IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.25234 of 2021

J.Venkatesh ... Petitioner

Vs.

State Represented by
The Inspector of Police,
J3-Guindy Police Station
Chennai.
(Crime No.983 of 2021) ... Respondent

PRAYER: Criminal Original Petition filed under Section 438 of the Code of Criminal Procedure, to enlarge the petitioner on bail in the event of his arrest in Crime No.983 of 2021 pending investigation on the file of the respondent police.

For Petitioner : Mr.V.Raghavachari

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

For Intervenor : M/S.EZHILARASAN, Advocate

ORDER

The petitioner, who apprehends arrest at the hands of the respondent police for the alleged offences punishable under Sections 406 & 420 IPC, in Crime No.983 of 2021, on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution is that the petitioner is running a petrol bunk on Thiruvallur Road @ Nesapakkam, Chennai. The petitioner came to know one Mr.Chandran and his wife Amudha through a common friend one Raj @ Rajendiran from Ekkattuthangal, Chennai. On that capacity they had approached the petitioner and demanded loan of Rs.2,00,000/- in order to repay their earlier debt and for construction. They agreed to pay interest at the rate of 2% per month and execute a registered mortgage deed for the said loan. Considering their request, the petitioner had given Rs.2,00,000/- on 16.02.2017.

The 2nd defendant C.Amudha had executed a registered mortgage deed No.1334/2017 on the file of SRO Saidapet, Chennai on 16.02.2017 in respect of her property situated at T.S.No.107/1, block No.1, Balaji Nagar 1st street, Ekkattunthangal Village, Guindy Taluk, Chennai, measuring an extent of 1356 Sq.ft. in favour of the petitioner. After that, both husband and wife had repeatedly approached the petitioner and demanded further loan amount by citing their kidney and heart problem. Considering their medical emergency and said mortgage, the petitioner had given them Rs.5,00,000/- on 24.02.2017, Rs.10,00,000/- on 10.03.2018 and Rs.10,00,000/- on 10.04.2019 for minimum interest rate of 2% per month. Both of them had accepted and calculated the agreed accumulated interest. They agreed to execute sale agreement, but demanded further amount for their medical treatment from the petitioner. Both of them had mutually fixed the total sale consideration of Rs.1,60,00,000/- for their properties. On 07.04.2021, the petitioner had paid Rs.8,30,000/- by cash at the time of said execution of sale agreement deed for their medical expenses. In all total, the petitioner had paid Rs.50,00,000/- to them as sale advance. The unregistered agreement of sale dated 07.04.2021 signed by the both parties, is filed along with this petition.

3.When they verified the Encumbrance Certificate over the property covered in the sale agreement, the petitioner found that already the father and mother of the defacto complainant borrowed loan for a sum of Rs.25,00,000/-from one Chandra and mortgaged property on 09.07.2014 through the registered Mortgaged deed and thereafter he demanded money with interest. Both of them agreed to pay Rs.50,00,000/- and executed two cheques dated 15.11.2021 and 17.11.2021 and both were presented for collection, thereafter, returned with an endorsement 'funds insufficient', and demanded exorbitance interest and the collusively obtained the documents.

4. The learned counsel appearing for the petitioner submitted that the petitioner is an innocent person and he has not committed any offence as alleged by the prosecution. He further submitted that the petitioner who lent money to the parents of the defacto complainant, now by instigating their son, who he gave a false complaint and the petitioner is ready to abide by any stringent conditions that may be imposed by this Court. Hence, he prays for grant of anticipatory bail to the petitioner.

5. The learned Government Advocate (Crl.Side) submitted that defacto complainant's father mortgaged the property and obtained loan for his study to the tune of Rs.2,00,000/-. Thereafter, with interest and principal sum of Rs.22.8 lakhs was paid for the loan amount of Rs.9,00,000/-. Now the financier / accused is refusing to cancel the mortgaged document and demanding sale of the property from the defacto complainant's mother and father. The defacto complainant is ready to give Rs.5,00,000/- but accused is not ready to cancel the document. The defacto complainant and his father required the

property, in order to sell and to utilize the same and selling it using the money for the defacto complainant's mother's medical expenses urgently. Hence, he vehemently opposed to grant anticipatory bail to the petitioner.

