



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 10/08/2022

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PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL OP (MD) . Nos.16836, 17989, 18239, 18261, 18262 and 18887 of 2021
and
Crl.M.P. (MD) Nos.3880, 3796 and 3878 of 2022

NAGESHWARAN	... PETITIONER/ACCUSED NO.7 IN CRL OP (MD) No.16836 of 2021
ASHOK	... PETITIONER/ACCUSED NO.5 IN CRL OP (MD) No.18239 of 2021
UDHAYA KUMAR	... PETITIONER/ACCUSED NO.6 IN CRL OP (MD) No.17989 of 2021
S.ANBALAGAN	... PETITIONER/ACCUSED NO.4 IN CRL OP (MD) No.18261 of 2021
P.VIJAYAKUMAR	... PETITIONER/ACCUSED NO.9 IN CRL OP (MD) No.18262 of 2021
S.MARY STELLA ANJELIN	... PETITIONER/ACCUSED NO.8 IN CRL OP (MD) No.18887 of 2021

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
DCB (LAND GRABBING CELL),
THOOTHUKUDI DISTRICT.
(CRIME NO.29 OF 2021)

... RESPONDENT/COMPLAINANT
IN ALL CRL.OP'S

In Crl.O.P. (MD) No.16836 of 2021

For Petitioner : Mr.Sathiya Singh K,
Advocate.

For Respondent : Mr.B.Thanga Aravindh,
Government Advocate (Crl.Side)

For Intervenor : Mr.N.PRAGALATHAN, Advocate.

<https://www.mhc.tn.gov.in/judis>



In CrI.O.P.(MD) No.17989 of 2021

For Petitioner : Mr.D.S.Haroon Rasheed
Advocate.

For Respondent : Mr.B.Thanga Aravindh,
Government Advocate (CrI.Side)

For Intervenor : Mr.N.PRAGALATHAN, Advocate.

In CrI.O.P.(MD) No.18239 of 2021

For Petitioner : Mr.D.S.Haroon Rasheed
Advocate.

For Respondent : Mr.B.Thanga Aravindh,
Government Advocate (CrI.Side)

In CrI.O.P.(MD) No.18261 of 2021

For Petitioner : Mr.G.Jeganathan
Advocate.

For Respondent : Mr.B.Thanga Aravindh,
Government Advocate (CrI.Side)

For Intervenor : Mr.N.PRAGALATHAN, Advocate.

In CrI.O.P.(MD) No.18262 of 2021

For Petitioner : Mr.M.S.Mohamed Ayub
Advocate.

For Respondent : Mr.B.Thanga Aravindh,
Government Advocate (CrI.Side)

In CrI.O.P.(MD) No.18887 of 2021

For Petitioner : Mr.C.T.Perumal
Advocate.

For Respondent : Mr.B.Thanga Aravindh,
Government Advocate (CrI.Side)

PETITIONS FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

COMMON PRAYER :-FOR ANTICIPATORY BAIL IN CRIME NO.29 OF 2021 ON THE FILE OF THE RESPONDENT POLICE.

COMMON ORDER : The Court Made the following order :-

The petitioners are facing charges under Sections 120B, 419, 465, 468, 471 and 420 IPC in Crime No.29 of 2021 on the file of the respondent police.

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

3.The defacto complainant lodged a complaint stating that he got double citizenship India and Srilanka. On 19.11.1992 and 16.12.1992, he along with one Anthony Xavier Pushpavanam Gomes



purchased the property in S.No.42/2 (Re.S.No.42/2B), measuring an extent of 4 acres and 9 cents. They were in joint possession of the same and later, they divided the same into two portions by partition and each one was allotted with 2.4½ acres. After the land acquisition, the remaining portion of 1.96 acres was in possession.

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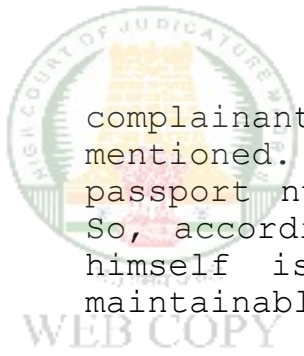
4. On 18.03.2019, the defacto complainant applied for encumbrance certificate and at that time, it was found that the aforesaid 1.96 acres in S.No.42/2B was sold to some other person by the accused persons. On coming to know about the illegal transaction, through his power agent, he filed a suit in O.S.No.89 of 2020 before the learned Additional District Judge No.II, Thoothukudi. The aforesaid illegal transaction was taken place with the connivance of the Sub Registrar, namely Mary Stella Angelin etc., With this, the defacto complainant lodged the complaint. In the complaint, 9 persons have been shown as accused.

