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Crl.O.P.Nos.22333 & 24313 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.12.2023

Pronounced on : 18.12.2023

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.Nos.22333 & 24313 of 2023

Cause title in Crl.O.P.No.22333 of 2023:-

1. C. Alagappan
2. A.L. Nachal
A2

... Petitioners/A1 &

Vs.

The State Rep. by
The Inspector of Police,
District Crime Branch,
Tiruvannamalai District.
Respondent/Complainant
Crime No.15 of 2023.

...

(Crime number amended as per order dated
13.10.2023 in Crl.M.P.No.16542 of 2023
in Crl.O.P.No.22333 of 2023)

PRAYER: Criminal Original Petition filed under Section 438 of Cr.P.C.,
prayed to enlarge the petitioners on bail in Crime No.15 of 2023 pending



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investigation before the respondent police.

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Cause title in Crl.O.P.No.24313 of 2023:-

1. C. Alagappan
 2. A.L. Nachal
 3. A. Alagappan alias Siva
 4. Arthi Alagappan
 5. K.M. Baskar
 6. Sathish Kumar
- A6

... Petitioners/A1 &

Vs.

The State Rep. by
The Assistant Commissioner of Police,
Central Crime Branch,
EDF – I Wing,
Vepery, Chennai.
Respondent/Complainant
Crime No.232 of 2023.

...

PRAYER: Criminal Original Petition filed under Section 438 of Cr.P.C.,
prayed to enlarge the petitioners on bail in Crime No.232 of 2023 pending
investigation before the respondent police.

For Petitioners : Mr. Ranjith Marar
For Mr. G. Sriram, in both Crl.O.Ps

For Intervener : Mr. John Sathyan, Senior Counsel,
For Mr. S. Namasivayan,
in both Crl.O.Ps

For Respondent : Mr. R. Vinothraja,



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Govt. Advocate (Crl. Side),
in both Crl.O.Ps



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COMMON ORDER

The accused C. Alagappan and his wife A.L. Nachal in Crime No.15 of 2023 registered by the respondent, Inspector of Police, District Crime Branch, Tiruvannamalai District, under Sections 420 and 506(i) IPC have filed Crl.O.P.No.22333 of 2023 seek anticipatory bail.

2.The accused C. Alagappan, and his wife A.L. Nachal, and his son A.Alagappan alias Siva and daughter-in-law Arthi Alagappan and his brother-in-law K.M. Baskar and driver G. Sathish Kumar / A1 to A6 in Crime No.232 of 2023 registered by the respondent, Assistant Commissioner of Police, Central Crime Branch, EDF – I Wing, Vepery, Chennai, under Sections 420, 409, 506(i) r/w Sections 120(B) and 34 IPC have filed Crl.O.P.No.24313 of 2023, seek anticipatory bail.

3.Even though both the Criminal Original Petitions relate to separate First Information Reports registered by two separate Investigating Agencies, since to a large extent, the facts overlap and since both the FIRs had been registered on complaints lodged by the same defacto complainant,



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Gautami Tadimalla and the nature of the complaints lodged against the accused to a large extent contained the same nature of allegations though it is not quite prudent, in this case, taking into consideration the similarities in the genesis of the complaint, a common order is passed.

4. It is also to be noted that in both Criminal Original Petitions, the defacto complainant had filed applications seeking to intervene and to be heard before orders are passed. It is also to be mentioned that the learned counsel on behalf of the petitioners in both the Criminal Original Petitions and the learned Government Advocate (Criminal Side) and also the learned Senior Counsel for the intervenor had addressed common arguments in both the Criminal Original Petition.

Crl.O.P.No.22333 of 2023 (Case of the Prosecution):-

5.It is the case of the prosecution that the defacto complainant, Gautami Tadimalla had stated in her complaint that the 1st accused, C. Alagappan had cheated her to an extent of Rs.55,00,000/- which amount had been given by her to him in March 2019 to purchase agricultural landed property at Ayngunam Village, Kilpennathur Taluk, Tiruvannamalai District.



