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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 26.03.2021

Pronounced on:01.04.2021

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD). No.16032 of 2020

1. Abdul Hameed
2. Hameed Husain
3. Abdul Bhasith
4. Sherif Ali
5. Rajesh
6. Abdul Kadhar

... Petitioners No.1 to 6/Accused No.1 to 6

- Vs-

State Rep.by
The Inspector of Police,
District Crime Branch,
Tirunelveli,
Tirunelveli District.
Crime No.15/2020.

... Respondent/Complainant

For Petitioners : Mr.M.Ajmalkhan, Senior Counsel
for M/s.Ajmal Associates,
For Intervenor : Mr.B.Kumar, Senior Counsel
for Mr.R.S.K.Pandian, Advocate
For Respondent : Mr.R.Srinivasan,
Government Advocate (Crl.Side)

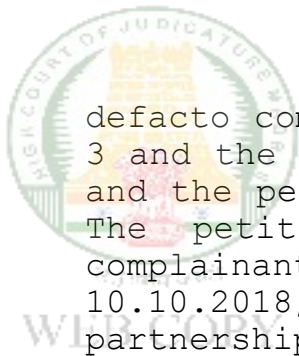
PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

PRAYER :- For Anticipatory Bail in Crime No.15 of 2020 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioners/Accused, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 120(B), 467,468,471, 419 and 420 of IPC seek anticipatory bail.

2.The case of the prosecution is that the defacto complainant and the petitioners 1 to 3 are blood brothers and one younger brother viz., Ayub Khan, who died on 09.04.2020, in which, the

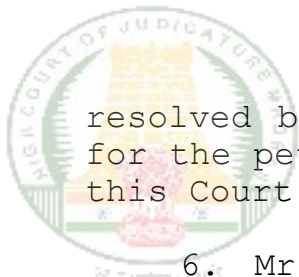


defacto complainant is the eldest among them. The petitioners 1 to 3 and the defacto complainant are partners of 5 Mark Beedi Company and the petitioners 4 to 6 are employees of the said Beedi Company. The petitioners without obtaining signature from the defacto complainant forged his signature in the sale agreement dated 10.10.2018, cheated the defacto complainant and sold one undivided partnership landed property. The bank account was transacted without his knowledge.

3.The learned counsel appearing for the petitioners submitted that there was a family agreement with regard to sale of one share of their family property and the defacto complainant now alleges that the signature found therein is not that of the defacto complainant and the petitioners had forged the signature. He further submitted that based on the family arrangement and agreement for sale, the petitioners 1 to 3 have executed sale deed vide Doc.No.2815/2019 dated 28.05.2019, it is clearly mentioned therein that the petitioners sold only their undivided 3/5th shares as per the recitals contained in the agreement regarding schedule property after receiving their balance sale consideration in accordance with their respective share. The other contention of the petitioners is that A5 in this case is a employee and without his authorisation operated bank accounts and money transactions of the petitioners 1 to 3 as well as the defacto complainant till the year 2019. The transaction dispute taken place in the year 2018. At that time, A5 was authorised and permitted to operate the account of the petitioners 1 to 3. The signature of the defacto complainant found forged in the family arrangement as well as the operation of his bank account is without the defacto complainant authorisation are not proper. Hence, the question of forgery and cheating could not arise.

4.The learned counsel appearing for the intervener/defacto complainant submitted that the defacto complainant is the eldest brother in the family. The petitioners 1 to 3 herein have together chased out the defacto complainant and created forged document and signed the same as though the defacto complainant had been party to it. He further submitted that the petitioners had shown the sale value of Rs.2,75,00,000/-, which is less than the guidelines value of Rs.3.50 Crores. He further submitted that the petitioners created forged document and in connivance with each other had misappropriated the family property affecting the rights of the defacto complainant. He further submitted that at the instance of A1 to A3, A5 had transferred entire advance amount of the property to the account of the partnership firm. The partnership firm is managed by the first petitioner. Therefore, the petitioners have committed the above offence.

5.Considering the facts and circumstances of the case and also considering the rival submission on either side, it is seen that the ~~defacto complainant~~ the brothers over inherited property and it can be



resolved before the Mediation. Both the learned counsel appearing for the petitioners and the intervener/defacto complainant requested this Court to post the matter before the Mediation for settlement.

6. Mr.T.Lajapathi Roy and Mr.G.Prabhu Rajadurai conducted mediation and reported that mediation failed. Though mediation failed, the mediator is of the view that there is a possibility of settlement if all the family properties are considered and divided. The issue between the defacto complainant and the petitioners is over the entire family property and the partnership business which can be settled. Further, it is felt arbitrator could be appointed to mediate and resolve the issues between the parties.

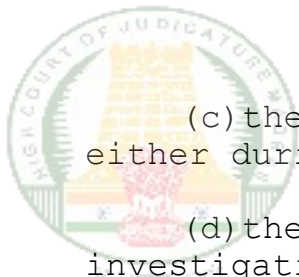
7. The learned Senior Counsels appearing for the petitioners and the defacto complainant admitted that the dispute is between the brothers in respect of family property. The family members as a whole got good reputation not only in the trade but also in the society and both the petitioner and the defacto complainant are steadfast in maintaining the family name and its reputation. The contention seems to be over their respective shares, which to be divided and allotted to each of them. It was agreed by both the petitioner and the defacto complainant to appoint a retired Judge of this Court Mr.K.N.Basha as Arbitrator. Further the petitioners and the defacto complainant to submit their respective claim application as per Section 9 of the Arbitration and Conciliation Act, 1996.

8. The remuneration to be paid to the Arbitrator shall be decided by both the parties. Both the petitioners and the defacto complainant shall participate in the arbitration and get the issue resolved. In view of the understanding arrived at by both the parties, this Court is inclined to grant anticipatory bail to the petitioners, subject to the following conditions;

9. 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.I, Tirunelveli 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 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 as <https://hseportal.gov.in/hseportal> 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;

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(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.

10. Further the respondent police is directed not to proceed with the investigation till the completion of arbitration proceedings and on successful completion of arbitration proceedings and the award accepted by both the parties, nothing survives for investigation and in such circumstances, the respondent police shall take into consideration the award passed and file an appropriate report before the concerned Court. Further, the petitioners are directed not to encumber and sell any of the properties held in their name and in the name of family members, relatives and others, till the conclusion of the arbitration proceedings.

sd/-

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

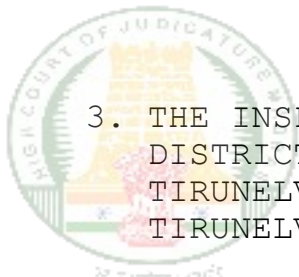
Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. THE JUDICIAL MAGISTRATE NO.I, TIRUNELVELI.

2. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.

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



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

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

COPY TO:

JUSTICE K.N.BASHA (RETD.,)
NO.25/1, Dr.AMBEDKAR ROAD,
F-1 "NORTH THIRUMALAI NAGAR,
VILLIVAKAM, CHENNAI - 600 049.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-2910[I] dated
01/04/2021)

ORDER

IN

CRL OP(MD) No.16032 of 2020

Date :01/04/2021

AAV

AE/JC/SAR-II/09.04.2021/5P.7C