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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

( Criminal Jurisdiction )

Reserved on : 23.11.2021

Delivered on : 26.11.2021

PRESENT

**The Hon`ble Mr.Justice K.MURALI SHANKAR**

CRL OP(MD). No.18284 of 2021

1. V.Murugesan,  
2. M.Manoj,

... Petitioners/Accused Rank Not known

Vs

State Rep by,  
The Inspector of Police,  
Karuppayurani Police Station,  
Madurai District.

Crime No.Not known of 2021). ... Respondent/Complainant

K.Bose

...Petitioner/Intervener/Informant  
(in Crl MP(MD)No.10095 of 2021  
in Crl OP(MD)No.18284 of 2021)

For Petitioners : Mr.S.Saravana Kumar, Advocate.

For Respondent : Mr.RMS.Sethuraman,  
Additional Public Prosecutor.

For Intervenor : Mr.N.Dilip Kumar,Advocate.

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

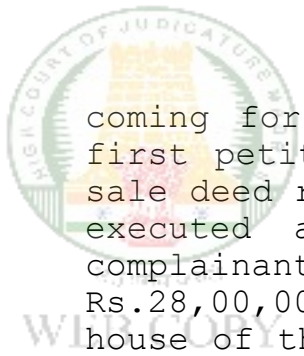
PRAYER :-

For Anticipatory Bail in Crime No.Not known of 2021 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 420, 294(b) and 506(i) IPC, in Crime No.Not known of 2021 on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution is that the defacto complainant has entered into a sale agreement with the first petitioner on 12.03.2021 in respect of the property owned by one Indira Gandhi, that the first petitioner has received a sum of Rs.35,00,000/- towards sale advance and both of them had fixed time for performance as six months, that the first petitioner has then approached the



coming for sale and requested him to purchase the same, that the first petitioner had received a sum of Rs.28,00,000/-, but got the sale deed registered in his name, that the first petitioner has then executed a power of attorney deed in favour of the defacto complainant and also issued a receipt for receiving a sum of Rs.28,00,000/-, that thereafter, the first petitioner came to the house of the defacto complainant and requested him to hand over the power of attorney deed and also receipt to produce the same for income tax enquiry, that the defacto complainant on believing his words, had handed over the said documents and that the first petitioner has not returned the documents and when the same was demanded and requested the petitioners to fulfil the transactions, they have threatened the defacto complainant and also gave live threats to him. Hence, the complaint.

3.The case of the petitioners is that the defacto complainant and the first petitioner are friends, that they have decided to purchase the land and promote it as house plots, that both of them have entered into a sale agreement, that the first petitioner as agreed, has purchased the adjacent land and also executed a power of attorney deed in favour of the defacto complainant in respect of the said land purchased by the first petitioner, that the defacto complainant has failed to pay the balance sale price as per the terms of sale agreement dated 12.03.2021, that the first petitioner has cancelled the proposed business with the defacto complainant and also cancelled the power of attorney deed and asked the defacto complainant to return back the amount and that therefore, the defacto complainant with vengeance has lodged a false complaint.

4.The case of the intervenor/defacto complainant is that the first petitioner even after sale agreement dated 12.03.2021 did not arrange for the appearance of owner Indira Gandhi, that as a part of their dubious designs and fraudulent intention made the intervenor to believe that after purchasing 4.28 acres of land situated abutting the property mentioned in the sale agreements, they will sell the same to the intervenor and obtained the sale consideration of Rs.28,00,000/-, that the petitioners have executed a general power of attorney in favour of the intervenor on 28.06.2021 in respect of the land purchased by the first petitioner and also gave a unregistered undertaking affidavit cum sale receipt on the same day in proof of the receipt of Rs.28,00,000/-, that the first petitioner had then cunningly taken away the originals by falsely claiming them for some enquiry by the income tax department, that the first petitioner had denied the receipt of Rs.28,00,000/- and that he had also destroyed the original documents and also cancelled the general power of attorney.

