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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2022

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.OP.No.13473 of 2022

AND

CRL.MP.NO.7418 of 2022

G.K.Mohamed Sahil

..Petitioner

Vs.

State Rep. by
Inspector of Police(crimes),
D-1 Police Station,
Triplicane, Chennai-05
(D-1 crime No.332 of 2022)

..Respondent

SHAKILA BANU

[PETITIONER/INTERVENOR/DEFACTO COMPLAINANT]
Ordered as per order of this Court
Dated 14/06/2022 made in CRL.MP.NO.7418/2022]

PRAYER:

Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail in D-1 crime No.332 of 2022 pending investigation on the file of the respondent police.

For Petitioner : Mr.D.N.Dhurgasha

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

For Intervenor : Dr.S.S.Swaminathan
for Mr.R.Premanandhan

ORDER

The petitioner, who was arrested and remanded to judicial custody on 11.05.2022 for the offence punishable under Sections 406 and 420 of IPC in D-1 crime No.332 of 2022 on the file of the respondent police, seeks bail.



2. The case of the prosecution is that the defacto complainant entered into construction agreement to purchase flat from the petitioner being developer of the property. Accordingly, the defacto complainant paid a sum of Rs.68 lakhs as a part of sale consideration. Simultaneously, the undivided share of the flat was also registered in favour of the defacto complainant on 07.10.2016 registered vide document No.1418 of 2016. However, the petitioner failed to put up any construction as per the construction agreement and as such, the defacto complainant demanded to return the money. However, on the assurance given by the petitioner, the defacto complainant executed power of attorney in respect of the said property in favour of the petitioner. In turn, the petitioner sold out the property in favour of one, Sunil Kumar who is the third party. Again, after completion of construction, the possession of the house flat was handed over to the defacto complainant. However, the petitioner failed to execute any sale deed in respect of the undivided share in favour of the complainant herein.

3. The learned counsel appearing for the petitioner would submit that thereafter, the said Sunil Kumar executed sale deed in favour of the petitioner. The petitioner is also ready to execute sale deed in favour of the defacto complainant. However, there is balance in respect of construction charges to the tune of Rs.20 lakhs and as such, whenever the defacto complainant pays the balance sale consideration, the petitioner is ready and willing to execute sale deed in his favour. Hence, he prays to grant bail to the petitioner.

4. The learned counsel appearing for the defacto complainant as intervenor submitted that the possession has been handed over to the defacto complainant as early as on 01.02.2019. However, the sale deed was not executed in favour of the defacto complainant. Though there is a dispute in respect of construction charges, apart from the earlier payment of Rs.68 lakhs, the defacto complainant is ready and willing to bear the registration charges and the stamp duty while registration of sale deed.

5. Considering the above and also the period of incarceration by the petitioner, this Court is inclined to grant bail to the petitioner. Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like sum to the satisfaction of the learned XIII Metropolitan Magistrate at Egmore, Chennai-8 and on further conditions that:

[a] 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 petitioner shall execute sale deed in favour of the defacto complainant within a period of two weeks from today in respect of the undivided share which was already registered in favour of the defacto complainant.

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[c] It is made clear that the defacto complainant shall bear the registration charges and the stamp duty in respect of the subject property. Further, if at all any claim against the defacto complainant, the petitioner can very well take appropriate action as against the defacto complainant insofar as the balance construction charges.

[d] the petitioner shall report before the respondent police as and when required for interrogation.

[e] the petitioner shall not abscond either during investigation or trial.

[f] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[g] 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].

[h] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

-sd/-

14/06/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE XIII METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI-08.

2 THE CHIEF METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI [FOR INFORMATION]



3 THE INSPECTOR OF POLICE (CRIMES),
D1 POLICE STATION, TRIPPLICANE,
CHENNAI-05.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI, CHENNAI.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+2 CC to M/S.D.N.DHURGASHA. Advocate on payment of necessary
charges SR.No.8999

+2 CC to M/S.R.PREMANANDHAN Advocate on payment of necessary
charges SR.No.9021

CRL OP.13473/2022
AND
CRL.MP.7418/2022
Date :14/06/2022

CSK 14/06/2022