



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Reserved on : 22/02/2022

Pronounced on : 01/03/2022

WEB COPY

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.20416 of 2021

1. Malarkodi,

2. Senthil Kumar, ...Petitioners/Accused Nos.1 & 2

Vs

THE STATE REP BY,
The Inspector of Police,
City Crime Branch,
Trichy.
(In Crime No.29/2021).

... Respondent/Complainant

P.Krishnmoorthi

...Petitioner/Intervener
/Defacto Complainant
in CrI MP(MD)No.11914/2021

For Petitioner : Mr.P.Ganapathi Subramanian,Advocate.

For Respondent : Mr.M.Muthumanikkam,
Government Advocate (CrI.Side)

For Intervener : Mr.M.Subash Babu,Advocate
In CrI MP(MD)No.11914/2021

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

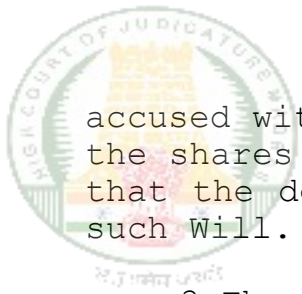
PRAYER :-

For Anticipatory Bail in Crime No.29/2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioners/A1 & A2, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 417, 420, 380, 467, 471 and 120(b) IPC, in Crime No.29 of 2021 on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution is that the petitioners along with five others created a forged Will as if the defacto complainant's father Prakasam executed a Will on 18.01.2017,that the



accused with the help of the said forged Will are attempting to grab the shares of the defacto complainant and his brother and mother and that the defacto complainant's father Prakasam has not executed any such Will. Hence, the complaint.

3.The case of the petitioners is that the father of the second petitioner Prakasam died on 16.02.2017, that the defacto complainant and his brother Ragunathan and mother Sureshkumari misappropriated a sum of Rs.2,80,00,000/-, that the defacto complainant created a Will through his mother and that the first petitioner has already lodged a complaint under Section 156(3) Cr.P. before the learned Judicial Magistrate No.I, Trichy in Crl.M.P.No.1974 of 2021 and the same was forwarded to the respondent Police on 17.05.2021 and that the respondent Police has not taken any action sofar.

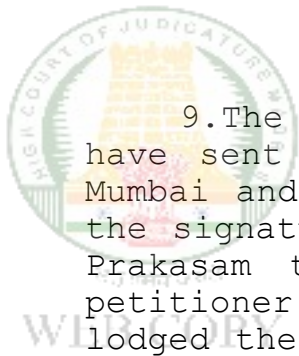
4.The petitioners' further case is that the first petitioner has already filed a suit for partition and the same is pending in O.S.No.177 of 2021 on the file of the learned District Court (Mahila), Trichy, that the defacto complainant along with his mother and brother Ragunathan filed a suit for partition and the same is pending in O.S.No.293 of 2021 on the file of the District Court, Trichy and that the genuineness of the Will can only be proved in the civil litigation.

5.The learned counsel for the petitioners would submit that the defacto complainant has lodged the above complaint converting a civil dispute into a criminal dispute and that since the Will is to be proved before the competent Civil Court, the present complaint alleging that the Will was fabricated is legally not sustainable and that the above complaint came to be filed only to harass the petitioners.

6.Admittedly, the first petitioner is the wife of second petitioner.

7.It is not in dispute that the said Prakasam had died on 16.02.2017 leaving behind his wife Sureshkumari, sons Krishnamoorthy (defacto complainant), Ragunathan and Senthil Kumar (second petitioner) and a daughter Ambika and that the said Ambika was given in marriage to the brother of the first petitioner, Rajasekar.

8.It is also not in dispute that the first petitioner before registration of FIR has filed a petition in Crl.OP(MD)No.6612 of 2021, seeking anticipatory bail and this Court on considering the submission made by the learned Government Advocate (Criminal Side) that petition enquiry was pending and no case was registered, closed the petition by granting liberty to the petitioner to file an appropriate petition, if any First Information Report is registered against her.



9.The learned counsel for the intervenor would submit that they have sent the alleged forged Will to the Bombay Forensic Lab at Mumbai and after examination, they have sent a report stating that the signatures found in the Will are not that of the signatures of Prakasam the father of the defacto complainant and the second petitioner and that therefore, the defacto complainant has rightly lodged the present complaint for fabricating a Will as if the same was executed by the Prakasam with sole intention to grab the properties.

10.The learned counsel for the petitioners would submit that the defacto complainant by himself has allegedly sent the Will to the private Forensic Lab and the report allegedly received by them cannot be relied on for any purpose and that since an application to send the Will to Forensic Laboratory is pending before the Court, in which, the partition suit is pending, the present complaint alleging forgery of a Will is premature and ought not to have been registered.

11. Admittedly, the partition suit filed by the first petitioner against the defacto complainant and others is pending in O.S.No.177 of 2021 and also another suit filed by the defacto complainant, his brother and mother is also pending in O.S.No.293 of 2021 on the file of the District Court, Trichy. It is also not in dispute that an application to send the alleged Will to Forensic Laboratory is pending before the said Court.

12.As rightly contended by the learned counsel for the intervenor, the Forensic Report allegedly obtained from a private lab and that too only at the instance of the defacto complainant, cannot be given weightage at this point of time.

13.No doubt, in case if a report is received from a Forensic Laboratory to the Court to the effect that the signatures of the said Prakasam were forged in the Will, then custodial interrogation may be necessary to find out as to who had forged the signatures, who had helped them and as to how they have forged the signatures and etc.

14.Moreover, as rightly contended by the petitioners' side, the respondent Police, by themselves cannot find out whether the signatures of the said Prakasam were forged in the Will and even in the absence of any civil proceedings, the respondent police has to take necessary steps to send the alleged Will to the Forensic Lab through the concerned Court and to get an opinion.

15.Considering the above facts and circumstances of the case and also the fact that the application to send the alleged Will to the Forensic Laboratory is pending before the concerned Court and as



necessary at this point of time, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

16. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate No.I, Trichy, on condition that the petitioners shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each with two sureties each for a like sum to the satisfaction of the learned Magistrate concerned and on further conditions that:

(a) the petitioners and the sureties shall affix their photographs and left thumb impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhaar card or bank pass book to ensure their identity;

(b) the first petitioner shall report before the respondent police as and when required for interrogation.

(c) the second petitioner shall report before the respondent police daily at 10.30 am for a period of one month and thereafter, as and when required for interrogation.

(d) the petitioners shall not tamper with the evidence or witness either during investigation or trial;

(e) the petitioners shall not abscond either during investigation or trial;

(f) on breach of any of the aforesaid conditions, the learned Magistrate/ Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]***; and;

(g) if the accused/ petitioners thereafter abscond, a fresh FIR can be registered under Section 229-A IPC.

sd/-

01/03/2022

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

das

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.



CRL OP(MD). No.20416 of 2021

TO

1 JUDICIAL MAGISTRATE NO.I
TRICHY

2 DO-THROUGH :
THE CHIEF JUDICIAL MAGISTRATE,
TRICHY DISTRICT.

3 THE INSPECTOR OF POLICE
CITY CRIME BRANCH,
TRICHY.

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

+1CCtoM/s.P.GANAPATHISUBRAMANIAN, Advocate (SR-1646 [I] dated 02/03/2022)

+1 CC to M/s.M.SUBASH BABU, Advocate (SR-1695[I] dated 03/03/2022)

ORDER
IN
CRL OP(MD) No.20416 of 2021
Date :01/03/2022

PKP/VR/SAR-3/07.03.2022/5P/7C