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She had appointed the 1st accused C. Alagappan as her power of attorney by a registered power of attorney Document No.1235 of 2015 to effect sale of another property. It had been further stated by her that the 1st accused had misused the general power of attorney and had purchased the property at Tiruvannamalai District in the joint names of the 2nd accused / his wife and defacto complainant. It was under those circumstances that the complaint had been alleged before the respondent, Inspector of Police, District Crime Branch, Tiruvannamalai District and FIR in Crime No.15 of 2023 had been registered under Sections 420 and 506(i) IPC.

Crl.O.P.No.24313 of 2023 (Case of the Prosecution):-

6.It is the case of the prosecution that the defacto complainant, Gautami Tadimalla had filed a complaint against the accused alleging that during the year 2004 when she had been afflicted by cancer, the 1st accused C. Alagappan came into her acquaintance and represented to her that he would assist her in selling properties owned by her in and around Tamil Nadu and suggested that she could, in the alternate, invest the amounts in some other properties to avoid capital gains. It had been stated that she had executed a power of attorney in favour of the 1st accused in Document No.1126 of 2020 dated 17.06.2020 to dealt with her portion of the property at Kottaiyur



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Village, Thiruvallur District. It had been further stated by her that on sale of that property, the 1st accused had prevailed upon her to purchase a property at Neelankarai and accordingly, a property was purchased at S.No.83/3A3F2, Plot No.9B, 5th Cross Street, Sunrise Avenue, Neelankarai, Chennai. It had been further stated by her that originally it had been agreed that the title deeds would be handed over to her. It had been however stated that without her knowledge, the 1st accused had purchased the said property by sale deed dated 28.09.2020 registered as Document No.5159 of 2020 in the office of the Sub-Registrar, Neelankarai, not only in her name, but also in the joint name of his wife / 2nd accused. It had been asserted by her that she alone had provided the entire sale consideration for purchase of that property. Therefore, she had raised allegations of cheating against the 1st and 2nd accused in the purchase of that property in the joint names of the defacto complainant and the 2nd accused. She also alleged that the original title deeds had not been handed over to her. She had further stated that the 1st and the 2nd accused had misused the power of attorney granted by her in favour of the 1st accused.



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7.It had been further stated that the 1st accused had transferred Rs.90,00,000/- from her bank account to his and to the accounts of the other accused and had utilized that amount to project that the 2nd accused had contributed towards part sale consideration out of the total sale consideration of Rs.3.90 Crores for purchase of the property at Neelankarai. It had been further stated that when she raised those issues, the accused coerced her to enter into a partition deed which was registered as Document No.5864 of 2023 on 05.05.2023 in the office of the Sub-Registrar, Neelankarai. It had been stated that the 2nd accused was allotted a larger area of 9094 sq.ft.s out of the total area of 15,895 sq.ft., and she, who had actually contributed the entire sale consideration, was allotted a lesser portion of 6801 sq.ft.s. It had been further stated that when she protested, the accused threatened her and her daughter. It had been further stated that the 1st accused had unlawfully obtained planning permits and commenced construction misusing the power of attorney.

8.It had been further stated by her that the 1st accused taking advantage of the trust reposed by her had transferred substantial amounts to an extent of about Rs.6 Crores from her bank account to the bank accounts of his family members between the years 2014 and 2022. She claimed that she



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had been cheated to a total extent of Rs.9.90/- Crores.

9.She further stated that during the years 2015 – 2016, the accused had cheated her to an extent of Rs.4/- Crores under the pretence of purchasing property in Ramanathapuram District. They had also transferred 8.35/- acres of her land in Ramanathapuram District to the 3rd and 4th petitioners, who had not paid her any consideration.

10.She also alleged that she was cheated to a sum of Rs.55/- Lakhs by projecting purchase of property at Tiruvannamalai, but they paid only Rs.6/- Lakhs towards the sale consideration and added the name of the 2nd accused as a joint purchaser.

11.She further alleged that the 1st accused had misappropriated the sale consideration from the sale of lands at Kottaiyur Village.

12.It was under those circumstances that the complaint was lodged and FIR in Crime No.232 of 2023 had been registered under Sections 420, 409, 506(i) IPC r/w Sections 120(B) and 34 IPC.



