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Crl.O.P.Nos.18379 & 18385 of 2023

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Reserved On	23.08.2023
Pronounced On	30.08.2023

RMT.TEEKAA RAMAN, J.

The petitioners in Crl.O.P.No.18379 of 2023, who apprehend arrest at the hands of the respondent police for the alleged offences under **Sections 120(B), 420, 465, 467, 468, 471 of IPC in Crime No.185 of 2023** on the file of the respondent police, seek anticipatory bail.

2. The petitioners in Crl.O.P.No.18385 of 2023, who apprehend arrest at the hands of the respondent police for the alleged offences under **Sections 120(B), 420, 465, 467, 468, 471 of IPC in Crime No.184 of 2023** on the file of the respondent police, seek anticipatory bail.

3. In both the petitions, the petitioners who are husband and wife are common. Hence, common arguments are heard and common order is passed.

4. Heard, Mr.R.John Sathyan, learned Senior Counsel for



the petitioners and Mr.Leonard Arul Joseph Selvam, learned Government Advocate (Crl.side) for the respondent.

5. The common facts for both the cases are that one Kumar and Yuvaraj are alleged to have availed bank loan based upon a fraudulent document. And hence, above said two crime Nos. are registered at the instance of the Bank of Baroda, Kolathur Branch, Chennai, with whom the said Kumar and Yuvaraj have pledged the documents as a collateral security and a raised loan and subsequently, there was default in payment of the EMI, resulted in account being declared as Non Performing Assets (NPA). Hence, they have filed above Crime Nos.

6. The case of the prosecution as could be seen from the records is that one K C Bose (now, Died) arrayed as A2 has manufactured and fraudulently created a title deed upon himself and appointed one Sabena Mintu Shaik/A3 as General Power of Attorney, who in turn have sold the property to Kumar/A1, who had pledged the documents and raised a loan as stated supra.

7. In the another crime No., on the similar modus



operandi, Yuvaraj, the very same KC Bose/A2 fabricated the documents of title deed upon himself, gave General Power of Attorney to Sabena Mintu Shaik and subsequently sold it to Yuvaraj, who has raised a loan, in which Kumar, the above stated accused has stood as guarantor, pledged the original title deeds and raised the loan. And hence, the case is under investigation.

8. Yet another facts of the case that is necessary for determination of this case is that these two petitioners, who are set to have running a business also raised a loan from the very same Bank of Baroda by mortgaging a document. With regard to the said document that was mortgaged by these petitioners by way of deposit of title deed and raised a loan, that documents are found to be genuine and there is no allegation that they have presented fabricated documents and availed the loan.

9. As they have difficulty in conducting the business of hospitality during the Corona period, it is stated that the account went default and declared as NPA, resulted in filing of Sarfaesi proceedings before the Debt Recovery Tribunal(DRT) which



resulted in Sarfaesi proceeding in S.A.No.212 of 2023 and a property was set for selling through e-auction.

10. The petitioners herein have filed a necessary application for stay and after hearing both the parties, it is stated by the learned counsel for the petitioner that final orders have been passed by the DRT in I.A.No.664 of 2023 in S.A.No.212 of 2023 on 03.07.2023, whereby the Sarfaesi proceedings have been closed and the tribunal has directed that the bank shall not register the sale certificate till the next date of hearing and also in the Sarfaesi proceedings, the case has been closed on the ground that the impugned sale notice dated 30.03.2023 was not served for the petitioners herein, who are the borrowers and accordingly set aside the notification and closed the Sarfaesi proceedings in S.A.No.212 of 2023 on 03.07.2023 and also awarded cost of Rs.50,000/- upon the bank for unnecessarily initiating Sarfaesi proceedings against the defaulter without serving the notice.

11. Furiated by the same, they are trying to interfere with the personal liberty of the petitioners on the ground that the 2nd



petitioner herein at one point of time worked along with the other two accused Viz., Kumar and Yuvaraj.

12. After perusing the order passed by the DRT and also the allegations against Kumar and Yuvaraj and also taking note of the fact that in respect of the loan raised by these petitioners, the documents pledged by these petitioners for raising loan by depositing title deed is found to be genuine and has no legal issues, I am inclined to grant anticipatory bail to the petitioners with certain conditions.

13. Accordingly, 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 Additional CCB Court, Egmore, Chennai**, on condition that the petitioners shall execute a separate 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 petitioners shall report before the respondent police twice a week i.e., on every Tuesday and Thursday 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



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fresh FIR can be registered under Section 229A IPC.

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