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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 26/04/2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.5844 of 2022

1. Elangiam,

2. Vijayan,

3. Kannathasan,

4. Mani,

5. Sanjeevi,

6. Poongodi,

7. Selvagiyam @ Selva Packiyam, ... Petitioners /Accused Nos.1 to 4, 6 to 8

Vs

THE STATE REP BY,
The Inspector of Police,
Rajathanai Police Station,
Theni District.
(Cr.No.47/2022). ... Respondent/Complainant

C.Susikumar, ...Petitioner/Intervener /Defacto Complainant in Crl MP(MD)No.4351 OF 2022

For Petitioners : MR.G.Radhakrishnan,Advocate.

For Respondent : Mr.R.Sivakumar, Government Advocate (Crl.Side)

For Intervenor : Mr.R.Maheswaran,Advocate for Mr.M.Subash Babu,Advocate In Crl MP(MD)No. 4351 OF 2022

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

PRAYER :-
For Anticipatory bail in Crime No.47 of 2022 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 147, 148, 447, 427, 294(b), 342, 323 and 506(2) IPC, in Crime No.47 of 2022 on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution is that the defacto complainant is the owner of the land in S.No.107/1-12 situated at Pitchampatti, Andipatti Village, Theni District, that the neighboring land owners are continuously giving trouble, that on 20.02.2022 when the defacto complainant was erecting fencing, the accused persons came to that place and abused the defacto complainant in filthy language and also tried to assault him with deadly weapons and that the accused had also damaged the fencing stones worth about Rs.1,10,000/-. Hence, the complaint.

3.The petitioners' case is that the petitioners are the members of the same family, that disputed S.No.107/1 admeasures 3.40 acres, which stands in the name of the deceased Subbammal, who is the mother of the first petitioner, in patta No.1413, that the defacto complainant's vendor has filed a suit in O.S.No.125 of 2013 against the said Subbammal and her sons, who are the petitioners 1 to 3, on the file of the District Munsif Court, Andipatti, and the suit was decreed as prayed for vide judgment dated 03.01.2020, that the petitioners 1 to 3 have already preferred an appeal in A.S.No.10 of 2022 and the same is pending before the Subordinate Court, Theni, that the defacto complainant after receiving the appeal notice has started to create problems, because, he was a subsequent purchaser pending litigation, that the defacto complainant also filed a direction petition before this Court in Crl.O.P.(MD)No.12753 of 2021, seeking police protection and to fix a boundary stone in S.No.107/1 and the same was disposed of, vide order, dated 30.09.2021, directing the Taluk Surveyor to conduct enquiry, that the Surveyor has not issued any notice and no enquiry was conducted, but, all of a sudden, the defacto complainant with the help of the Police tried to erect fencing and to occupy the property, that when the petitioners opposed the same, a wordy quarrel arose between the parties before the respondent Police, that the respondent Police directed both the parties to maintain the disputed property as it was, till the disposal of the appeal and that the defacto complainant all of sudden, lodged a false complaint and on that basis, present FIR came to be registered.

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4.The learned counsel for the petitioners would submit that no one was injured in the incident, that it is purely a civil dispute and civil case is also pending, that the petitioners are innocents and that they have not committed any offence as alleged.

5.The case of the intervenor/defacto complainant is that he purchased 1.70 acres of land in S.No.107/1 situated at Pitchampatti Village from one S.Pandian, vide sale deed, dated 29.03.2021, that the complainant has been in possession and enjoyment of the property, that the petitioners, who are the adjacent land owners, have created troubles and attempted to occupy the property, that since the petitioners did not permit the surveyor to demarcate the property, the complainant has filed a direction petition in Crl.O.P.(MD)No.12753 of 2021 and this Court has directed the Surveyor to conduct enquiry under Section 10 of Tamil Nadu Survey and Boundaries Act, that since the Survey Department did not obey the directions of this Court, the complainant filed a Contempt Petition in Cont.P.(MD).No.1888 of 2021 and the Taluk Surveyor appeared before this Court, that since this Court had taken serious view about the attitude of the Taluk Surveyor, the property has been surveyed on 14.02.2022 and consequently, the complainant had erected 100 boundary stones in his property.