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Crl.O.P.Nos.22333 and 24313 of 2023 (General Contention of the Petitioners):-

13.It had been contended by the learned counsel for the petitioners that the defacto complainant was a film actor and had purchased properties without proper title and in possession of third parties. When her career in the film world slowly waned, she attempted to sell properties possessed by her in Sriperumbudur and other areas. She executed several Agreements of sale but they did not fructify into sale deeds. It had also stated that she had known the accused who hail from a reputed family. The 1st accused was requested by her to deal with her properties and accordingly he was appointed as her power of attorney agent to deal with her properties, to primarily purchase properties for her and sell her other properties in and around the State of Tamil Nadu.

14.It had been stated that the 1st accused took all efforts to clear existing litigations and make the properties free from all encumbrances. It had been stated that the 1st accused had acted with utmost faith and maintained accounts of the sale proceeds and had submitted them to the defacto complainant. It had been stated that before the defacto complainant



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had appointed the 1st accused as power of attorney agent, she had also appointed others as her power of attorney agents.

15.It had been further contended that she had sold the lands at Sriperumbudur at Sunguvarchatram measuring nearly about 36 acres directly and had executed sale deeds in favour of the purchaser and received the sale proceeds directly. However, the total area was not in one single part and out of the total area only two acres was dealt by the 1st accused and it is claimed that the sale proceeds of those two acres had been handed over to the defacto complainant.

16.It had also been stated that the defacto complainant had executed a letter dated 06.02.2021, termed as a Reconfirmation Letter and acknowledged that accounts had been settled. She also acknowledged that original document had been received by another letter dated 06.05.2023. It had been stated that it was the defacto complainant who had to pay to the 1st accused a sum of Rs.2.1 Crores and when that was demanded the false complaints had been lodged.



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Crl.O.P.No.22333 of 2023 (Specific Contention of the Petitioners):-

17. With respect to the specific allegations relating to the lands in Ayngunam Village, Kilpennathur Taluk, Tiruvannamalai District, it had been stated that the 1st accused had informed the defacto complainant on 10.03.2019 that the property had been purchased in the joint names of herself and the 2nd accused. It had been further stated that she had executed an acknowledgement in May 2023 admitting that accounts had been settled. It had been asserted that she had knowledge that the property at Tiruvannamalai had been purchased in her name and in the name of the 2nd accused. She had also executed a Reconfirmation Letter on 06.02.2021 after checking the accounts. It had been further contended that if the 1st accused had cheated her, she would not have executed further power of attorney documents in his favour till the year 2020.

18. It had also been stated that the defacto complainant had lodged several complaints with respect to the transactions in Chennai and Tiruvannamalai and it had therefore been stated that registration of multiple First Information Reports against the accused over the same set of facts is not legally permissible. It had been further stated that the entire issue is only a



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civil dispute and a colour of criminal case had deliberately painted by the defacto complainant. It had therefore been contended that the complaints are false and therefore anticipatory bail should be granted.

Crl.O.P.No.24313 of 2023 (Specific Contention of the Petitioners):-

19. Lands in Neelankarai measuring 15895 sq.ft:

It had been contended by the accused that this property had been purchased by sale deed dated 28.09.2020 in the names of the 2nd accused and the defacto complainant with her consent. It had been very specifically stated that she had signed a Memorandum of Understanding on 21.10.2020, acknowledging the purchase of the property in that manner and agreeing to partition it and undertaking to execute a registered partition at a later date. She had also accepted that funds had been provided by the accused also. It had therefore been stated that the accused were free to put up a construction in the site. It had also been stated that patta had been obtained in the joint names of the defacto complainant and the 2nd accused. It had been further stated that the defacto complainant was a party to a registered partition deed dated 05.05.2023, when she appeared before the Registrar and it is therefore



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claimed that she cannot plead coercion. It was specifically stated that the 1st accused was not present at the time of registration of the partition deed. It was also stated that the front portion of the property had been allotted to the defacto complainant. It had been further stated that the defacto complainant had also executed a deed of acknowledgement wherein she declared that accounts had been settled and that she had also received the partition deed document and the parent title documents.

