BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 02.12.2021
PRESENT
The Hon'ble Mr.Justice B.PUGALENDHI
CRL OP(MD)Nos.16227 and 16232 of 2021

1. S.AYYAPPAN
2. SELVAKUMARI ... PETITIONERS/ACCUSED 1 & 4 IN CRL OP(MD)NO.16227 OF 2021

1. N.BALAMURALI
2. HEMALATHA ... PETITIONERS/ACCUSED 2 & 3 IN CRL OP(MD)NO.16232 OF 2021

VS

THE STATE REPRESENTED BY,
THE INSPECTOR OF POLICE,
CENTRAL CRIME BRANCH,
MADURAI CITY.
[CR.NO.1 OF 2016] ... RESPONDENT/COMPLAINANT IN BOTH CRL.O.PS

For Petitioners : Ms.Porkodi Karnan, Advocate for Polax Legal Solutions in both CRL.OPs.
For Respondent : Mr.P.Kottaichamy, Government Advocate(Crl Side) in both CRL.O.Ps

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

PRAYER :-
For Anticipatory Bail in Crime No.1 of 2016 on the file of the Respondent Police.

ORDER : The Court made the following order :
The petitioners in Crl.O.P(MD)No.16227 of 2021 are accused Nos.1 and 4 and the petitioners in Crl.O.P(MD)No.16233 of 2021 are accused Nos.2 and 3 in Crime No.1 of 2016 on the file of the respondent.

2.Accused Nos.2 and 3 are husband and wife. They purchased a property from the defacto complainant one Sakthivel, for a sale consideration of Rs.50,00,000/-. After purchasing the property, in order to grab money from the defacto complainant, accused Nos.2 and 3 introduced accused No.1 Ayyappan and accused No.2 his wife Selvakumari to the defacto complainant, projected him that he is doing real estate business at Chennai and they are also investing money along with A-1 in the real estate business. They persuaded the defacto complainant that if he gives a sum of Rs.50,00,000/- to them, they would invest the same in the real estate business and they would pay interest @ 18% per month. Believing their words, the defacto complainant has also parted with a sum of Rs.50,00,000/-, which he got from the sale of his property in the year 2013. The accused also gave him two cheques as collateral security for the money received by them. The accused neither paid any interest nor returned the money. Therefore, he lodged a complaint before the police in the year 2015. During the enquiry the accused appeared before the police and gave an undertaking that they would return the amount in two installments, as Rs.20,00,000/- onor before 22.08.2015 and the remaining amount on or before September 2015. Based on their undertaking, the defacto complainant not pressed this complaint. But the accused once again cheated the petitioner and when he approached the petitioners demanding the money, he was intimidated with goondas and therefore, the defacto complainant lodged a complaint before the respondent Police on 19.10.2015 and the same was registered in Crime No.1 of 2016 on the file of the Central Crime Branch as against these petitioners/accused Nos.1 to 4, for the offence under Sections 406, 420, 294(b), 120(B) and 506(i) IPC.The petitioners have approached this Court for anticipatory bail in Crl.O.P(MD)No.21707 of 2018 and when the petition was taken up for hearing on 07.12.2018, a representation was made on behalf of the petitioners that there was some possibility of settlement in this issue and request was made to refer the matter for Mediation and Conciliation Centre attached to this Bench. Accordingly, Hon'ble Mr.Justice M.Nirmal Kumar, passed an order directing the petitioners to appear before the Mediation Centre on 14.12.2018 and granted interim protection to these petitioners and the interim order was extended on 19.12.2018, 18.01.2019 and on 25.01.2019 and finally when the matter came up before Hon'ble Mr.Justice M.Dhandapani, a representation was made on behalf of the petitioners that both these petitioners and the defacto complainant are doing real estate business and the defacto complainant has invested a sum of Rs.50,00,000/- in real estate business and to prove their bonafide, they were also ready to deposit a sum of Rs.20,00,000/- in favour of the defacto complainant. Since the petitioners have come forward to deposit a sum of Rs. 20,00,000/-, this Court passed the following order:

> *"6.Considering the facts and circumstances of the case and also considering the petitioners themselves come forward to deposit an amount of Rs.20,00,000/- (Rupees Twenty Lakhs only) in favour of the defacto complainant, this Court is inclined to grant anticipatory bail to the petitioners. Accordingly, the petitioners are ordered 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.1, 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*

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 learned Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(b)the petitioners are directed to deposit a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) to the credit of Crime No.1 of 2016 within a period of three weeks from the date of receipt of a copy of this order, failing which the order passed by this Court shall vacated automatically. Since the defacto complainant died, the learned Magistrate shall disburse the said amount, in favour of the legal heirs of the defacto complainant, after perusing the legal heirs certificate;

(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 petitioner 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.”

