BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 01.03.2022

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD). No.16405 of 2021

Mohankumar ...Petitioner/Accused No.3

Vs

THE STATE REP BY,
The Inspector of Police,
City Crime Branch,
Trichy District.
(Crime No. 9 of 2021) ... Respondent/Complainant

For Petitioner : No appearance

For Respondent : Mr.P.Kottaichamy
Government Advocate (Crl. Side)

For Intervener : Mr.Amal Antony, Advocate
for Mr.John Paul Raj,Advocate

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

PRAYER :-

For Anticipatory bail in Crime No.9 of 2021 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioner, an Advocate, apprehending arrest at the hands of the respondent Police for the offence punishable under Sections 406, 420, 465, 468, 471 and 109 IPC, in Crime No.9 of 2021 on the file of the respondent Police, seeks anticipatory bail.

2. Today, when the matter is called, there is no representation for the petitioner.

3. The learned counsel appearing for the defacto complainant submits that the defacto complainant, who was desirous of purchasing immovable asset from the savings out of the hard earned money of her husband, who was employed overseas, was lured into a trap by the first accused, claiming that he was a real estate broker. The first accused took her and her husband to one R.Visvanathan @ Manika

Thevar, after showing the lands measuring about to Ac.4.90 and Ac.3.50 cents in Kalamavoor and Mathur respectively in Pudukottai District in the year 2007. After an interaction with the said Viswanathan, the first accused represented that the sale price to be Rs.75,95,000/- and Rs.36,30,000/- respectively. The defacto complainant accepted the offer and paid an advance of Rs.5,00,000/- and Rs.1,30,000/- for the lands respectively on 24.11.2007 after the agreement for sale was entered into between them and the first accused signed in the agreement as a witness.

4. The learned counsel for the defacto complainant further submits that on 14.12.2007, the first accused demanded the defacto complainant to pay the balance amount of Rs.35,00,000/- for registering the Mathur property and received the sum of Rs.35,00,000/- and acknowledged for the same. When the defacto complainant asked the first accused for execution of the sale deed pertaining to the lands in Mathur, the first accused represented that for the lands identified in Mathur for purchase, the sale agreement was struck and it could not be registered and instead of that, he was willing to get a sale deed executed for Acre 2.05 cents of land in S.F.No.636/3 in Sooriyur Village, Pudukottai District from one T.N.Loganathan and got a sale deed executed vide sale deed No.251/2008 on 10.01.2008. The defacto complainant approached the Village Administrative Officer, Sooriyur for getting the patta in her name based on the sale deed dated 10.01.2008. The Village Administrative Officer, Sooriyur, after verification of the revenue records, informed her that the lands sold to her was Kuttai Puramboke. Therefore, the registration of lands was cancelled on 28.04.2010.

5. The learned counsel appearing for the defacto complainant further submits that the defacto complainant filed a suit for recovery of the defrauded amount by way of a suit in O.S.No.11 of 2011 before the III Additional District Court, Trichy, wherein, the accused Jothi @ Daniel, Julias Raj, Napolean, R.Viswanathan and his legal heir were impleaded as defendants. The learned III Additional District Judge, Trichy, granted a decree for a sum of Rs.47,21,359/- in favour of the defacto complainant as against the first accused. The first accused entered into an agreement with the defacto complainant that he would issue two post dated cheques for discharging his liability and accordingly, he issued two post dated cheques dated 20.01.2014 for a sum of Rs.40,000/- and Rs.2,00,000/- respectively drawn in M/s.Andhra Bank in favour of the defacto complainant. But, the first accused failed to comply with the same and the cheques presented for encashment on 20.01.2014 returned as insufficient funds. The petitioner has also instituted a criminal proceedings under Sections 142 and 143 of Negotiable Instruments Act before the learned Judicial Magistrate No.II, Trichy and the same is pending in STC No.3657 of 2014.