6. The learned counsel for the intervenor also submitted that, initially they borrowed only a sum of Rs.2,00,000/- as loan and due to the illness of his mother, another Rs.5,00,000/-was borrowed, totally a sum of Rs.7,00,000/- was borrowed he being the financier. Originally, they borrowed loan of Rs.2,00,000/- for education of their son in the year 2016 and subsequently agreed to repay the amount with 2% interest every month by depositing their original title deeds with respect to the property located at T.S.No.107/1, Block No.1-Balaji Nagar, 1st street, Ekkatuthangal Village, Guindy Taluk, Chennai-600 032. measuring an extent of1356 Sq.ft and executed an equitable Mortgage deed in Doc.No.1334/2017 dated 16.02.2017 with other documents including 3 unfilled cheque leaves, unfilled Rs.20/- stamp papers 2 and unfilled Demand Promissory Note-2 in favour of the petitioner. Thereafter, the father of the respondent had repaid the loan amount with interest, when they returned back the original title deeds, petitioner refused. The petitioner had threatened the parents of the defacto complainant to execute the sale deed in favour of him. While so, the mother of the defacto complainant suffered Kidney transplantation and so, the parents decided to sell the property. Hence, both the parties were entered into an un-registered sale agreement deed in the month of April 2021. As per that, the petitioner agreed to pay a sum of Rs.50 lakhs as advance, but he agreed to transfer to NEFT/RTGS but not paid the advance amount, with an intention to grab the property belonging to the defacto complainant and to get benefit out of it illegally. So, he gave the complaint on 17.06.2021. Due to his mother's illness, there was no progress in the said complaint. In order to arrange a portion for the Kidney transplantation surgery for his mother, he proposed to sell the property to the 3rd party and also approached the petitioner to settle the issue by paying the balance amount of Rs.15,00,000/- and requested the petitioner to cancel the mortgaged deed and return back the document. Inspite of the payment he refused to return back the document, and hence the complaint arose.

7. The facts reveal that the parents of the defacto complainant borrowed a loan from the petitioner and even after repayment of the loan amount they refused to return back the title deed as well as by cancelling the mortgage deed. Apart from that, the petitioner being the financier compelled the defacto complainant's family to execute the sale deed in his favour, with regard to the said property. The mother of the defacto complainant was also suffered with Kidney problem and needs for Kidney transplantation. So, the complainant are in need of money. But the petitioner refused to settle the issue. The petitioner submits that he entered into an agreement for valid consideration and the parents of the complainant also received money.

Furthermore, the petitioner also gave Government auction Public Notice to sell the property. Since the issues between the parties are with regard to cancel of Mortgage deed and return of the original documents. The dispute is around the property concerned.

8. Considering that, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions. The petitioner should file an affidavit before the trial Court by depositing the Mortgage deed as well as the original title deeds along with which belongs to the complainant's mother and father. Apart from that, he is also directed to deposit a sum of Rs.10,00,000/- in Crime No.983 of 2021 and on such deposit, the defacto complainant is permitted to withdraw the same for the reason that his mother was suffered for Kidney problem and they need money for Kidney transplantation, So by giving undertaking, by filing of affidavit as well as on such deposit.

9. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen (15) days after lifting of lockdown or the commencement of the Court's normal functioning whichever is earlier, before the learned IX Metropolitan Magistrate, Saidapet, Chennai, on condition that the petitioner shall execute 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 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 petitioner should file an affidavit before the trial Court by depositing the Mortgage deed as well as the original title deeds along with which belongs to the complainant's mother and father. The petitioner is directed to deposit a sum of Rs.10,00,000/- (Rupees Ten Lakh only) to the credit of Crime No.983 of 2021 within a period of fifteen (15) days after lifting of lockdown or the commencement of the Court's normal functioning whichever is earlier and shall produce the said receipt before the Court below.

[b] the petitioner 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.

[c] the petitioner is directed to report before the respondent police daily at 10.30 a.m., until further orders.

[d] the defacto complainant is permitted to withdraw the deposit amount of Rs.10,00,000/- (Rupees Ten laksh Only) on proper identification and acknowledgement.

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

[f] the petitioner shall not abscond 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/-
12/01/2022

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 METROPOLITAN MAGISTRATE,
NO.IX, SAIDAPET, CHENNAI.

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

3 THE INSPECTOR OF POLICE,
J3 GUINDY POLICE STATION,
CHENNAI

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 CC to M/S.K.EZHILARASN, Advocate on payment of necessary charges SR.NO.821

CRL OP.25234/2021

Date :12/01/2022

JPA 07/02/2022