3.Subsequently, the petitioners moved an application in Crl.M.P (MD)No.2419 of 2019 seeking extension of time limit fixed by this Court in Crl.O.P(MD)No.21707 of 2018 for depositing the said amount. This Court has also extended the time for a further period two weeks by order dated 18.03.2019. Thereafter, these petitioners moved another application in Crl.M.P(MD)No.3667 of 2019 seeking to extend the time limit fixed by this Court in Crl.O.P(MD)No.21707 of 2018 for depositing the said amount. This Court has also extended the time for a further period of two weeks by order dated 22.04.2019. Subsequently, the petitioners filed an application in Crl.M.P(MD) No.7615 of 2019, which came before the Hon'ble Mr.Justice G.R.Swaminathan on 04.09.2019, wherein this Court extended the time limit and passed the following order:

“*The petitioners' counsel states that they would finally need time till 25.09.2019 for complying with the condition imposed by this Court.*

2.It is made clear that the petitioners will not be allowed to file any more application for extension of time

3.The petitioners' counsel gives an undertaking that this will be the last time for seeking extension of time.

4.Recording the said under taking, this criminal original petition is allowed and time is granted till 25.09.2019.”

4.Without complying with the order and without furnishing the sureties as directed, the 4th accused filed a petition in Crl.O.P(MD) No.13758 of 2019 as against the respondent police for a direction not to harass the petitioners based on her representation dated 17.09.2019. The petition was disposed of on the statement of the respondent made in the criminal case registered in crime No.1 of 2016.

5.The petitioners / A1 and A4 filed another application for anticipatory bail in Crl.O.P(MD)No.10277 of 2020, which came before Hon'ble Mr.Justice G.K.Ilanthiraiyan on 05.10.2010 and it was dismissed as withdrawn and it was observed as follows:

> “*After hearing the learned counsel for the petitioners, when this Court was about to dismiss the petition on merits, the learned Counsel appearing for the petitioners seeks permission of this Court to withdraw the petition.*
>
> 2.In view of the same, this Criminal Original Petition is dismissed as withdrawn”

6.Thereafter, the petitioners have preferred another anticipatory bail application before this Court in Crl.O.P(MD) Nos.12519 an 12521 of 2021, and the learned Counsel for the petitioners submitted that though the petitioners were granted anticipatory bail application by this Court in Crl.O.P(MD)No.21707 of 2018, on 06.02.2019, they could not deposit a sum of Rs.20,00,000/- in favour of the defacto complainant in view of covid – 19 situation and therefore, the earlier application was closed and the present subsequent application has been filed. Considering the conduct of these petitioners in obtaining an interim order from this Court in the year 2019 and enjoying the liberty for nearly 2 ½ years with an assurance that they would pay the sum and failing to make the payment, this Court was not inclined to grant anticipatory bail and accordingly dismissed the above application by order dated 08.09.2021. Now the present applications are filed, on the ground that the petitioners' counsel in Crl.O.P(MD)No.21707 of 2018 insisted them to deposit a sum of Rs.20,00,000/-, then only the anticipatory bail would be considered by the Court and therefore, with no other option, they have agreed on the compulsion made by their counsel. The learned counsel for the petitioners submits that it is purely a business transaction and the allegations as against

A2 and A3 are that they have introduced A1 to the defacto complainant and the entire allegations in the complaint are false and concocted one. She would further submit that when the allegation of transaction of money without any proof for payment and when there is no specific overt act against these petitioners, the directions of this Court to deposit money in anticipatory bail application, would amount to taking away the rights of the petitioners to get anticipatory bail. She further submits that the petitioners have not indulged in any real estate business and in order to extort money from the petitioners, the case has been foisted.

7.The learned Government Advocate (Crl Side) appearing for the respondents would submit that the petitioners, who purchased the property from the defacto complainant, knowing that the defacto complainant is having Rs.50,00,000/- with him, induced him to invest the same, in the real estate business with A1, projecting him a very big real estate businessman and through him huge profit as interest, would be paid. The amount as undertook by the petitioners was not paid and thus they have cheated the defacto complainant. This is the fourth anticipatory bail petition and considering the conduct of the petitioners, this Court dismissed the earlier anticipatory bail applications and there is no change in circumstance. He would further submit that the petitioners by giving false undertaking before this Court obtained an interim order and evaded arrest for the past three years.

8.This Court paid its anxious consideration to the rival submission and perused the materials placed on record.

