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Crl.O.P.Nos.11738 & 12675 of 2023

Crl.O.P.Nos.11738 & 12675 of 2023
and
Crl.M.P.No.8019 of 2023

G.CHANDRASEKHARAN. J.

Petitioner in Crl.O.P.No.11738 of 2023, S.Parthasarathy, who apprehends arrest at the hands of the respondent police for the alleged offences under Sections 420, 294 (b) & 506 (2) IPC in Crime No.Not known of 2023, on the file of the respondent police, seeks anticipatory bail.

2.Petitioner in Crl.O.P.No.12675 of 2023, Gomathi, who apprehends arrest at the hands of the respondent police for the alleged offences under Sections 420, 448, 465, 468, 471 & 506 (1) IPC in Crime No.130 of 2023, on the file of the respondent police, seeks anticipatory bail.

3.Learned counsel for the petitioners submitted that S.Parthasarathy is the original owner of the property, a multi-storeyed building, having ground and two floors, bearing S.L.C.No.362, 37th Street, TVS Avenue, Anna Nagar West Extension, Chennai – 600 101, Padi Village, Ambattur Taluk, Thiruvallur District, Comprised in



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R.S.No.273 Part and 274 Part, measuring to an extent of 1125 Sq.Ft.

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Parthsarathy used to mortgage his property with the defacto complainant for meeting the expenses of his business by executing registered mortgage deed. This property is worth about 4 crores now. In support of his submissions, he produced the encumbrance certificate to show the mortgage deed executed in favour of the defacto complainant and then cancelling the mortgage deed. He further submitted that Parthasarathy wanted to close the loan amount and therefore, he executed the sale deed in favour of the defacto complainant on 31.07.2015. Though sale deed was executed, possession of the property was not given to the defacto complainant and he was in continuous possession and enjoyment of the property. Sale deed was executed only for the purpose of security. However, taking advantage of the sale deed, defacto complainant gave a false complaint against the petitioners. He further submitted that he filed a suit in O.S.No.131 of 2023, on the file of the Principal District Court, Tiruvallur for declaring that the sale deed executed by him in favour of the defacto complainant is null and void and for other reliefs. In the said circumstances, this petition is filed praying for anticipatory bail for the



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petitioners.

4.The learned counsel for the intervener/defacto complainant submitted that after purchasing the property on 31.07.2015, except for the ground floor portion, possession of the remaining 1st and 2nd floors was handed over to the defacto complainant. Defacto complainant was pressurising for taking possession of the ground floor portion. In 2019 , Parthasarathy handed over the possession of the ground floor portion to the defacto complainant. In February 2023, he had forcibly taken possession of ground floor portion. Subsequently, Parthasarathy had executed an unregistered lease agreement in favour of third parties in respect of the 1st and 2nd floor portions of the property and received a sum of Rs.14,00,000/- from the lessee. Therefore, this case is given.

5.The learned Government Advocate (Crl.Side) submitted that the accused after selling the property did not give possession to the purchaser and then threatened the owner. He further submitted that investigation in this case is pending.

6.Considered the rival submissions and perused the records.



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7. Admitted position is that, the disputed property originally belong to accused Parthasarathy. Accused did not dispute the execution of sale deed dated 31.07.2015. Perusal of the sale deed shows that the possession of the property was handed over to the defacto complainant on the date of the sale. However, it is now claimed by the learned counsel for the intervener/defacto complainant that possession of the ground floor was not handed over and possession of the 1st and 2nd floor portions were only handed over. It is claimed that Parthasarathy had given possession of the ground floor portion in 2019. Then, it is claimed that, in 2023, he reclaimed the possession of the ground floor portion by force. However, learned counsel for the intervener/defacto complainant is not able to substantiate his claim by producing any complaint given in this regard to the police, for taking forcible possession of the ground floor portion in 2023. Admittedly, there is also a suit filed by the accused Parthasarathy for declaring the sale deed dated 31.07.2015 as null and void.



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8.The claim made by the learned counsel for the petitioners that the sale deed dated 31.07.2015 was executed as a security is a far fetched claim and it is against law. There is a prohibition under Section 92 of the Indian Evidence Act to give evidence contrary to the terms of the document. However, perusal of the lease agreements dated 01.02.2023 and 22.03.2023 executed by Parthasarathy in favour of third party lessees shows that he claims himself as the owner of the property. It is totally in disagreement and contrary to the sale deed dated 31.07.2015.

9.There is a dispute with regard to the handing over of the possession of the property purchased by the defacto complainant. The claim of the defacto complainant that he was put in possession of the 1st and 2nd floors in 2015, ground floor in 2019, and then in 2023, defacto complainant took forcible possession of the ground floor are hard to believe. Evidence is required for deciding these aspects.

10.But the documents and evidence produced in this case,



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clearly establishes that petitioner Parthasarathy, after selling the property to the defacto complainant, claims ownership of the property and executed lease agreements, which is against law.

11.In this view of the matter, this Court is of the view that the prayer seeking anticipatory bail for petitioner in Crl.O.P.No.11738 of 2023, S.Parthasarathy, cannot be considered and therefore, anticipatory bail in respect of S.Parthasarathy is dismissed. However, petitioner in Crl.O.P.No.12675 of 2023, Gomathi is a woman and there is nothing stated about her role, especially incriminating role, in the FIR or any other document. Therefore, this Court grants anticipatory bail so far as petitioner Gomathi is concerned and she 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.II, Ambattur**, on condition that the petitioner shall execute a bond for a sum of **Rs.10,000/- (Rupees Ten 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



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satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed 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 Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioner shall report before the respondent police everyday at 10.30 a.m., until further orders;

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

[d] the 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



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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.

10. Accordingly, Crl.O.P.No.11738 of 2023 is dismissed and Crl.O.P.No.12675 of 2023 is allowed. Consequently, connected miscellaneous petition is closed.

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