



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

Dated: 15/07/2022

PRESENT

The Hon'ble Mr.Justice G.ILANGO VAN

Crl.OP(MD)Nos.11075 and 11412 of 2022

1.Crl.OP(MD)No.11075 of 2022:-

Thangavel : Petitioner/Accused No.2

Vs.

The State rep. By
The Inspector of Police,
District Crime Branch,
Theni, Theni District.
(Crime No.15 of 2022)

: Respondent/Complainant

For Petitioner : Mr.B.Jeyakumar, Advocate

For Respondent : Mr.R.M.Anbunithi
Additional Public Prosecutor

For Intervenor : Mr.S.Alagu Sundar, Advocate

2.Crl.OP(MD)No.11412 of 2022:-

1. Kannan
2. Mahadevan : Petitioners/Accused No.3&4

Vs.

1. The State rep. By
The Inspector of Police,
District Crime Branch,
Theni, Theni District.
(Crime No.15 of 2022)

: Respondent/Complainant

2. Subramanian : Petitioner/Intervenor/
Defacto Complainant

For Petitioners : Mr.M.Jegadeesh Pandian, Advocate

For Respondent : Mr.R.M.Anbunithi
Additional Public Prosecutor

For Intervenor : Mr.S.Alagu Sundar, Advocate



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

COMMON PRAYER:-

For Anticipatory Bail in Crime No.15 of 2022 on the file of the Respondent Police.

COMMON ORDER : The Court made the following order:-

The petitioners, who are arrayed as A2 to A4 apprehending arrest at the hands of the respondent police for the offences punishable under sections 465, 468, 471, 420 and 120(B) IPC in Crime No.15 of 2022, seek anticipatory bail.

2.The case of the prosecution in brief:-

The de-facto complainant lodged a complaint stating that the ancestral property, which belongs to him and his two brothers namely Marichamy and Kannan were divided among themselves through a registered partition deed in 2010. In pursuance of the above said partition, they were in possession of their respective share. On 21/12/2021, he applied for encumbrance certificate. At that time, it was found that the first brother namely Kannan executed a power deed, falsely claiming that the property under dispute was allotted to him in the partition. The power was given to one Thangavel, who is arrayed as A2 herein. By virtue of the above said power of attorney, the above said person sold the property to several persons as detailed in the complainant. Later, Kannan executed a cancellation of power of attorney. With these allegations, he lodged a complaint, over which, a case in Crime No.15 of 2022 for the offences punishable under sections 465, 468, 471, 420 and 120(B) IPC was registered.

3. Seeking anticipatory bail, A2 to A4 have filed this petition on the ground that after a long gap, the complaint has been given and the alleged transaction took place 10 years back and a suit has been filed in O.S No.119 of 2019 before the Sub Court, Theni. During the pendency of the above suit only, the present complaint has been given.

4. According to the learned counsel appearing for the petitioners, it is purely a civil dispute and a civil suit is pending and the matter must be taken in its logical conclusion in the suit itself.

5. Heard the learned counsel appearing for the intervener/de-facto complainant.



6.The learned counsel appearing for the petitioners would straightaway rely upon the judgment of the Hon'ble Supreme Court in the case of **Md.Ibrahim and others Vs. State of Bihar and others [(2009)8 SCC 751]**. This is a classical case over the issue.

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7.Here, the case of the de-facto complainant is that the property in respect of the which, A1-Kannan has executed the power of attorney in favour of one Thangavel/A2 in respect of the property, which does not belong to him. He also relied upon the partition deed, dated 31/12/2010, which was entered between the family members. At that time, Gurusamy Reddiar was no more. So the power agent of the Gurusamy Reddiar and the other legal heirs were parties in the disputed power of attorney deed.

8.Reading of the partition deed shows that 'B' scheduled was allotted jointly to G.Marichamy G.Subramanian and G.Kannan. Similarly 'D' schedule was allotted to G.Marichamy, G.Subramanian, G.Kannan, G.Nagarajan, Muniyandi and Chinna Muniyandi.

9.It is seen that even though the property has been jointly allotted, the grievance of the de-facto complainant is that Kannan executed a power in excess of the share and whole of the property covered in the partition deed, in which he is also having a share.

10.No doubt, it is a joint family property of the de-facto complainant and the petitioners herein. If any power of attorney has been executed for the entire property and any sale has been effected in respect of the share of the de-facto complainant, the document is not valid. If at all only, the purchasers can make an allegation that they were cheated by the petitioners by way of executing the above said power deed.

11.It is also seen that a suit has also been filed in this aspect. Since the dispute between the brothers, the matter can be resolved through proper mediation process. But the parties are not agreeing for that.

12.So considering the facts and circumstances of the case, the custodial interrogation of the petitioners may not be required, since the entire case rests upon the documentary evidence, this court is inclined **to grant anticipatory bail** to the petitioners with certain 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, Theni 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 the petitioners shall appear before the respondent police daily at 10.00 am until further orders. The petitioners shall comply with the condition stipulated



under Section 438 Cr.P.C. scrupulously. The petitioners shall appear before the concerned Magistrate within a period of 15 days from the date on which the order copy made ready, failing which, the petitions for anticipatory bail stand dismissed.

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sd/-
15/07/2022

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/07/2022

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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 JUDICIAL MAGISTRATE,
THENI.
2. DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE,
THENI DISTRICT.
3. THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
THENI, THENI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.B.JEYAKUMAR, Advocate (SR-7238[I] dated 18/07/2022)

ORDER
IN
Crl.OP(MD)Nos.11075 and
11412 of 2022
Date :15/07/2022

ER
USK/SVR/SAR-I/27.07.2022/4P/6C