9.The allegation as against the petitioners is that knowing that the defacto complainant is having money, induced him to invest the money in the real estate business by projecting A1 as real estate businessman and cheated a sum of Rs.50,00,000/- from the defacto complainant. In the first anticipatory bail application filed by the petitioners, the petitioners made a request to refer the matter for Mediation and Conciliation centre that there is a possibility for settlement. Accordingly, this Court has also referred the matter to the Mediation and Conciliation Centre attached to this Bench and granted interim protection. The interim protection was also periodically extended and finally before this Court the petitioners undertook to pay a sum of Rs.20,00,000/- to show their bonafide and considering their request, this Court granted anticipatory bail to the petitioners by order dated 06.02.2019. However, for making payment of Rs.20,00,000/-as undertook by them, they filed three applications one after the other, in Crl.M.P(MD)Nos.2419 of 2019, 3667 of 2019 and 7615 of 2019 and the time for depositing the amount was also extended upto 25.09.2019. Even then, the petitioners have not paid the amount as agreed by them before the Court. Thereafter, the petitioners move second anticipatory bail application and considering the nature of offence, when this Court was not inclined to grant anticipatory bail to the petitioners, the application was withdrawn and therefore, it was dismissed as withdrawn. Thereafter, third anticipatory bail petition was filed before this Court in Crl.O.P(MD)No.12519 and 12521 of 2021 and considering the conduct of these petitioners this Court dismissed the applications on 08.09.2021. Both these applications are filed with allegation as against the learned Counsel, who appeared for the petitioners in Crl.O.P(MD)No.21707 of 2019 that without their consent, the learned Counsel has represented that the petitioners would pay a sum of Rs.20,00,000/- and therefore, this consent was obtained on coercion and therefore, the petitioners case shall be considered for grant of anticipatory bail.

10.This Court is surprised on such a submission made on behalf of the petitioners. The statement was made on behalf of the petitioners only in the present application. Before filing of these petitions, when the first application for anticipatory bail was listed for hearing, a request was made on behalf of the petitioners to refer the matter for mediation and accordingly, the matter was also referred for mediation and conciliation centre. Thereafter, the petitioners filed three petitions for extension of time and thereafter second anticipatory bail application was filed in Crl.O.P (MD)No.10277 of 2020 and the same was dismissed as withdrawn. However, no such averment is made in that application and there is no whisper about filing of the extension applications and the orders passed therein. The petitioners also filed third anticipatory bail petitions in Crl.O.P(MD)Nos.12519 and 1251 of 2021 and in those petitions also, the petitioners have not stated anything about the filing of extension applications and those anticipatory bail petitions were dismissed by this Court on 08.09.2021. Now the present fourth anticipatory bail applications are filed. In these applications the petitioners have taken a stand that only on the insistence of the learned Counsel, who appeared on behalf of the petitioners in Crl.O.P(MD)No.21707 of 2018, they have given consent for such an undertaking in the first anticipatory bail petition in Crl.O.P(MD)No.21707 of 2018.

11.It is seen from records that the petitioners have changed the Counsel every time. The first anticipatory bail petition in Crl.O.P(MD)No.21707 of 2018 was filed through Advocate Mr.D.Vijayaragavan, first extension application in Crl.M.P(MD) No.2419 of 2019 is filed through Advocate Mr.S.Arunnithi, second extension application in Crl.M.P(MD)No.3667 of 2019 was filed through Advocate Mr.M.Ashok Kumar, third extension application in Crl.M.P(MD)No.7615 of 2019 was filed through Advocate Mr.V.Sasikumar, second anticipatory bail petition in Crl.O.P(MD) No.10277 of 2020 was filed through Advocate Mr.R.Senthil Kumar, third anticipatory bail petitions in Crl.O.P(MD)Nos.12519 and 12521 of 2021 were filed through Advocate Mr.Pon Karthikeyan and now the present fourth anticipatory bail petitions in Crl.O.P(MD) No.16227 and 16232 of 2021 are filed through M/s.Polax Legal Solutions.

12.Since, it is claimed that the petitioners on the insistence of the Counsel in the first anticipatory bail petition, have given an undertaking to pay the part amount, this Court thought it fit to implead the said Counsel in this petition. However, Ms.Porkodi Karnan, learned Counsel is not willing for the same that it is not required. This Court is not inclined to accept these vague allegations made in the petition and this petition is filed without even verifying the fact from the learned Counsel concerned.

13.Considering the conduct of the petitioners and the manner in which the petitioners are absconding from the clutches of law for the past three years by giving false promise before this Court and obtaining interim protection and evading the process of law for the past three years, this Court is not inclined to grant anticipatory bail to the petitioners.

14.The petitioners are not arrested by the respondent Police in view of the interim order passed by this Court. Considering the conduct of the petitioners, this Court deems it fit to issue direction to the respondent Police to secure the petitioners, if it is required for investigation. This Court is also surprised why the investigation is pending from the year 2015 in this case. The Superintendent of Police, shall monitor the matter and take appropriate action for filing the final report in this case as expeditiously as possible.

15.In fine, these criminal original petitions are dismissed.

sd/-
02/12/2021

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/ /2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO
1. THE INPSECTOR OF POLICE,
   CENTRAL CRIME BRANCH, MADURAI CITY.
2. THE ADDITIONAL PUBLIC PROSECUTOR,
   MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO :
THE SUPERINTENDENT OF POLICE, MADURAI DISTRICT.

+2 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-8809 & 8810[I].

ORDER IN
CRL OP(MD)Nos.16227 and
16232 of 2021
Date :02/12/2021

USK/JM/SAR-I/25.01.2022/7P/6C