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

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|-------------|---------------|
| Reserved on | Pronounced on |
| 27.07.2021  | 30.07.2021    |

PRESENT

The Hon`ble Mr.Justice G.CHANDRASEKHARAN

CRL OP(MD) . No.15310 of 2020

G.Athiyappan

... Petitioner/Accused No.1

Vs

The State rep by  
The Inspector of Police,  
Sivakasi East Police Station,  
Virudhunagar District.  
(Crime No. 875 of 2020).

... Respondent/Complainant

S.Pa.Muthumari

...Petitioner/Intervener  
in CRL MP(MD)No.3260 of 2021  
in CRL OP(MD) . No.15310 of 2020

For Petitioner : Mr.Nithyaesh Natraj,  
Advocate.

For Respondent : Mr.E.Antony Sahaya Prabahar,  
Government Advocate (Crl.Side)

For Intervenor : Mr.E.Mareeskumar  
Advocate

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

PRAYER :-

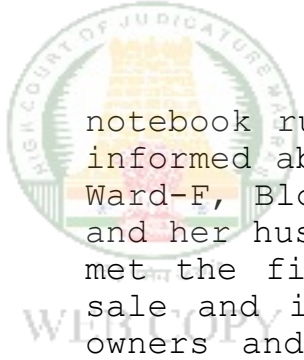
For Anticipatory Bail in Crime No.875 of 2020 on the file of the  
Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A.1 apprehending arrest at the hands of the  
respondent police for the alleged offence punishable under sections  
420 and 506(i) I.P.C., in Cr.No.875 of 2020, on the file of the  
respondent police, seeks anticipatory bail.

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

2. The case of the prosecution is that the defacto  
complainant's husband is running Vishnu Too Arts, which engaged in



notebook rubber printing. One Anand, who is known to her husband, informed about the availability of plot Nos.16, 17, 18 in Sivakasi, Ward-F, Block-4 in Survey No.12, for sale. The defacto complainant and her husband along with Anand met broker Velmurugan and then they met the first accused Athiyappan and enquired about the plots for sale and its owners. Athiyappan informed them that there are 10 owners and he is their power agent. He also informed that the documents are available with one of the owners R.C.Krishnamoorthy. The rate of one Kuzhi is Rs.10,500/- The defacto complainant and Athiyappan negotiated the price for 775 kuzhis in plot nos.16, 17, and 18, at the rate of Rs.10,500/- per kuzhi and the total sale price is Rs.81,27,000/-. Athiyappan informed the owner R.C.Krishnamoorthy about the deal and he handed over the phone to the defacto complainant. R.C.Krishnamoorthy told her to pay the entire sale consideration to Athiyappan. He has also promised to execute the sale deed along with other owners. A sale agreement was executed with Athiyappan on 07.07.2018 by paying Rs.5,00,000/- as advance. Rs.36,80,000/- was paid to R.C.Krishnamoorthy through demand draft. Rs.44,40,800/- was paid in installments and Rs.4,11,500/- was paid as documentation expenses to Athiyappan. Totally, Rs.85,38,500/- was paid to Athiyappan. After receipt of the money, the accused did not come forward to execute the sale deed. Whenever the defacto complainant asked about the execution of sale deed, they gave excuses. When the defacto complainant demanded the return of money, the accused scolded her in filthy language and threaten to kill her by engaging hirelings. Therefore, this case came to be registered.

3. The learned Counsel appearing for the petitioner submitted that the petitioner is only a broker. He is no way involved in receipt of sale consideration. The transaction of the defacto complainant was only with the third accused Krishnamoorthy, who is one of the owners of the property. The petitioner had not received any money as sale consideration. Even the advance amount of Rs.5,00,000/- received by him was returned by him, with a direction to pay directly to Krishnamoorthy. Instead of filing a civil suit for specific performance, the defacto complainant is misusing the penal provisions and trying to convert the civil dispute into criminal dispute. The claim of the defacto complainant that she did not know the third accused is not correct, for the reason that on 11.10.2018 itself, the amount was paid to the third accused by the defacto complainant through Demand Draft. Earlier, anticipatory bail petition filed by the petitioner was dismissed. The petitioner filed second anticipatory bail petition, after this Court granted anticipatory bail to the third accused. However, without considering the change of circumstances, this Court had dismissed the second anticipatory bail petition also. He has filed a suit in O.S.No.102 of 2020, on the file of the District Munsif Court, Sivakasi for the relief of permanent injunction not to interfere with his possession and enjoyment of the property in dispute, except by due process of law. This being a civil dispute, the case has to be proved by documentary evidences and the custodial interrogation of the



petitioner is not necessary. Therefore, he seeks anticipatory bail in favour of the petitioner.

