Crl.O.P.No.770 of 2023

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The petitioner, who apprehends arrest for the alleged offence under Section 418, 420, 423 and 424 of IPC in Cr.No.18 of 2022 on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution is that the defacto complainant is the brother of the petitioner. In the year 2002, their father died and after his demise, for some of the loans obtained from bank, the bank initiated recovery action. The petitioner and other family members decided to sell all the lands at Poonjuthi Village, to discharge the debt payable to the Bank. For easy mobilisation of the transaction, all the other legal heirs executed the Power of Attorney in favour of this petitioner. In the year 2021, the defacto complainant and others came to know that this petitioner, using the power of Attorney executed in his favour, had defrauded all the other legal heirs and had sold vast area of land by through various sale deeds in favour of many persons. They also came to know that this petitioner had infact sold the properties for a very loan consideration and thereby defrauded the Government. Hence the complaint.

3.The learned counsel appearing for the petitioner would submit that there is property dispute between the petitioner and the defacto complainant. After the demise of their father, recovery action was initiated by the State Bank of India, Overseas Bank branch before DRT, Coimbatore. Hence, it was decided by the petitioner and other legal heirs to sell the lands at Poonjuthi Village, to mobilise the funds to discharge the debt payable to State Bank of India. The petitioner's mother died on 23.04.2004. Thereafter, the petitioner executed 3 sale deeds in November 2003 and the remaining sale deeds during October 2004 to April 2006. According to the petitioner, he paid a sum of Rs.99,00,000/- to discharge the loan payable to State Bank of India and thereafter, the entire sale proceeds of about Rs.5,00,000/- were paid to discharge the loan to State Bank of India and all the legal heirs including the defacto complainant were aware of the payment and discharge of the loan to State Bank of India. Except the defacto complainant, all the other legal heirs did not raise any objection against the petitioner. Thereafter, the defacto complainant filed a Civil Suit in C.S.No.896 of 2008 for partition and the same is pending before this Court. After 16 years, the defacto complainant had lodged a complaint against the petitioner in the year 2015, only to pressurize the petitioner to settle the matter. All the legal heirs executed the General power of Attorney in favour of the petitioner in the year 2003. He further submitted that the petitioner had not committed with the alleged offence. Hence, the learned counsel prays to grant anticipatory bail to the petitioner.

4. The learned Intervenor/defacto complainant submit that there is property dispute between the petitioner and the defacto complainant, the defacto complainant filed a Civil Suit in O.S.No.896 of 2008 before this Court for the relief of partition against all the brothers in which one of the suit property under dispute is also mentioned as Item No.5A. The State bank of India, Overseas Branch on 22/05/1997 had issued a notice to the company Yuvaraj International which was managed by the accused. He further submit that the Civil Suit is pending between the parties. Hence, he prays to dismiss the anticipatory bail to the petitioner.

5.The learned Government Advocate (Crl.side) would submit that admittedly both the parties are blood relatives. The Civil Suit is pending from the year 2008 onwards. Since the petitioner is not coming forward to settle the dues to the Bank, the defacto complainant is put to task by the creditors and hence, he has lodged the present complaint and hence, he vehemently opposed to grant anticipatory bail to the petitioner.

6. The petitioner is one of the brother of the defacto complainant. His property dispute is going on between the brothers from the year 2008 and a suit filed by the defacto complainant in O.S.No.896 of 2008 for the relief of partition against all the brothers is pending. The one of the Item under dispute in the present complaint is also mentioned as Item No.5A in that suit. The learned counsel for the petitioner submitted that this petitioner had settle all the dues to the brothers long before the power of Attorney was given and based on the settlement arrived at between the brothers and sisters only the Power of Attorney came to be executed. By disposing of the properties, the petitioner has settled the Bank loan and to that effect the receipts issued by the bank and also included in Type Set. Now, as per the FIR allegation, is that the petitioner had not settled the share of the defacto complainant. Considering the fact that already a partition suit in the year 2018 is pending between the defacto complainant and the petitioner, though

their mother has passed away in the year 2004, No Objection was raised by the defacto complainant for four years, it cannot be said that all is well with the parties. Considering the fact that, the issues are pending before the Civil Court and there is no possibility of tampering the evidence. Considering the facts and circumstances, this Court is inclined to grant anticipatory bail to the petitioner.

7.Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial **Magistrate No.II, Tirupur,** condition that the petitioner shall execute a bond for a sum of **Rs.50,000/- (Rupees Fifty Thousand Only) each**, with **two sureties out of which one surety must be a blood related surety** 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 and on further condition that:

(a)the petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the Court concerned may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

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(b) **the petitioner shall report before the respondent police on every Wednesday for a period of two weeks, and thereafter, as and when required for interrogation;**

(c) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(e)the petitioner 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 thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

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