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Crl.O.P.No.22122 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2023

CORAM

THE HON'BLE MR. JUSTICE **G.CHANDRASEKHARAN**

Crl.O.P.No.22122 of 2023

Asen Basha

...Petitioner

Vs.

The State Rep. by Inspector of Police,
Arni Town Police Station,
Tiruvannamalai District.

...Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to release the petitioner on bail pending investigation in Crime No.592 of 2023 on the file of the respondent police.

For Petitioner : Mr.T.Maha Vishnu

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor

ORDER

The petitioner, who was arrested and remanded to judicial custody on 16.08.2023 for the offence punishable under Sections 448, 427 of IPC and Section 3(1) of Tamil Nadu Property (Prevention of Damage and



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Loss) Act, 1992 in Crime No.592 of 2023 on the file of the respondent police, seeks bail.

2. The learned counsel for the petitioner submitted that petitioner is falsely implicated in this case on the allegation that he is the driver of the JCB bearing Reg.No.TN 25 BW 5985 which was used for the demolition of the building purchased by the *de-facto* complainant in an auction held under SARFAESI proceedings. He further submitted that petitioner is not aware of the fact that the *de-facto* complainant is the owner of the building and that JCB was hired by A1 & A2. He has nothing to do with the dispute between A1, A2 and the *de-facto* complainant. He is in judicial custody from 16.08.2023 and thus he seeks bail.

3. In response, the learned Additional Public Prosecutor submitted that the *de-facto* complainant purchased the property in S.No.16/1A1B in Plot.No.71 & 72, comprising of 2190 Sq.Ft., and the building there on, at Amman Nagara, Nayakanpalayam, Arani Town in an auction



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proceedings under SARFAESI. The owners of the building are residing opposite to this building. The sale was executed in favour of the *de-facto* complainant by the Bank Manager Dhayanithi and physical possession was also given to him. The previous owners Jayanthi and her husband gathered the details about the sale from the bank officials and they had also taken photographs of the *de-facto* complainant's father and the bank officials. In this regard, the *de-facto* complainant's father gave a complaint to the Arani Nagar Police Station on 11.08.2023 and in CSR No.630 of 2023, the complaint was registered on 14.08.2023. The *de-facto* complainant and his father cleaned the premises and there was no issues. On 16.08.2023, at about 10.00 a.m., when they visited the building, they found that the building was totally demolished using JCB. On enquiry, they came to know that the JCB bearing Reg.No.TN 25 BW 5985 owned by accused Venkatesan was operated by one Asen Basha for demolition of the building. The *de-facto* complainant suffered a loss of Rs.11,39,500/-. Therefore, the complaint.



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4. From the submissions of the learned counsel appearing for the parties and the allegations made in the First Information Report, it is clear that the petitioner is the driver of the JCB bearing Reg.No.TN 25 BW 5985. There is no allegation that he had knowledge about the purchase of the building by the *de-facto* complainant. There is no doubt that previous owners were A1 & A2 and they hired the JCB.

5. In the said circumstances and also considering the period of the judicial custody of the petitioner ie., from 16.08.2023 and that substantial part of the investigation might have been completed, this Court is inclined to grant bail to the petitioner.

6. Accordingly, petitioner is ordered to be released on bail on his executing 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 **Judicial Magistrate Court, Arni**, and on further conditions that :-

[a] 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



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Bank pass Book to ensure their identity.

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

[c] the petitioner shall not abscond either during investigation or trial.

[d] the petitioner shall not tamper with evidence or witness 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.

26.09.2023

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G.CHANDRASEKHARAN, J.

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To

1. The Judicial Magistrate Court,
Arni.
2. The Inspector of Police,
Arni Town Police Station,
Tiruvannamalai District
- 3.Sub-Jail,
Arni.
- 4.The Public Prosecutor,
High court of Madras.

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