, the said Will has come into effect after 01.03.1986. In 'A' schedule, the property in Bimas No.532-535, later assigned as Survey No.305/30, has to be partitioned equally among five sons. But, A1 in conspiracy with A3 had executed a Settlement Deed in Document No.1069 of 2013 dated 06.03.2013 in favour of A2 with the help of forged document.

5. Mr.Sricharan Rangarajan, learned counsel for the petitioners submits that the case in Cr.No.12 of 2021 relates to a gift settlement dated 06.03.2013 in respect of 13 cents of the property (6.5 cents of property in S.No.219/2B belonging to T.R.V.Ramkumar and 6.5 cents of property acquired by the Government). Initially when the gift settlement deed dated 06.03.2013 was executed, the extent of Survey No.219/2B was inadvertently mentioned as 1.12 acres, which was later rectified by a Rectification Deed executed on 07.09.201, wherein the schedule of property was rectified to reflect only 93 cents, excluding 6.5 cents of the property belonging to T.R.V.Ramkumar and 6.5 cents acquired by the Government.

6. The learned counsel for the petitioners further submits that <https://hdservices.cemil.gov.in/hdservices/> Cr.No.14 of 2021 relates to another property situated in S.No.305/30 part popularly known as "Keeraithottam" which was a subject matter of the partition deed dated 02.09.1958 and the



registered Will dated 18.02.1973. The first petitioner, being the sole and absolute owner of the entire 2.75 acres of the land, was in possession and had been paying the kists regularly for over a period of 40 years. The first petitioner gifted the same to the second petitioner vide gift settlement deed dated 06.03.2013. When the second petitioner took necessary steps to transfer the patta from the name of the first petitioner to herself, she noticed that the records were mutated without the knowledge of the petitioners. Since the family members of brothers of the first petitioner mutated the records in respect of the property without the knowledge of the petitioners, the second petitioner filed a writ petition on 08.04.2021 in W.P.(MD)No.8413 of 2021 challenging the order of the Aruppukottai Municipality dated 06.09.2020, wherein, an order of interim injunction was granted restraining the respondents from creating any third-party interest pending disposal of the writ petition, vide order dated 23.04.2021 in W.M.P.(MD)No.6341 of 2021. Therefore, these complaints have been filed as counter-blasts to the writ petition filed by the second petitioner in respect of Keeraithottam property on 08.04.2021. Further, the disputes are civil in nature borne out of records that have been given a criminal colour by the complainants.

7. The learned counsel for the petitioners further submits that the first petitioner executed a gift settlement deed only in respect of the property over which he rightfully had title. The first petitioner did not alienate the property of any other family member. The first petitioner affixed his own signature and conveyed the property to his wife by way of gift deed and thus, the question of forgery and fabrication of documents or even criminal conspiracy does not arise. He also relied upon the Judgments of the Hon'ble Apex Court in the case of **Indian Oil Corporation vs. NEPC India Ltd.**, reported in **2006 (6) SCC 736** and **Govind Prasad Kejriwal vs. State of Bihar**, reported in **2020 16 SCC 714**, wherein, it was held that it is an abuse of process of law and the Court, when a civil dispute is given a colour of criminal proceedings.

8. The learned counsel for the petitioners further submits that the first and second petitioners are senior citizens suffering with serious health problems and the third petitioner has nothing to do with the transaction and she is in the spiritual path in a spiritual organization. Hence, he prayed for grant of anticipatory bail to the petitioners.

9. Mr.N.R.Elango, learned Senior Counsel appearing for the defacto complainants submits that the defacto complainants are the grandsons of one T.Ramasamy Naicker. Some of the properties belonging to T.Ramasamy Naicker were partitioned between T.Ramasamy Naicker and his five sons vide partition deed dated 02.09.1958 at Sub Registrar Office, Aruppukottai. The said T.Ramasamy Naicker retained the land mentioned in A schedule and T.R.Varadharajan, the father of Mr.P.R.V.Ramkumar was given the land mentioned in E schedule property in the said partition. Survey No.219/2B was



settled in favour of T.R.V.Ramkumar, vide settlement deed dated 27.03.1975 by his father T.R.Varadharajan from 'E' schedule properties.

10. The learned Senior Counsel for the defacto complainants further submits that T.Ramasamy Naicker executed a Will dated 18.02.1973 and gave life estate to his wife Aavudaiyammal for the land retained by him in A schedule in the said partition deed dated 02.09.1958 and after the demise of his wife, the land was bequeathed equally to all the five sons of T.Ramasamy Naicker in the said Will. After the demise of T.Ramasamy Naicker on 15.08.1973 and Aavudaiyammal on 01.03.1986, A1 illegally usurped the entire 2.75 acres of land in A schedule. T.R.Varadharajan was bequeathed 55 cents of land out of 2.75 acres in A schedule in the Will dated 18.02.1973, but, the land has been usurped by A1 in collusion with A2 and A3. The learned Senior Counsel further submits that the accused persons claimed that they have documents to prove their title, but, they have not produced any document before this Court nor served any documents to the defacto complainants to prove their title. Hence, he prayed for dismissal of this petition.

