



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Dated:02/09/2022

PRESENT

The Hon'ble Mr.Justice **G.ILANGOVAN**

Crl.MP(MD)No.5252 of 2022

and

Crl.OP(MD)Nos.13358 and 13469 of 2021

1.Sam Thomas
2.Devasahayam : Petitioners/A1 and A2

Vs.

The State represented by
Inspector of Police,
Shenkottai Police Station,
Shenkottai, Tenkasi District.

Prayer in Crl.MP(MD)No.5252 of 2022: This Criminal Miscellaneous Petition has been filed under section 482 of Cr.P.C to modify the operative portion of the order passed by this court in Crl.OP(MD)No.13358 of 2021, dated 01/02/2022 in para 7 & 8 with respect to the reconveyance subject to the order side returning the sum of Rs.51,30,000/- to the petitioners as directed by the Hon'ble Supreme Court of India in Special Leave to Appeal (Crl) No.2575 of 2022, on 25/03/2022.

1.Sam Thomas
2.Devasahayam : Petitioners in
Crl.OP(MD)Nos.13358 of 2021/A1 and A2

V.Mary Ajitha @ Ajithaa : Petitioner in
Crl.OP(MD)No.13469 of 2021/A3

Vs.

The State represented by
The Inspector of Police,
Shenkottai Police Station,
Shenkottai,
Tenkasi District. : Respondent/Complainant



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For Petitioners : M/s.Victoria Gowri.L
For Respondent : Mr.M.Vaikkam Karunanithi
Government Advocate
(Criminal side)
For Intervener : Mr.TSR.Venkatramana
for Mr.N.Shyllappa Kalyan

PETITIONS FOR ANTICIPATORY BAIL under Sec.438 of Cr.P.C

PRAYER:-C-24AB.For Anticipatory Bail in Crime No.136 of 2021 on the file of the Respondent Police.

COMMON ORDER : The Court made the following order:-

The petitioners, who are arrayed as A1 to A3 apprehending arrest at the hands of the respondent police for the offences punishable under sections 406, 420 and 120(B) IPC, in Crime No.136 of 2021 on the file of the respondent police, seek anticipatory bail, whereas Criminal Miscellaneous Petition has been filed seeking for modification of the operative portion of order, dated 01/02/2022 passed in CrI.OP(MD)No.13358 in para 7 and 8 with respect to the reconveyance subject to the other side return the sum of Rs.51,30,000/-.



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2.While passing the order in the anticipatory bail petitions, the first petitioner/A1 was directed to execute a deed of reconveyance in favour of the de-facto complainant. He was directed to produce the above said copy of the deed for considering the anticipatory bail petitions. The exercise was ordered to be completed within a period of three months from the date of the order namely 01/02/2022. On that account, interim protection was granted to the petitioners and the Registry was directed to post the matter after three months.

3.Seeking an order to set aside the above said order, the petitioners moved the Hon'ble Supreme Court by way of filing SLA(Crl)No.2575 of 2022 and before the Hon'ble Supreme Court, it was submitted that there is no order with regard to returning of the sum of Rs. 51,30,000/- to the petitioners for the purpose of executing the deed of reconveyance. Liberty was granted to the petitioners to move this court for modification with suitable petition. In view of the above said direction, the modification petition came to be filed.



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4.While arguing the matter, the learned counsel appearing for the petitioners would submit that at the time of passing the order, this court failed to make an observation that the de-facto complainant must return Rs. 51,30,000/- to the accused persons for the purpose of executing the re-conveyance deed. She would draw the attention of this court that a deed of acknowledgement alleged to have been executed by the de-facto complainant in favour of the petitioners, dated 25/06/2019.

5.According to the learned counsel appearing for the petitioners, this document was not considered at the time of passing the above said order.

6.But even though, there is no mentioning in the above said order, this court has also perused the above said deed of acknowledgement. But even though not mentioning in the order, subsequent conduct of the parties was taken into account.

7.As mentioned above, originally, the subsequent messages that have been exchanged between the parties through email etc., *prima facie* shows that the de-facto



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complainant was put under dark with regard to the nature of the document, which according to the accused persons is a power of attorney. But according to the de-facto complainant, she was made to believe that it is only a caretaker document.

8.The order passed by this court, dated 01/02/2022 can be reproduced for better appreciation. The relevant paragraphs viz., 4 and 5 are extracted hereunder:-

"4.But the learned counsel appearing for the petitioners would submit that the de-facto complainant is not a lady of ordinary standing and well educated and settled in London and her children are also well placed and educated. So according to the petitioners, her contention that without her knowledge and consent, the power of attorney has been obtained is not believable one. But on perusal of the entire CD file shows that right from the beginning, the de-facto complainant was under misconception that it is only a care taker document. If really, it was the power of attorney and the property was sold with the knowledge and consent of the de-facto complainant, those facts ought to



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have been replied, when email communication was undertaken between the first petitioner and the son of the de-facto complainant. Nowhere in the entire email communication, it has been stated by the first petitioner/A1 that only with the consent and knowledge of the de-facto complainant, the property was sold and money was also paid in person to the de-facto complainant.

