



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

Date : 08/08/2022

PRESENT

WEB COPY

The Hon`ble Mr.Justice G.ILANGO VAN

CRL OP(MD).Nos.12526 and 11820 of 2022

Rajendran ... Petitioner/Accused No.3
in Cr1.OP(MD)No.12526 of 2022

Latha ... Petitioner/Accused No.2
in Cr1.OP(MD)No.11820 of 2022

Vs

1. The State Rep. By,
The Inspector of Police,
District Crime Branch,
Thanjavur.
Crime.No.12 of 2022. ... Respondent/Complainant
in both petitions

2. K.Bajrudeen ... Petitioner/Defacto Complainant
in Cr1.MP(MD) No.8239/2022 in
CRL OP(MD) No.12526/2022
in Cr1.MP(MD) No.7602/2022 in
CRL OP(MD) No.11820 /2022

IN BOTH PETITIONS :

For Petitioners : Mr.Deenadhayan.S,
Advocate
For Respondent : Mr.R.M.Anbunithi,
Additional Public Prosecutor
For Intervenor : Mr.AN.Ramanathan, Advocate

PETITIONS FOR BAIL & ANTICIPATORY BAIL Under Sec.439& 438 of Cr.P.C.

COMMON PRAYER :-

For Bail and anticipatory bail in Crime No. 12 of 2022 on
the file of the Respondent police in Cr1.OP(MD) Nos.12526 and 11820
of 2022 respectively.

COMMON ORDER : The Court made the following order :-

The first petitioner/Accused, who was arrested on
13.02.2022 for the alleged offence punishable under Sections 406,
420 I.P.C, in Crime No.12 of 2022, on the file of the respondent



police, seeks bail. The second petitioner/Accused, appearing for arrest at the hands of the respondent police in the said Crime No.12 of 2022, seek anticipatory bail.

2.The case of prosecution in brief is as follows:

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(i)The defacto complainant viz., Mohamed Rifas is the power of attorney of one K.Bajurudeen. The defacto complainant's Principal viz., K.Bajurudeen for the purpose of purchasing the property, transferred Rs.49,80,000/- to the accused persons, through bank transfer and in cash. Similarly, after 2019 a sum of Rs.47,21,000/- was transferred to the account of first accused's friend, for purchasing the property. As promised, neither the property was purchased nor the amount was returned. They also refused to pay to pay 15 months rent to JCB vehicle.

(ii)Based upon the above facts, a complaint has been registered. Seeking bail and anticipatory bail, the third and second accused preferred separate petitions.

3.The intervener also filed an intervening petition and after hearing both sides, common order is passed.

4.The petitioner in Crl.OP(MD)No.11820 of 2022 for the second accused has submitted that the first accused and said K.Bajurudeen are close friends. As per the instructions given by the defacto complainant, the first accused put up construction, by utilising the money, that was sent by the defacto complainant. Construction was also completed. The balance amount of Rs.4,60,000 to be paid by the above said K.Bajurudeen, for which, a pronote was also executed and a suit in OS.No.182 of 2022 was filed to that effect. To overcome the above said suit, this complaint has been filed.

5.The petitioner in Crl.OP(MD)No.12526 of 2022 for the third accused has submitted that he is only the brother of first accused and he is no way involved in the above said transaction between the defacto complainant and the first accused.

6.Heard both sides. In this case, the Accused No.2 is the wife of first accused and the third accused is the brother of first accused. Even as per the allegation made in the FIR against the third accused, it is stated that this petitioner also joined with the accused No.1, 2 and assured the defacto complainant to purchase the properties. The amount is also transferred by the defacto complainant through the account of these petitioners.

7.The learned counsel for the petitioners submitted that only to overcome the suit in OS No.182 of 2022, this complaint has been given by the defacto complainant.



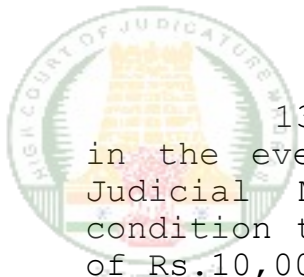
8. However, the counsel for the intervener submit at the suit is totally not connected with the present FIR. According to him, the suit was filed on the basis of forged pronote. It is further contended that the first accused was appointed as a power of attorney for purchasing the properties. After the above said issue, K. Bajurudeen issued a notice to the first accused on 07.02.2022, but there was no immediate reply. According to the defacto complainant, the suit is being initiated on the basis of forged pronote. The intervener also produced an agreement that was executed by the first accused, in favour of above said K. Bajurudeen, for the above said Rs.49,80,000/-. He has stated that he was acting as a power agent for the above said K. Bajurudeen, looking after the business and properties. He has also purchased some properties for him and also produced an agreement of rent for JCB vehicle. Another agreement was entered on 20.01.2022, by which, the first accused has undertaken to return Rs.1.121 Crores, to the defacto complainant, within three months, from the date of undertaking. The defacto complainant also issued a notice on 07.02.2022 demanding repayment of Rs.1.01 crores. Hence, this document shows that it is a clear undertaking on the side of first accused to return the money, that was already received by him.

9. In any of the documents, these petitioners are not shown as party. Even though money is being transferred through accounts of the Accused Nos. 2 and 3, the entire transactions appears to have between the first accused and the K. Bajurudeen. The bank statements of the defacto complainant and his power agent viz., Mohamed Rifas as well as the defacto complainant also produced, to show the actual transactions made by defacto complainant.

10. Now, whatever it maybe, as mentioned above, the entire liabilities lies on the first accused. Simply because money is being transferred through the bank accounts of these petitioners, they cannot be criminally liable for cheating and misappropriation of money. The bank account statement of the second accused viz., Latha is produced, to show that no amount is transferred through her account. It is also stated that the entire amount was to be settled by the first accused.

11. On the above said factual matrix of this case, this Court is inclined to grant bail and anticipatory bail to the petitioners with the following conditions.

12. Accordingly, these Criminal Original Petitions are allowed and the first petitioner is ordered to be released on bail, on executing a personal 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, Thiruvidadaimaruthur, Thanjavur, and on further condition that the petitioner shall report before the respondent police daily at 10.30 a.m. until



13.The second petitioner is ordered to be released in the event of arrest or on her appearance, before the learned Judicial Magistrate, Thiruvidaimaruthur, Thanjavur District on condition that the second 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 learned Magistrate concerned and the second petitioner shall appear before the respondent police daily at 10.30 a.m. until further orders. The second petitioner shall comply with the condition stipulated under Section 438 Cr.P.C. scrupulously.

14.The second petitioner 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 petition for anticipatory bail stands dismissed.

sd/-

08/08/2022

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10/08/2022

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

TO

1. THE JUDICIAL MAGISTRATE,
THIRUVIDAIMARUTHUR, THANJAVUR DISTRICT.
2. DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE,
THANJAVUR DISTRICT AT KUMBAKONAM.
3. THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH, THANJAVUR.
4. THE OFFICER-INCHARGE,
SUB-JAIL, THANJAVUR.
5. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2 CC to M/s.S.DEENADHAYALAN, Advocate (SR-8300 & 8301[I] dated 08/08/2022)

+1 CC to M/s.AN.RAMANATHAN, Advocate (SR-8310[I] dated 08/08/2022)

ORDER

IN

CRL OP(MD).Nos.12526 and
11820 of 2022

Date :08/08/2022

PNM

<https://www.mca.gov.in/iv/10.08.2022/4P/9C>