IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Sixteenth day of June Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice G.K. ILANTHIRAIYAN

CRIMINAL ORIGINAL PETITION No.13394 of 2022

1 D.JAGADEESAN [PETITIONERS/ACCUSED]
2 R.VELU
3.S.SUBRAMANIAM

Vs

STATE REP.BY [RESPONDENT/COMPLAINANT]
THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH,
NAMAKKAL DISTRICT.
(CRIME NO.8/2022)

For Petitioner : M/S.R.JOHN SATHYAN Advocate

For Respondent : MR.A.DAMODARAN, Additional Public Prosecutor

For Intervenor : MR.SUNDARAVADHANAN,Advocate

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

ORDER : The Court Made the following order :-

The petitioners/A1, A2 & A3 who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 420, 468, 471 & 506(i) of IPC in Crime No.8 of 2022, seek anticipatory bail.

2. The case of the prosecution is that the de facto complainant is the native of Keezhmugam Village, Mallasamudaram, Thiruchengodu, Namakkal District and is presently residing at Mumbai, Maharastra. It is the further case of the de facto complainant that he purchased a property in his native in Survey No.227/5 to an extent of 2616 Sq.ft on 27.08.1993 and constructed a shopping complex with 6 shops by the name Karupaiah Shopping Complex. It is alleged that, the Kandhuvatti Velu/A1 and Jagadeesan/A2 petitioners herein allegedly lured the de facto complainant to avail loan at an attractive lower rate of interest and believing the words of A1 & A2, on 29.12.2015, the de facto complainant mortgaged his shopping complex and availed a

loan of Rs.15,00,000/- at 3.50 % interest per month alongside, he also executed a sale agreement dated 29.12.2015 in favour of Kandhuvatti Velu/A1 and Jagadeesan/A2 and at the insistence of the above, the de facto complainant also executed a General Power of Attorney in favour of Subramanian/A3 petitioner herein. Thereafter, the de facto complainant left for Mumbai on business. Further, the de facto complainant admits that between 29.12.2015 and 07.08.2017, Kandhuvatti Velu/A1 and Jagadeesan/A2 had paid Rs.55,00,000/-. It is further stated in the complaint that, the de facto complainant suffered health setback in the month of January 2017 and hospitalized and taking treatment as inpatient. On coming to know the health condition of the de facto complainant, both Kandhuvatti Velu/A1 and Jagadeesan/A2 paid the de facto complainant a further sum of Rs.1,00,000/-. After undergoing treatment for a few months, the de facto complainant returned to his native, the de facto complainant allegedly attempted to repay the Rs.55,00,000/- which the de facto complainant allegedly received as loan and gave his shopping complex in mortgage, but Kandhuvatti Velu/A1 and Jagadeesan/A2 gave evasive reasons and refused to receive the money. The de facto complainant claimed that, the property was valued at Rs.1,75,00,000/- and suspecting foul play applied for Encumbrance Certificate and came to understand that using the Power of Attorney dated 21.04.2015, Subramaniam/A3 executed a sale deed in favour of Kandhuvatti Velu/A1 and Jagadeesan/A2 using an allegedly fabricated medical and life certificate issued by Dr.Velappan/A4, on 21.04.2017. Further, it is alleged that while registering the property, the fact that a shopping complex existing in the land was suppressed and was shown as a vacant site. On 10.11.2020, it is alleged that the de facto complainant went to the shop housing M/s Vinayaga Hydraulics owned by Jagadeesan/A2 to question the overt acts, where he was allegedly threatened with dire consequences in the presence of one Ayyakannu and Thangaraj. Hence, the complaint.

3. Admittedly the de facto complainant entered into an agreement for sale on 29.12.2015 with the A1 & A2. On the same day, the de facto complainant executed Power of Attorney in favour of A3. On perusal of agreement for sale, it reveals that the total sale consideration was fixed for the subject property at Rs.10,00,000/- in which the de facto complainant received a sum of Rs.9,50,000/-. On the strength of the Power of Attorney and also on the strength of agreement of sale entered into by the de facto complainant and accused A1 & A2, the A3 who being the Power of Attorney executed a sale deed in respect of the subject property in favour of A1 & A2 on 21.04.2017.

4. Whereas, the learned counsel for the de facto complainant/intervenor submitted that the de facto complainant was ill, as such, he borrowed a sum of Rs.55,00,000/- from A1 & A2 and thereafter went to Mumbai after executing Power of Attorney in favour A3 and agreement for sale on 29.12.2015. However, he went to Mumbai,

he fell ill and he was not present at the time of execution of sale deed. His signature was forged and the life certificate was issued by the A4 while execution of sale deed by his Power of Attorney Viz., A3.

5. It is seen from the complaint lodged by the de facto complainant dated 17.11.2020, there was no allegation about the fabrication of life certificate and forged signature of the de facto complainant by the petitioners herein. Thereafter, the present complaint was lodged in the year 2022 with improved allegations. Further, the case of the de facto complainant is that he borrowed only a loan and when he intended to return the loan along with the interest, A1 to A3 refused to receive the loan and stated that already the subject property was purchased by the A1 & A2 by the registered sale deed executed by Power of Attorney A3.

6. Therefore, if at all any grievance is there with regard to execution of Power of Attorney, agreement for sale and sale deed, the de facto complainant ought to have file a suit before the appropriate forum.

7. Considering the above facts and circumstances of the case, this Court is of the view that custodial interrogation of the petitioners are not required. Hence, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

8. 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 on which the order copy made ready, before the learned Judicial Magistrate, Thiruchengode, on condition that each of the petitioners shall execute a separate 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 respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed 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 daily at 10.30 a.m. for a period of two weeks 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 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].

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

-sd/-
16/06/2022

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 JUDICIAL MAGISTRATE,
THIRUCHENGODE.

2 THE CHIEF JUDICIAL MAGISTRATE
NAMAKKAL [FOR INFORMATION]

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

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1CC to M/S.R.JOHN SATHYAN Advocate on payment of necessary charges SR.No.9359

+1CC to M/S.A.SUNDARAVADHANAN Advocate on payment of necessary charges SR.No.9426

CRL OP.13394/2022

Date :16/06/2022

CSK 22/06/2022