6. The learned counsel for the defacto complainant further submits that the petitioner, an advocate, who was defending the first accused in that case, approached the defacto complainant and assured on behalf of first accused that they would arrange another property as if the amount paid as advance to another property measuring 12000 sq.ft. in Survey No.1/8 part AH Block of K.Sathanur Village. The petitioner also represented that the lands proposed to be sold is valuable to an extent of Rs.35,00,000/-. Since it is represented by the Advocate, the defacto complainant also believed the same and she paid a further sum of Rs.20,00,000/- through cheque in favour of A1 and another sum of Rs.15,00,000/- by way of Demand Draft on 20.12.2019. The accused have also executed a sale deed in favour of the defacto complainant vide Document No.7/2020 through one Loganathan on 02.01.2020. The petitioner also signed as a witness in that document. Thereafter, the defacto complainant came to know that the third property, which has now been executed in favour of the defacto complainant in Doc.No7 of 2020 is not belonging to the said Loganathan and it is belonging to some other person.

7. According to the learned counsel for the defacto complainant, in order to drag the criminal proceedings, pending before the Judicial Magistrate No.II in STC No.3657 of 2014, the first accused approached through his Advocate/the petitioner herein and cleverly, they have cheated the defacto complainant, apart from cheating the earlier amount of Rs.47,21,359/- which was decreed in O.S.No.11 of 2011 by the learned III Additional District Judge, Trichy and the accused have also managed to obtain Rs.35,00,000/- more than the amount paid in the year 2007. Therefore, he strongly opposed to grant anticipatory bail.

8. According to the learned counsel for the defacto complainant, the petitioner, who is an Advocate, is also the mastermind of this incident. He also stood as a witness in Document No.7 of 2020. He further submits that the petitioner has approached this Court along with the Accused No.I in Crl.O.P.(MD)No.2218 of 2021 seeking anticipatory bail. When the Court was not inclined to grant anticipatory bail, they withdrew the anticipatory bail petition on 05.03.2021. Similarly, the second application was also filed by the first accused individually. Thereafter, the petitioner approached this Court individually in Crl.O.P.(MD)No.3818 of 2021 seeking anticipatory bail. This Court was not inclined to grant anticipatory bail, he withdrew the anticipatory bail petition on 06.10.2021. Now, this is the third anticipatory bail petition. When this Court suggested to settle the amount to the defacto complainant, the petitioner has taken time sufficiently and dragged the proceedings for the past four months and now, there is no representation for the petitioner.

9. Though there is no representation for the petitioner, this Court perused the materials placed before this Court.

10. The defacto complainant was cheated by the accused No.1 in the year 2007. The defacto complainant filed a suit for recovery of amount in O.S.No.11 of 2011 and the same was also decreed by the learned III Additional District Judge, Trichy, in O.S.No.11 of 2011. Even thereafter, the accused No.1 has not paid the amount and therefore, the defacto complainant has lodged a criminal complaint. In that criminal complaint, the accused No.1 has come forward for settlement and issued two cheques to the defacto complainant. The cheques presented in the year 2014 returned as insufficient funds. Therefore, a criminal proceedings was initiated against the first accused in STC No.3657 of 2014 and the same is still pending before the learned Judicial Magistrate No.II, Trichy. The petitioner is an Advocate defending the case in STC No.3657 of 2014 on behalf of the first accused. The said case is also kept pending for the past seven years. According to the learned counsel for the defacto complainant, the petitioner/A3 approached the defacto complainant on behalf of A1 and A2 and offered for settling the issue and they have created the document in Document No.7 of 2020 on 02.01.2020. The document also appears to be prepared in a fraudulent manner by creating forged document of another person. The petitioner, who is an advocate, went to an extent of signing the document No.7/2020 as a witness to the document. The petitioner/A3 has filed the first anticipatory bail petition along with the main accused No.I. The petitioner has also dragged this case also for the past four months under the guise of settling the issue, but, he failed to do so.

11. Considering the overall facts and circumstances of the case and also considering the fact that the petitioner along with A1 and A2 have cleverly cheated a woman whose husband is staying abroad, this Court is not inclined to grant anticipatory bail to the petitioner. Further, the custodial interrogation of the petitioner is required to ascertain the nature of offence committed by other accused.

12. In the result, the Criminal Original Petition is dismissed. This Court expects that the respondent Police would conduct a proper investigation in this case.

sd/-
01/03/2022

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/ /2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE INSPECTOR OF POLICE,
CITY CRIME BRANCH, TRICHY DISTRICT.

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

+1. CC to M/S.K.SIVABALAN, Advocate SR.No.1652(I)

ORDER
IN
CRL OP(MD) No.16405 of 2021
Date :01/03/2022

PKP/PN/SAR-4/31.03.2022/5P/4C