Crl.O.P.No.4617 of 2023

A.D.JAGADISH CHANDIRA, J.

The petitioners, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 464, 465, 467, 468, 471, 406, 420, 506(i) r/w 34 of IPC in Crime No.37 of 2023, seek anticipatory bail.

2.The case of the prosecution, as per the de facto complainant/ Mohammed Ashraf Buhari is that he is a seaman/sailor by profession and that accused are close relatives. The accused had induced him to invest money in real estate business assuring that lands would be purchased in his name and that he would get huge profits. Believing the same, the defacto complainant, over the period from 2021, had given a sum of Rs.2,26,00,000/- to the accused, but the accused had not invested the amount as promised and had cheated him. Hence, the complaint.

3.The learned counsel for the petitioner would submit that the petitioners are innocent and a false complaint has been given. He would submit that the petitioners and the defacto complainant are relatives and there were a financial dealings between them and later there was a financial dispute which is now falsely projected as a case of cheating and the defacto complainant is now attempting to recover the amounts through police action. He would further submit that earlier in respect of the financial transactions between the petitioners and the defacto complainant, he had obtained three debts deeds from the 1st petitioner by force and based on which the defacto complainant had earlier preferred a complaint before the Ramanathapuram Police Station. The petitioners were called for an enquiry and finding that the dispute was civil in nature the complaint was closed. Subsequently, the de facto complainant has preferred a complaint before the respondent police, based on which, the respondent police are harassing the petitioners and unable to bear the harassment, the first petitioner has filed a suit in O.S.No.7179 of 2022, on the file of the XIX City Civil Court, Chennai to declare the alleged Debt Deeds 3 Nos dated 24.10.2021 executed by the 1st petitioner in favour of the defacto complainant as null and void and not binding on the 1st petitioner and also for a mandatory injunction restraining the defendant to return the alleged Debt Deeds 3 Nos dated 24.10.2021 executed by the 1st petitioner in favour of the defacto complainant to the 1st petitioner. He would further submit that in respect of the harassment, the first petitioner has filed a writ petition in W.P.No.33627 of 2022 dated 14.12.2022 seeking for writ of mandamus forbearing the respondents 1 to 3 therein from harassing/coercing the 1st petitioner except by due process of law and it is pending. He would also submit that the 2nd petitioner who is the wife of the first petitioner and who is in no way connected with the money transaction with the defacto complainant is now unnecessarily roped in and harassed, thereby, he would seek for anticipatory bail.

4.The learned Government Advocate (Crl.Side) would submit that the petitioners are related to the de facto complainant and they induced the de facto complainant to invest Rs.2,26,00,00/- in the real estate business stating that the properties would be purchased in the name of the defacto complainant based on which, the defacto complainant, who is a Captain in a ship, sent money to them through bank transactions and that the accused have cheated him and therefore, he would object to grant of anticipatory bail.

5.The learned counsel for the intervenor would submit that the defacto complainant is a Sailor. The accused who are related to him have induced him stating that if he invests in real estate lands would be purchased in his name and that he would get good returns for the invested lands. Based on the assurance given by the accused, that the lands would be purchased in his name, the defacto complainant has parted with Rs.2,26,00,000/-, whereas, the accused has cheated the defacto complainant. The first petitioner further in order to cheat the petitioner and project as a civil dispute has filed a Civil Suit before the Court based on fabricated documents. The first petitioner has also fabricated false documents by forging the signature of the defacto complainant, as if the defacto complainant has received money and issued receipt for the same. The furnished receipts were fabricated in the Non Judicial Stamp Papers dated 24.10.2021 are as follows:

Non Judicial Stamp No	*Dated*	*Rs*
CT 040990	24.10.2021	Rs.47,78,000/-
CS 746941	24.10.2021	Rs.30,20,000/-
CT 04499	24.10.2021	Rs.42,80,000/-
CS 740582	24.10.2021	Rs.43,94,700/-

6. Learned Counsel for the Intervenor would submit that prove that the receipts are fabricated and the signatures were forged the defacto complainant had applied under RTI Act before the Treasury Officer seeking information with regard to date of issuance of the Non Judicial Stamp Papers before the Treasury Office and letters has been issued from the District Treasury Office stating that the Non Judicial Stamp mentioned above dated 24.10.2021 have been released by the District Treasury Office only on 29.12.2022 very much after the date as claimed by the 1st petitioner. He would reiterate that the first petitioner not only involved in fraudulent activities, but also filed fabricated documents before the Trial Court and interfering with the administration of justice and that if anticipatory bail is granted to the petitioners there will be possibility of attempting to interfere in the investigation and fabricating

false documents. Hence, he would seek for dismissal of the petitioners.

7. Heard both sides and perused the materials available on records.

8.It is the case of the defacto complainant that the accused had cheated him to the tune of Rs.2,26,00,000/-. It is the further case of the first petitioner is that the case of financial transaction has been projected as a case of cheating and that part of the amount has been discharged. The 1st petitioner had filed a suit in O.S.No.7179 of 2022 before the XIX City Civil Court, Chennai, in which, he has also filed receipts towards discharge of part amount alleged to be issued by the defacto complainant, whereas, the defacto complainant had received information from the District Treasury Office stating that the documents for proof of discharge of part amount filed in Non Judicial Stamp Papers dated 24.10.2021 have been released by the District Treasury Office subsequently only on 29.12.2022 and not on the date as claimed by the petitioners. This Court is of the opinion, that prima facie material to show that the petitioners have fabricated the documents to show that the part of the liability has been discharged. The first petitioner has not made out a case for grant of anticipatory bail. However, asfaras the second petitioner is concerned, the second petitioner is the wife of the first petitioner and there is no specific allegations as against the second petitioner/wife of the first petitioner.

9.Accordingly, the 2nd petitioner is ordered to be released on bail in the event of arrest or on her appearance, within a period of fifteen days from the date on which the order copy made ready, before the learned Judicial Magistrate No.I, Tambaram, on condition that the 2nd petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) 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 2nd petitioner 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 2nd petitioner shall report before the respondent Police everyday at 10.30 a.m., for a period of two weeks and thereafter on every saturday at 10.30 a.m., untill further orders.

[c] the 2nd petitioner shall not tamper with evidence or witness either during investigation or trial;

[d] the 2nd petitioner 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 petitioner in accordance with law as if the conditions have been imposed and the petitioner 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 FIR can be registered under Section 229A IPC;

06.03.2023
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