20. Kottaiyur Property (Tiruvallur District):-

It had been stated that the defacto complainant had herself acknowledged in her affidavit filed by her in W.P.No.5307 of 2022 filed against the Income Tax officer, Nungambakkam and the National Faceless Assessment Centre, New Delhi, seeking to raise an order of attachment of her bank account and seeking a certiorari mandamus with respect to the notice issued by the Income Tax Department dated 29.04.2021, that the consideration from the sale of land at Kottaiyur Property, Tiruvallur District, had been received by her from her other power of attorney agents and that she had actually received the consideration. It had therefore been contended that the accused are innocent of the allegations raised by the defacto



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complainant relating to the lands at Kottaiyur in Tiruvallur District.

21. Lands in Ramanathapuram District:-

It had been contended that the sale deeds with respect to the lands at Ramanathapuram had been executed by the defacto complainant by herself on 10.02.2021 and therefore, she can never claim ignorance of the manner in which the sale proceeds had been divided or the names of the parties to the sale deeds. The consideration was paid to her. It had been stated that even in the sale deed, she had acknowledged receipt of the sale consideration. It had therefore been contended that allegations raised by her are false.

22. Usage of signed cheque leaves by the 1st petitioner:-

It had been stated that the defacto complainant had alleged that signed cheque leaves had been used by the 1st, 2nd, 3rd, 5th and 6th accused to withdraw and transfer Rs.5,96,43,900/- from her bank account between April 2014 to December 2022. In this connection, it had been stated that she had issued a Reconfirmation Letter on 06.02.2021 acknowledging that accounts had been settled as on 06.02.2021. It had been further stated that she had also executed a Deed of Acknowledgement on 06.05.2023 acknowledging



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settlement of all acts done by the power of attorney agent except with respect to the Tiruvannamalai lands. This document had also been signed by her daughter as a witness. It had therefore been contended that she cannot now claim that the cheques had been misused by the accused.

Crl.O.P.Nos.22333 and 24313 of 2023 (Contentions of the Defacto Complainant):-

23.It is the contention of the defacto complainant that she had been acting from the age of 17 years and had acted in more than 125 movies in Tamil, Telugu, Malayalam, Kannada and Hindi. However, there there was a sudden set back in her health and she had been diagnosed with cancer in the year 2004, when her daughter was just four years old. At that time, she had taken a decision to sell properties in Sriperumbudur area and consolidate them by purchasing further properties to secure the future of her child. It was at that time that the 1st accused, C. Alagappan had represented to her projecting that he was also in the business of real estate and offered to assist her, not only in disposing of properties but also in purchasing properties for her to avoid capital gains. Trusting him, she had executed deeds of power of attorney in his favour. She stated that she was unable to personally attend



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the works relating to sale of the land and had therefore executed specific deeds of power of attorney giving the details of the properties for which they were related. As the properties were sold by the 1st accused, she had to rely more and more on the 1st accused to complete each transaction. She thus stated that she had been victim of fraud by the accused. She further stated that owing to her poor health and owing to the pandemic she could not taken any prudent decision. She also handed over the original and parent documents of all her immovable properties to the 1st accused. She also executed deeds of specific power of attorney in his name. She also signed in blank white sheets and in a number of non-judicial papers, in trust that the same will not be misused. She further stated that he had also forged her signatures and fabricated documents in his name and in the names of his family members. Thus, being frustrated, she had been forced to lodge the criminal complaints.

Crl.O.P.No.22333 of 2023 (Status report filed by the respondent):-

24.In the status report filed, it had been stated by the Inspector of Police, District Crime Branch, Tiruvannamalai District, that on the basis of the complaint, witnesses had been examined and relevant documents had also



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been collected, but investigation is at a nascent stage. It had been further stated that further witnesses will have to be examined and relevant documents will have to be collected and the absconding accused will have to be secured to find out the real facts. It had been further stated that if the accused are granted anticipatory bail, there is every possibility that they would abscond from the judicial process and tamper with the evidence and threaten the witnesses. It had also been stated that they would not co-operate with the investigation process. Hence, strong objections were raised for grant of anticipatory bail to the accused.