6.It is the further case of the complainant that while being so on 20.02.2022 at about 07.00 am, he was informed by his sister's husband that the petitioners had unlawfully assembled and trespassed into the said property with deadly weapons and also started to damage the fencing stones, that the complainant immediately rushed to the spot along with his brother Prabu, that the petitioners on seeing the complainant, had abused him and assaulted him and also attempted to kill him, that the complainant had managed and escaped from the occurrence place and that they have damaged the entire 100 boundary stones worth about Rs.1,10,000/-.

7.Considering the rival contentions, this Court directed the respondent Police to file a status report and in pursuance of the same, the respondent Police has filed the status report dated 11.04.2022, wherein, it has been stated that the accused persons are in the habit of making continuous threat and causing danger in the said locality, that the accused persons had abused the Survey Department Officials, during the survey held on 04.02.2022 and for that the case in Crime No.29 of 2022 was registered, that on 14.02.2022, the accused had created ruckus and abused the Survey Department Officials and another case came to be registered in Crime No.40 of 2022, that the fourth accused and one Kannammal went to the house of the defacto complainant's sister and threatened them with dire consequences and for that another case in crime No.75 of 2022 was registered on 31.03.2022 for the offence punishable under Sections 294(b) and 506(2) IPC.

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8.In the status report, it has been further stated that the petitioners/accused had played active role in the above crime, that the investigation is in preliminary stage and that since the offences committed are serious in nature, their application for anticipatory bail is liable to be dismissed.

9.It is not in dispute that the fifth accused alone has been arrested and is in judicial custody.

10.The learned counsel for the petitioners would submit that since the defacto complainant is a practicing Advocate, at his influence, above FIR came to be registered.

11.The defacto complainant has also produced the copies of the photographs to show that the boundary stones were removed and damaged.

12.It is pertinent to mention that this Court in Crl.O.P.(MD) No.12753 of 2021, has passed an order dated 30.09.2021, directing the Taluk Surveyor to conduct an enquiry, under Section 10 of Tamil Nadu Survey and Boundaries Act, by giving proper notice to both parties and depending upon the outcome of the enquiry, he has to take further steps to measure the property and if any troubles at the hands of the private respondent, he can give a representation to the Police, who in turn, shall consider the same on merits and provide police protection, if necessary arises for measuring the property and that the said exercise shall be completed within a period of one month from the date of receipt of copy of that order.

13.As already pointed out by the learned counsel for the petitioners, since the Taluk Surveyor has not taken any steps to comply with the above directions, the defacto complainant was constrained to file contempt petition in Cont.P.(MD)No.1888 of 2021 and that when the same was pending, the property was measured and the boundary stones were fixed and that thereafter, the present occurrence is said to have occurred.

14.It is also pertinent to mention that since the petitioners had abused the Survey Department Officials, two FIRs came to be registered and thereafter, the fourth accused along with one Kannammal proceeded to the defacto complainant's sister's house and abused them and threatened them with dire consequences, another FIR came to be registered. Though the learned counsel for the petitioners has taken a stand that the appeal is pending, as rightly pointed out by the learned counsel for the Intervenor that the petitioners have not obtained any order staying the judgment and decree passed by the learned District Munsif.

15.Considering the above facts and also Considering the seriousness and gravity of the offence alleged and also the quantum of damages allegedly caused, that the investigation is pending and

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also taking note of the status report filed by the respondent Police, this Court is not inclined to grant anticipatory bail to the petitioners.

16.In the result, the Criminal Original Petition is dismissed.

sd/-
26/04/2022

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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 INSPECTOR OF POLICE,
RAJATHANAI POLICE STATION,
THENI DISTRICT.

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

ORDER
IN
CRL OP(MD) No.5844 of 2022
Date :26/04/2022

PKP/JM/SAR-2/10.05.2022/5P/3C

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