



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2022

PRESENT

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P (MD)Nos.21681 and 21985 of 2022

WEB COPY

1 ALAGAPPAN

2 SUBRAMANIYAN

3 MEYAGNANAMOORTHY

4 ALAGU

5 SEENIVASAN

... PETITIONERS/ACCUSED 1 to 5
IN CRL OP (MD).21681/2022

1 A.PRAKASH

2 K.UDAIYAPPAN

... PETITIONERS/ACCUSED NO.NOT KNOWN
IN CRL OP (MD).21985/2022

Vs

1. State Rep.by
THE INSPECTOR OF POLICE
KALAIYARKOVIL POLICE STATION,
SIVAGANGAI DISTRICT.
(CRIME NO.382/2022)

... RESPONDENT/COMPLAINANT
IN BOTH CRL OP's

2. S.DEVIKA

... INTERVENER/DEFACTO COMPLAINANT
IN CRL MP(MD) NO.15506/2022 IN
CRL OP(MD) NO.21681/2022

Common Prayer: Criminal Original Petitions filed under Section 438 of Cr.P.C, praying to enlarge the petitioners on bail in the event of their arrest in connection with Cr.No.382 of 2022 on the file of the respondent Police.

For Petitioners

in Crl.O.P.(MD)No.21681 of 2022 : Mr.G.Prabhu Rajadurai

in Crl.O.P.(MD)No.21985 of 2022 : Mr.S.Pakalavan

For Respondent
(in both cases)

: Mr.K.Sanjai Gandhi
Government Advocate (Crl.side)

For Intervenor

in Crl.O.P.(MD)No.21681 of 2022 : Mrs.A.L.Gandhimathi



COMMON ORDER

The petitioners, who apprehend arrest at the hands of the respondent Police for the offences punishable under Sections 147, 148, 294(b), 341, 354, 355, 380, 382, 292, 427 and 506(ii) IPC and Section 3 of TNPPDL Act and Section 4 of TNPHW Act in Crime No.382 of 2022 on the file of the respondent Police, seek anticipatory bail.

2.The case of the prosecution, as per the de-facto complainant, Devika, is that her father is Sakthivel Asari and he has got two sons and four daughters. The father had owned 8 acres of land and in that, there is a rice mill, a tiled house and a store room with 3 acres and 30 cents. After the death of her father, there was a property dispute among the siblings. While so, the sisters on one side and her brothers on one side have filed a partition suit in O.S.No.29 of 2011 on the file of the Principal District Court, Sivagangai and the suit was decreed in favour of the brothers' side on 31.10.2022. The de-facto complainant had also filed a stay petition before the Principal District Court and it is pending and the de-facto complainant had also taken steps to file an appeal.

3.While so, on 10.11.2022, the de-facto complainant had come to Sivagangai to attend the Court. At that time, the accused 1 to 5 along with 20 other persons had come to the property in question in three Innova cars and 3 JCB and lorry and had demolished the rice mill and removed the machineries and when it was questioned by the de-facto complainant, they have abused her in filthy language and intimidated her. The value of the machineries was about Rs.30,00,000/- and the value of the shed was about Rs.20,00,000/- and thereby, the case.

4.The learned Counsel for the petitioners in Cr.O.P.(MD) No.21681 of 2022 would submit that the petitioners are arrayed as Accused No.1 to 5 and they are innocents and a false complaint has been given. He would also submit that the property originally belonged to one Sakthivel Asari. The said Sakthivel Asari had two sons and four daughters and the parties have effected partition deed in respect of the property owned by Sakthivel Asari on 25.04.2011, whereby, the property in Schedule-I including the rice mill and the shed came to one Yogeshwaran, the elder son of Sakthivel Asari. The said Yogeshwaran had executed a power of attorney on 03.08.2011 to the first petitioner, Alagappan in respect of four distinct properties based on which, the said Alagappan executed a sale deed, dated 06.09.2011 in respect of four properties in part of schedule-I. Subsequently, the rest of the properties were in the custody of the said Yogeshwaran and later, he died during the year 2014. Thereafter, the legal heirs of Yogeshwaran, had given power of attorney in favour of the first petitioner, Alagappan and based on which, the first petitioner had entered a sale agreement with the



fourth petitioner. More over, the wife of said Yogeshwar had entered into a sale agreement for sale of rest of the property with the fourth respondent. The wife of Yogeshwar had also permitted the petitioners to demolish the rice mill and take the machineries.