11. The learned Additional Public Prosecutor submits that after registering the cases, the respondent Police issued summon dated 27.08.2021 under Section 41-A of Cr.P.C. asking the accused persons to appear before the respondent Police along with relevant documents for investigation purpose. Immediately after receipt of the summon, the first accused claims that he has medical ailment and got admitted in a private hospital on the very next day, i.e. on 28.08.2021. When the respondent Police contacted other accused, they informed that the first accused was admitted in a hospital and they are taking care of him and also refused to disclose the name and other particulars regarding the hospital. Till date, neither the petitioners obliged the summon issued under Section 41-A of Cr.P.C. by the respondent Police nor produced any documents to claim that they have right over the properties even before this Court. Since the petitioners are not co-operating for the investigation, the custodial interrogation of the petitioners is required in this case. Hence, he prayed for dismissal of this petition.

12. Both the learned Senior Counsel as well as the learned Additional Public Prosecutor also relied upon the judgment of the Hon'ble Apex Court in the case of **Prasanta Kumar Sarkar vs. Ashis Chatterjee and another**, reported in **2010 14 SCC 494**, wherein, the Hon'ble Apex Court has laid certain conditions which have to be considered by the Court while deciding the bail petition, which reads as under:

"(i) Whether there was a *prima facie* or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of accusations;

(iii) severity of punishment in the event of conviction;



- (iv) danger of the accused absconding or fleeing, if granted bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of repetition of the offence;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger of justice being thwarted by grant of bail."

13. This Court paid its anxious consideration to the rival submissions made.

14. The petitioners and the defacto complainants belong to the same family. Their family is a reputed family. Considering the age of the petitioners, nature of the allegations, this Court, by order dated 08.09.2021, referred the matter for mediation and also appointed learned counsel Mr.K.K.Ramakrishan, former Additional Public Prosecutor, as Mediator in this case.

15. The Mediator has also filed a report before this Court that the mediation failed.

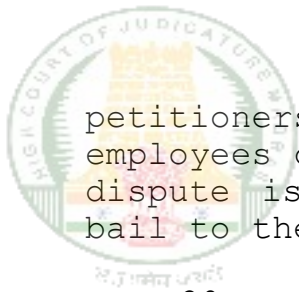
16. The defacto complainants are none other than the brothers' sons of the first petitioner. The first petitioner's father and the defacto complainants' grandfather, one Ramasamy Naicker, was a very big business man having several properties and several business establishments in that area. The partition was made among the family members in the year 1996 and the same was confirmed in an Arbitration Proceedings. The allegation is that the petitioners have created some documents with regard to the property belonging to the defacto complainants' family in a fraudulent manner.

17. The learned counsel for the petitioners claims that the petitioners' family is having several properties in and around area and therefore, there is no necessity for the petitioners to fabricate the documents and get the properties belonging to the defacto complainants. He further claims that more than 7000 persons are employed under the first petitioner in various firms and the first petitioner is also providing free education to needy children by establishing a school. Further, with regard to the properties, civil litigation is pending before the Civil Court. According to him, a civil dispute is given a colour of criminal proceedings.

18. It is seen that the first petitioner is aged about 82 years and the second petitioner is his wife aged about 74 years. The medical records are also placed before this Court that the first and second petitioners are suffering with old age ailments. The nature of complaint is based on records and it appears that civil suit is also pending between the parties.

<https://hcservices.ecourts.gov.in/hcservices/>

19. Considering the facts and circumstances of the case, the relationship between the parties, the age of first and second



petitioners, the tradition of petitioners' family, the number of employees depending on the petitioners' firm and also the fact civil dispute is pending, this Court is inclined to grant anticipatory bail to the petitioners.

20. Accordingly, the Criminal Original Petitions are ordered. In both the cases, the petitioners are directed to be released on bail in the event of arrest or on 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 learned Magistrate concerned and on further conditions 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 Aadhaar card or bank pass book to ensure their identity;

[b] the petitioners shall report before the respondent police as and when required for interrogation;

[c] the petitioners shall not tamper with the 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 are 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 thereafter abscond, a fresh FIR can be registered under Section 229-A IPC.

sd/-
15/11/2021

/ TRUE COPY /

/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

OGY

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 SUB-INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH, VIRUDHUNAGAR.

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

+2 CC to M/s.P.SANTHOSHKUMAR, Advocate (SR-8155 & 8157[I] dated
17/11/2021)

ORDER
IN

CRL OP(MD) . Nos.12929 and 13720 of 2021
Date :15/11/2021

SB/JC/SAR-II/22.11.2021/7P/7C