4. In response, the learned Counsel appearing for the defacto complainant strongly opposes this petition on the ground that the entire sale transaction was initiated and transacted only through the first accused Athiyappan. The sale consideration of Rs.85,38,000/- with documentary charges had only been paid to the first accused. In support of his contention, he has produced a copy of sale agreement dated 06.07.2018 and copies of demand drafts taken in the name of the third accused. This petitioner, who has no title to the suit property, with an intention to cheat the defacto complainant, received entire sale consideration along with the documentation charges and now denies the receiving amount. There is an admission even in the suit filed by the petitioner, letter addressed by the petitioner to the Inspector of Police, Sivakasi Police Station with regard to the fact that he received Rs.85,38,500/- from the defacto complainant. Though he says that he paid this amount to the third accused, there is no material filed in support of his claim. This fact itself shows that the petitioner, with criminal intention to cheat the defacto complainant, made her to part with money and now is not taking steps to either execute the sale, or return the money. It is not merely a civil dispute, but clear case of cheating. Therefore, he seeks dismissal of this petition.

5. The learned Government Advocate(Crl.Side) appearing for the State opposes this petition on the ground that the petitioner had cheated the defacto complainant to the tune of Rs.85,38,500/-.

6. Heard the learned Counsel for the petitioner, the learned Counsel for the defacto complainant and the learned Government Advocate (Crl.side) appearing for the State and perused the materials placed on record.

7. Narration of the facts in the F.I.R., and the submissions made by the parties show that the petitioner introduced himself as power agent of the owners of the property in plot Nos.16, 17, 18, in Survey No.12, in Sivakasi, Ward-F, Block-4, in his capacity as power agent, he entered into sale agreement with the defacto complainant, received a sum of Rs.85,38,500/-., later has not taken any steps for executing the sale deed or repaying the money. The learned Counsel for the petitioner submitted that this is a pure case of civil dispute and the remedy available for the defacto complainant is to file a suit for specific performance before the competent civil Court. On the other hand, the learned Counsel for the defacto complainant submitted that it is a clear case of cheating, for the reason that from inception of negotiation, the petitioner was not sure about executing sale deed in favour of the defacto complainant, because the property is owned by 10 owners, however he continued with the execution of sale agreement and received the sale consideration only with an intention to cheat the

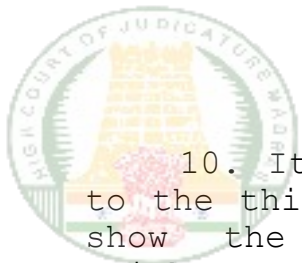


defacto complainant. The consideration of the materials, especially the sale agreement dated 07.07.2018 shows that the petitioner had received a sum of Rs.85,38,500/-.

8. However, the learned Counsel for the petitioner disputed receiving of Rs.34,15,799/- on 11.10.2018 and Rs.4,11,500/- on 13.10.2018. He disputes the signatures in these endorsements and claimed that these signatures are not his signatures. Only if these documents are sent to handwriting expert's opinion, the issue in this regard will be resolved.

8. The petitioner has filed a suit in O.S.No.102 of 2020 against the defacto complainant on the file of the District Munsif Court, Sivakasi. Reading of the plaint shows that the petitioner claims himself as person engaged in real estate business and the suit property belongs to him on the basis of the sale agreement. He admitted that he executed the sale agreement in respect of the property with the defacto complainant on 07.07.2018. The property belonged to Krishnamoorthy, Kesavamoorthy, Ramamoorthy. He claimed to have entered into sale agreement with Krishnamoorthy on his behalf and on behalf of Kesavamoorthy and Ramamoorthy on 28.11.2015. It is his case that he cleared lands and spent lakhs of rupees for plotting it. It is also stated that he entered into sale agreement with individual buyers, received sale consideration and paid it to the owners. That is how, he entered into sale consideration with the defacto complainant on 07.07.2018. The total sale consideration was fixed at Rs.81,27,000/-. He received Rs.5,01,000/- as advance and the balance amount through demand draft and cash. It is his specific case that the entire sale consideration was available with Krishnamoorthy. Because of the death of Kesavamoorthy and Ramamoorthy and change in regularization of plots, there was a delay in execution of sale deed. Meanwhile, the defacto complainant tried to interfere with his possession in respect of the property and therefore, he filed the suit. From this plaint averments, it is clear that the petitioner admitted entering into sale agreement with the defacto complainant on 07.07.2018 and also receiving of sale consideration.

