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CRL OP(MD). N



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 08/08/2022

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL OP(MD). No.20971 of 2021

1. M.Durai

2. Bareeth Puhari ... Petitioners/Accused

Vs

The State rep.by,
The Inspector of Police,
CCB, Tirunelveli City.
Cr.No.02/2022

... Respondent/Complainant

(Amended as Per Order of this Court
dated 11.03.2022 in Cr1.MP(MD)
No.2899 of 2022 in Cr1.OP(MD)
No.20971 of 2021 by KMSJ)

Berchmans ...Petitioner/Intervener/
Defacto Complainant

For Petitioners : M/s.Maran.M

For Intervener : Mr.S.Prabhu Rajadurai, Advocate
for Mr. R.Maheswaran, Advocate

For Respondent : Mr.M.Vaikkam Karunanithi,
Government Advocate (Cr1.Side)

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

PRAYER :-

For Anticipatory Bail in Crime No.02 of 2022 on the file of
the Respondent Police.

ORDER : The Court made the following order :-

The petitioners/Accused, apprehending arrest at the hands
of the Respondent police for the alleged offence punishable under



Sections 406, 418, 420, 465, 506(i) IPC in Crime No.02 of on the file of the respondent police, seek anticipatory bail.

2.The case of prosecution in brief:

(i)The de facto complainant had lodged a complaint stating that he was looking for a property to put up hospital for his son. So, he approached the first and second accused. They identified a property and they entered into a sale agreement on 25.07.2013. The total sale consideration fixed as Rs.34,50,000/-. Later, they also received Rs.25 lakhs on various dates. The total amount that was received by the accused persons is Rs.59,50,000/-. Then they informed him that there is some encumbrance in the property and they would clear the same.

(ii)Later, they also informed him that another property in survey number 42/2A is also for sale. They also executed a sale agreement on 14.07.2015 for Rs.42 lakhs. They also received amounts in various dates, ie., totally Rs.72 lakhs received for the second item.

(iii)On enquiry, it was found that no such property as identified by accused persons was really existed and some third person put up construction and living there. That was enquired, for which, the accused persons stated that the Jabar Sathik, who is the owner of the property filed a suit before First Additional Sub Court, Tirunelveli. So, they ready to return the amount. It was also later found the documents had been created by impersonation, in respect of above said property. There was a Court Decree to that effect that the documents were created one. When the money was demanded, the accused person agreed to pay the same, later, they failed and threatened the defacto complainant. Thereby, the accused persons had cheated to the tune of Rs.1 Crore 31 Lakhs. Based upon the above said complaint, this case was registered. During the course of investigation it was found that three sale agreements had been executed by accused persons. It also revealed the fact that the first accused without any valid title entered into sale agreements with the de facto complainant and also cheated him.

(iv)Seeking anticipatory bail, this petition is filed by the petitioners on the ground that sale agreements dated 25.07.2013, 17.02.2013, 14.07.2015 and 26.08.2016 were true, but they received only Rs.78 lakhs. Due to some personal reasons, they are not in a position to execute the sale deed. So money also returned to the defacto complainant on various dates.

3.Heard both sides. The intervener also appeared and produced typed set of papers and also enclosed the copy of sale agreements that was entered between the parties.



4.Perusal of records, these documents are not denied by the accused persons. But, they relying upon some blanks, which are available in the sale agreements. When the petitioners themselves admit the genuineness of the documents, blanks which are available in the documents need not be taken into account. Apart from that an undertaking letter was also executed by the first accused in favour of the defacto complainant stating that the agreement dated 27.09.2016 will be complied after completing the process under section 47(A) of the Stamp Act. But later another document was executed between the defacto complainant and the first and second accused on 23.12.2021, by which, accused No.1 and 2 has given an undertaking that first accused will repay Rs.1.10Crore in instalments, similarly, the second accused will repay Rs.1Crore in two instalments and both the liability must be discharged on or before 30.06.2022 by the first accused and on 31.03.2022 by the second accused.

5.Now, the complaint has been lodged on 12.02.2022, much before the date of instalment that was mentioned in the document. Whether the accused persons paid the first instalment as promised by them, is not clear on record. But the grounds mentioned in the petition is quite contra to the above said undertaking letter. It is stated that the entire amount was returned to the defacto complainant. But, there is no document to prove their contention. So, this itself shows that the petitioners are not approaching this Court with clean hands. Having given an undertaking to return the amount, without complying the same, both the petitioners approached this Court stating that the issue between the parties is civil in nature. The very fact that they suppressed the undertaking letter, given a wrong information to the effect that they have returned the money to the de facto complainant, is sufficient enough to deny the discretionary relief.

6.On the above grounds, this petition is liable to be dismissed. Accordingly, this Criminal Original Petition is dismissed.

sd/-

08/08/2022

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

PNM

TO

1. The Inspector of Police,
CCB, Tirunelveli City

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



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2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER

IN

CRL OP(MD) No.20971 of 2021

Date :08/08/2022

RK/JM/SAR-IV (17/08/2022) 4P/3C