5. He would also submit that based on the mandate given by the wife of said Yogeshwar, the petitioners had demolished the rice mill and had also taken the machineries and the machineries were sold for Rs.50,000/- and the amounts were also handed over to the wife of Yogeshwar and she has also given a due receipt for the same. Meanwhile, the suit filed by the de-facto complainant and her sisters got to be dismissed on 31.10.2022 and in the suit, the learned Trial Judge had given a categorical finding that Schedule-A properties are in the possession of the legal heirs of Yogeshwar and in such circumstances, the de-facto complainant and her sisters have filed a false complaint, as if the petitioners have demolished the rice mill and taken away the goods. He would submit that the de-facto complainant had suppressed about the earlier registered partition deed and the fact that the properties in Schedule-A were given to Yogeshwar, the first son of Sakthivel Asari. He would also submit that a civil dispute is attempted to be given a criminal colour. He would also submit that the case has been registered based on a direction under Section 156(3) of Cr.P.C., by the learned Judicial Magistrate.

6. The learned Counsel for the petitioners in Crl.O.P.(MD) No.21985 of 2022 would submit that the petitioners are owners of JCB. He would submit that on the request made by the other accused that they are the owners of the property and that they have to demolish the rice mill, the petitioners have sent the JCB and lorry. Other than that, the petitioners have nothing to do with the alleged occurrence and that they are not the beneficiaries in the transaction and thereby, he would seek for anticipatory bail.

7. The learned Government Advocate (crl.side) would submit that the de-facto complainant is the daughter of one Sakthivel Asari. There is a dispute between the daughters of Sakthivel Asari on one side and the sons of Sakthivel Asari on one side. Meanwhile, the first son of Sakthivel Asari, Yogeshwar, had executed a power of attorney in favour of the first petitioner and based on which, he had sold some property during the year 2014. Subsequently, after the demise of Yogeshwar, his wife had given a power of attorney to the first petitioner, based on which, the accused had demolished the property. He would also submit that the respondent understands that the wife of Yogeshwar had also entered into a sale agreement with the fourth respondent for sale of schedule mentioned property. He would also submit that the case has been registered based on the direction from the Court under Section 156(3) Cr.P.C., and that JCB and a lorry has been seized. He would also submit that investigation is pending and he would oppose for grant of anticipatory bail.



8. Mrs. A.L. Gandhimathi, learned Counsel appearing for the de-facto complainant would submit that the de-facto complainant is the daughter of one Sakthivel Asari and there is a dispute between the daughters and the sons of Sakthivel Asari. The elder son Yogeswaran died in 2014. To defeat the rights of de-facto complainant and her sisters, the wife of Yogeswaran, had given a power of attorney in respect of the property, which she is not entitled to and based on that, the accused had trespassed into the property and demolished the rice mill which was functioning and have also removed the machineries and thereby, caused loss to the de-facto complainant. She would also submit that there is a residential house and the accused are also taking steps to demolish the house also. She would object for grant of bail.

9. Heard the learned Counsel. Taking into consideration the facts and submission and on perusal of the documents filed along with these petitions, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

10. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on their appearance, within a period of fifteen days from the date on which the order copy made ready, before the learned Judicial Magistrate No.I, Sivagangai, on condition that the petitioners shall execute 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 respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[a] the petitioners and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the first petitioner in Crl.O.P.(MD)No.21681 of 2022 shall report before the respondent police everyday at 10.30 a.m., for a period of two weeks, thereafter every Saturday at 10.30 am until further orders. The other petitioners shall appear before the respondent police everyday at 10.30 a.m., until further orders.

[c] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioners shall not abscond either during investigation or trial.

[e] 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]**.



[f] If the accused thereafter absconds, a fresh FII registered under Section 229A IPC.

sd/-
15/12/2022

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/12/2022

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

CMR

TO

1. THE JUDICIAL MAGISTRATE NO.I,
SIVAGANGAI.
2. DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE,
SIVAGANGAI DISTRICT.
3. THE INSPECTOR OF POLICE,
KALAIYARKOVIL POLICE STATION,
SIVAGANGAI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.PRABHU RAJADURAI G, Advocate (SR-14987[I] dated 16/12/2022)

+1 CC to M/s.S.PAKALAVAN, Advocate (SR-15116[I] dated 19/12/2022)

ORDER

IN

CRL.O.P(MD)Nos.21681 and
21985 of 2022

Date :15/12/2022

USK/VR/SAR-I/29.12.2022/5P/6C