9. The petitioner had sent communication on 18.09.2020 to the Inspector of Police, Sivakasi East Police Station, wherein he openly admitted receiving Rs.85,38,000/- from the defacto complainant as demand draft and through cash. Even in the anticipatory bail petition, while explaining the case of the accused, he said in paragraph No.1 that the defacto complainant paid Rs.5,00,000/- as advance to the petitioner's account and then he returned this amount, asking the defacto complainant to pay it to Krishnamoorthy. It is specifically said that he had given the entire sale consideration amount to Krishnamoorthy. Thus there are materials available in this case in the form of sale agreement dated 07.07.2018, the plaint averments in O.S.No.102 of 2020, that it was the petitioner, who received a sum of Rs.85,38,000/- from the defacto complainant.



10. It is the case of the petitioner that he paid this amount to the third accused Krishnamoorthy. There is a material filed to show the payment of Rs.38,00,000/- to the third accused Krishnamoorthy was made through demand draft. The third accused Krishnamoorthy was granted anticipatory bail for the reason that he came forward to pay Rs.38,00,000/- to the defacto complainant. It is represented that he paid Rs.38,00,000/- to the defacto complainant. The balance amount i.e, Rs.47,00,000/- and add, according to the case of the petitioner, he had paid it to the third accused. However, he has not produced any single piece of paper to show that he paid Rs.47,00,000/- and add to the third accused. When he admitted the receipt of Rs.85,00,000/- and add and a proof was placed for payment of Rs.38,00,000/- to the third accused, the burden of proof is on the part of the petitioner to prove that he has also paid Rs.47,00,000/- and add to the third accused Krishnamoorthy. However, as stated earlier, the petitioner has not produced any material in this regard. Therefore, this Court has necessarily to conclude that the petitioner is in possession of Rs.47,00,000/- and add, which was received from the defacto complainant.

11. It is seen from the earlier proceedings that there was some proposal regarding the settlement of issue between the parties. However, inspite of giving several opportunities, the settlement has not taken place. Therefore, this petition has to be decided on merits. In the anticipatory bail petition, the petitioner claims that there was a sale agreement entered into between the defacto complainant and the petitioner on 07.07.2018. In paragraph No.3, he claimed that sale agreement was entered into between the defacto complainant and the third accused. It is patently a false claim.

12. As narrated above, the petitioner is not the owner of the property. He has only an agreement in his favour and on the basis of the said agreement, he entered into sale agreement with the defacto complainant and received sale consideration. There are obviously three owners. Two of them are died. There are issues with regard to getting regularization of plots. Inspite of these shortcomings, he proceeded to execute the sale agreement with the defacto complainant and received sale consideration, knowing fully well that the possibility of executing the sale deed is not certain. This clearly shows that the petitioner had dishonestly and fraudulently represented to the defacto complainant that he would make arrangement to sell the property in question and induced the defacto complainant to part with Rs.85,38,500/-. It shows that there was clear intention on his part to cheat the defacto complainant. Therefore, the claim of the learned Counsel for the petitioner that the dispute involved in this case is a civil dispute and the remedy available to the defacto complainant lies only before the civil Court, cannot be accepted. The amount involved is huge and it is not yet recovered. Therefore, custodial interrogation of the petitioner is necessary for recovery of the amount and for completion of the



investigation. In this view of the matter, this Court is not inclined to grant anticipatory bail to the petitioner. Accordingly, this Criminal Original Petition is dismissed.

Sd/-  
30.07.2021

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

SSL

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 INSPECTOR OF POLICE,  
SIVAKASI TOWN POLICE STATION, SIVAKASI,  
VIRUDHUNAGAR DISTRICT.
2. THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER  
IN  
CRL OP(MD) No.15310 of 2020  
Date : 30/07/2021

VB/JM/SAR.I/05.08.2021/6P/3C