5.Heard Mr.S.Saravana Kumar, learned counsel appearing for the petitioners, Mr.Rms.Sethuraman, learned Additional Public Prosecutor appearing for the respondent and Mr.N.Dilip Kumar, learned counsel



6. Admittedly, the first petitioner and the defacto complainant have entered into a sale agreement, dated 12.03.2021 in respect of the property owned by one Indira Gandhi. It is not in dispute that the first petitioner has received a sum of Rs.35,00,000/- towards sale advance and both the parties have agreed to complete the sale transactions within six months.

7. According to the petitioners, the first petitioner had purchased the property situated adjacent to the property referred in the sale agreement and that since the defacto complainant has agreed to purchase the said land, he had executed a power of attorney dated 28.06.2021. But according to the defacto complainant for purchasing the said adjacent property, the petitioners had received Rs.28,00,000/- from the defacto complainant and subsequently, executed a general power of attorney in his favour and also executed a unregistered undertaking affidavit cum sale receipt, evidencing the receipt of Rs.28,00,000/-.

8. The learned counsel for the petitioner would submit that the petitioners have not received the amount of Rs.28,00,000/- and never executed any such sale receipt in favour of the defacto complainant. He would further submit that since the defacto complainant has not chosen to pay the balance sale price and to get the sale deed executed as per the sale agreement, dated 12.03.2021 within the time stipulated, the first petitioner has cancelled the power of attorney deed and also expressed his readiness to return back the sale advance amount of Rs.35,00,000/- received by him.

9. As already pointed out, though the petitioners have expressed their readiness to return the sale advance amount of Rs.35,00,000/- to the defacto complainant, according to the petitioners, the defacto complainant has refused to receive the same, on the ground that the petitioners have also to return Rs.28,00,000/- along with Rs.35,00,000/-.

10. Whether the first petitioner had received a sum of Rs.28,00,000/- from the defacto complainant and whether he had executed any sale receipt therefor, are the aspects that cannot be gone into, by the Bail Court.

11. Considering the rival contentions of both the parties, it is clearly evident that there existed civil dispute between the parties and that the defacto complainant is attempting to give the civil dispute a criminal flavour/colour. As rightly pointed out by the learned Additional Public Prosecutor, the defacto complainant has lodged a complaint under Section 156 (3) Cr.P.C before the jurisdictional Magistrate Court and the same was forwarded to the respondent police.

12. Recently, the Hon'ble Supreme Court in **Mitesh Kumar J. Sha vs. State of Karnataka and others**, passed in [Crl.A.No.1285/2021  
<https://hccservices.courtsofjudiciary.gov.in/hccservices/>



arising out of SLP(Crl).No.9871/2016, has reiterated that cloaking a civil dispute with a criminal nature in a bid to get quicker relief is an abuse of process of law, which must be discouraged. Considering the above facts, this Court is inclined to grant anticipatory bail to the petitioners.

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13. 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.II, Madurai, 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 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 Aadhar card or Bank pass Book to ensure their identity;

(b) the petitioners shall report before the respondent police daily at 10.30 am for a 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 petitioner in accordance with law as if the conditions have been imposed and the petitioner 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/-

26/11/2021

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

DAS

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  
MADURAI.

2 DO-THROUGH :  
THE CHIEF JUDICIAL MAGISTRATE,  
MADURAI DISTRICT.

3 THE INSPECTOR OF POLICE  
KARUPPAYURANI POLICE STATION,  
MADURAI DISTRICT.

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

+1 CC to MR.N.DILIP KUMAR, Advocate SR-8596[I]

+1 CC to MR.R.SURIYA NARAYANAN, Advocate SR-8588[I]

ORDER

IN

CRL OP(MD) No.18284 of 2021

Date :26/11/2021

PKP/JM/SAR-2/02.12.2021/5P/7C