5. Seeking anticipatory bail, now these petitions have been filed. The entire CD file has been called for and perused.

6. Perusal of CD file shows that during the course of investigation, it was found that the accused 1 to 3 have played a major role. The 2nd accused is the impersonator and the 1st accused is the executor of the document along with 2nd accused, Knowing fully well that the property belongs to John Xavier Neria Fernando, the aforesaid document of sale has been created by impersonation and the 2nd accused, as I mentioned earlier, he is an impersonator. The accused 3 and 4 were stated to be the land brokers and everything was arranged by the 9th accused, namely Vijayakumar. The 1st accused has also been included in the document of sale for the purpose of suppressing the real identity and ownership of the property and the 2nd accused has given a detailed confession statement.

7. Even though the learned counsel for the petitioners would submit that it is a case of impersonation, he would make contrary allegations to the effect that the defacto complainant, who is the power agent of the alleged owner of the property, himself is not a genuine person.

8. The reason for this set of submission is that the owners of the property, namely John Xavier Neria Fernando and Anthony Xavier Pushpavanam Gomes, jointly sold a portion of the property to one Panguraj some other person on 18.03.2010 through a registered sale deed. In the sale deed, the photographs of the aforesaid two persons have been annexed. The passport number is mentioned as A.072559. According to him, the aforesaid two persons are the real owners and true persons, whereas, in the partition deed that is mentioned in the complaint, which is dated 23.05.2017, the photograph is entirely different. When we compare the photographs in both the sale documents, we find that only the photograph of Anthony Xavier Pushpavanam Gomes is matching, whereas the photograph of the defacto



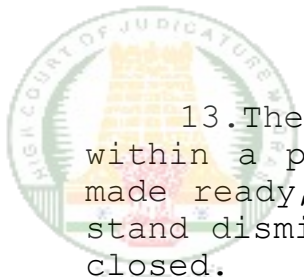
complainant is not matching. However, the passport number is mentioned. But, we do not find any verification with regard to the passport number. How this occurred is a matter for investigation. So, according to the accused persons, when the defacto complainant himself is an impersonator, then the complaint itself is not maintainable.

9. The respondent, who is the Investigation Officer, was present in person before this Court and has submitted that the defacto complainant attended the enquiry and during the course of investigation, the possession of the title deeds was found and the passport of the person has also been recovered.

10. We find entirely a different story. When we find that the passport number is mentioned as N3324844, this photograph is matching with the partition deed dated 23.05.2017. So, how this discrepancy in identity took place is a matter for investigation. So, I find there is some force in the argument advanced by the learned counsel for the petitioners to the effect that the defacto complainant's identity itself is doubtful and is a suspicious one. Similarly, we find that the signatures are also not matching. So, a thorough investigation is required as to know the identity of the defacto complainant and true ownership of the property as well as the involvement of the petitioners is required to be investigated, because prima facie it is seen that it is a case of impersonation. Who is the real owner is the disputed question now and it is for the Investigation Officer to take a call. In the aforesaid factual issue, the individual act that is allegedly played by this petitioners need not be discussed at length at this stage. Since the documents have been collected during the course of investigation and major portion of the investigation is also over on the aforesaid issue, it appears that no concentration has been made by the Investigation Officer so far. So, the Investigation Officer may take this issue into account and find out the real owner and true facts and if during the course of investigation, custodial interrogation of these petitioners is required, then the respondent police is at liberty to approach the concerned Court for appropriate orders.

11. With the foregoing discussions and liberty, this Court is inclined to grant anticipatory bail to the petitioners.

12. Accordingly, these Criminal Original Petitions are **allowed** and the petitioners are ordered to be released on bail in the event of arrest or on their appearance, before the learned Judicial Magistrate, Land Grabbing and Special Cases, Thoothukudi, on condition that the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the learned Magistrate concerned and the petitioners shall appear before the respondent police on every Sunday at 10.30 a.m. until further orders. The petitioners shall comply with the condition stipulated under Section 438 Cr.P.C. scrupulously.



13. 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 petition for anticipatory bail shall stand dismissed. Consequently, connected miscellaneous petitions are closed.

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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,
LAND GRABBING AND SPECIAL CASES, THOOTHUKUDI.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE
THOOTHUKUDI DISTRICT.

3 THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH (LAND GRABBING CELL),
THOOTHUKUDI DISTRICT

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

+1 CC to M/s.N.PRAGALATHAN, Advocate (SR-8504[I] dated 12/08/2022)

+1 CC to M/s.D.S.HAROON RASHEED, Advocate (SR-8407[I] dated 11/08/2022)

ORDER

IN

CRL OP(MD). Nos.16836, 17989, 18239,
18261, 18262 and 18887 of 2021

and

Crl.M.P.(MD) Nos.3880, 3796 and 3878
of 2022

Date :10/08/2022

MM

MK/VR/SAR.II/16.08.2022/2P/7C