5.A series query has been raised by the Investigating Officer to the first petitioner/A1, with regard to the entire transaction. Even though the first petitioner/A1 has stated that the amount, which was involved in the sale transaction was also given to the de-facto complainant, there is no documentary evidence to show the same. The first petitioner/A1 is not in a position to prima facie show that the amount was really handed over to the de-facto complainant in person."

The extracted portion of the above said observation makes the mind of this court very clear.

9.As mentioned earlier, right from the beginning, the de-facto complainant was under impression that what was executed by her is only a care taker document and not



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the power of attorney giving power to the first accused as a party. As mentioned earlier, the messages that were exchanged between the parties through e-mail may also take into account. Even though, there is an observation to the effect that the petitioners expressed and willingness to execute the deed of re-conveyance, provided the above said amount of Rs.51,30,000/- is returned to them, but this court thought it fit to impose such a condition upon the de-facto complainant for the simple reason that she is all along disputed the document.

10. When this document was again brought to my notice, the learned counsel appearing for the de-facto complainant would submit that very reading of the document will show that it is a created one. The de-facto complainant signed in the bottom of the document, whereas the witnesses signed above the signature of the de-facto complainant. More-over, the stamp paper was also purchased in the name of the de-facto complainant, when she was in London. Even though, this court has not relied upon the documents to show that the above said amount was actually acknowledged and received by the de-facto



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complainant. But from the facts and circumstances and subsequent e-mail, that was exchanged between the parties, this court totally disbelieved the version of the petitioners that only with the consent of the de-facto complainant, the property was sold on the basis of the power of attorney, for which the receipt has also been issued.

11.It is further seen that on the date of the alleged sale of the property, the de-facto complainant was very much present in India. Then, what prevented the de-facto complainant to execute the sale deed directly in favour of A2 is also not explained. All these happenings clearly shows that the defence that is put forth by the petitioners is totally unbelievable. As mentioned earlier, the petitioners were not in position to answer correctly, the query that has been raised by the Investigating Officer.

12.But one important factor brought to the notice of this court that if the deed of re-conveyance is executed by the petitioners in favour of the de-facto complainant, then it will amount to deciding the merit of



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the case in advance. So this argument is worth considering. So I am of the considered view that the order can be modified to the effect that the petitioners must deposit Rs.51,30,000/- within a period of one month from the date of receipt of a copy of this order to the credit of the concerned crime number before the concerned Judicial Magistrate Court. With the above said condition, anticipatory bail can be granted to the petitioners to appear before respondent police once in a week at 10.am until further orders.

13.A strong objection has been made by the de-facto complainant to the effect that absolutely, this court was misled by the petitioners as if they were permitted to move modification petition before this court. But absolutely, there is no observation by this court to return the disputed amount. He would also submit that section 362 Cr.P.C bars, this court to entertain such modification petition. But I am unable to agree with this line of argument for the simple reason that modification of the order will not amount to reviewing the order. On this ground, this argument is negatived. Even though, it has been submitted on the side of the de-



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facto complainant that the petitioners 1 and 2 duped the de-facto complainant taking advantage that she has no residence in India; Such a nature of the offence should be seriously viewed by this court.

14. In view of above facts, as stated above, this modification petition is **allowed** and the order passed by this court, dated 01/02/2022 is modified to the effect that petitioners are directed to deposit the disputed amount of Rs.51,30,000/- within a period of one month from the date of receipt of a copy of this order.

15. Considering the above facts and circumstances of the case, this court is inclined **to grant anticipatory bail** to the petitioners with the conditions. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on their appearance before the learned Judicial Magistrate, Shenkottai and on each of them 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 Judicial Magistrate concerned and on condition that the petitioners must deposit a sum of Rs.51,30,000/- within a period of one



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month from the date of receipt of a copy of this order to the credit of the concerned crime number before the concerned Judicial Magistrate Court and on further condition that the petitioners shall appear before respondent police once in a week at 10.00 am until further orders. The petitioners shall comply with the condition stipulated under Section 438 Cr.P.C scrupulously.

16. Accordingly, CrI.MP(MD)No.5252 of 2022 and CrI.OP(MD)Nos.13358 and 13469 of 2021 are **allowed** as indicated above.

(G I J)
02.09.2022

Index:Yes/No
Internet:Yes/No

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G. ILANGO VAN , J

Cr1.OP(MD)Nos.13358 and 13469 of 2021
and
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