Crl.O.P.No.24313 of 2023 (Counter affidavit filed by the respondent):-

25.It had been stated that on the basis of the complaint given by the defacto complainant, a FIR was registered and during the investigation, sixteen witnesses had been examined and statements have been recorded. It had been specifically stated that the daughter of the defacto complainant, had specifically stated that the 1st accused had threatened her and the defacto complainant with dire consequences. It had also been stated that details of the amounts transferred to the account of the accused had also been obtained from Indian Overseas Bank, Kottaiyur Branch.

26.It had also been stated that a perusal of the documents revealed



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that a power of attorney had been granted to the 1st accused only for sale of the property at Kottaiyur in Thiruvallur District. It had been stated that however the 1st accused had purchased property at Neelankarai without the knowledge of the defacto complainant. It had been stated that the trail of money for the consideration had to be determined. It had also been stated that further investigation will have to be done and requisitions had been given to the Sub-Registrar, Neelankarai and the Zonal Officer, Sholinganallur and the Tashildar, Sholinganallur, seeking further documents.

27. It had also been stated that the amount transferred from the account of the defacto complainant to each one of the accused have also to be determined. In the counter, specific amounts so transferred had also been given. It had also been stated that notices under Section 41A Cr.P.C., had been issued to the accused but their houses were found locked and therefore, the notices were affixed. It had also been stated that none of the accused had appeared before the Investigating Officer to co-operate with the investigation. It had also been stated that this Court had granted interim protection only for the 4th accused only because she had a young child of three years, but inspite of such protection, even she had not appeared for investigation and did not



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co-operate during the investigation. It had also been stated that a special team had been formed to secure the accused but they kept moving from place to place.

28.It had also been stated that the defacto complainant had filed yet another complaint before the District Crime Branch, Kancheepuram and FIR in Crime No.17 of 2023 had been registered under Sections 406, 465, 468, 471, 506(i) 420 IPC r/w Section 34 IPC on 02.11.2023. It had also been stated that she had filed a complaint before the District Crime Branch, Tiruvannamalai and FIR in Crime No.15 of 2023 had been registered under Sections 420 and 506(i) IPC on 15.10.2023. It had also been stated that she had filed another complaint before the Commissioner of Police, Greater Chennai Police with respect to cheating of a sum of Rs.8,71,09,956/- with respect to the sale consideration of land at Kottaiyur Village, Thiruvallur District and FIR in Crime No.253 of 2023 had also been registered under Sections 409 and 420 IPC r/w 120(B) IPC.

29.It had been stated that one of the accused Balaraman had been



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arrested and he had confessed that a sum of Rs.2,00,00,000/- had been given to the 1st accused / C. Alagappan. It had also been stated that the 1st accused, had preferred a complaint against the defacto complainant stating that she had not paid his share of Rs.3,10,00,000/- with respect to the sale of property at Kottaiyur Village. When notice was issued to him to appear, he did not appear and did not produce any evidence and therefore, the petition was closed. It had also been stated that the CCTV footage in the office of the Commissioner was verified and it was found that the 1st accused did not give the complaint but an impersonator of similar age and similar height had given the complaint. The signatures were also different. It had also been stated that the defacto complainant had denied the reconfirmation letter dated 06.02.2021 and the MoU dated 21.10.2020 and had stated that she was not aware of the contents.

30.It had been stated in the counter that stamp papers purchased in the year 2016 had been used. As a matter of fact, on 06.02.2021, she had been admitted in a hospital for Angiography to be performed on 07.02.2021 and therefore she could never have executed the letter dated 06.02.2021. It had also been stated that separate stamp papers had been used for the letter



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dated 06.02.2021.

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31.It had been stated that the accused had indulged in various offences to cheat the defacto complainant. It had also been stated that a search was also conducted and several signed blank stamp papers had been seized. It had also been stated that if anticipatory bail is granted, the accused would escape from the clutches of law. It had been stated that investigation is under process and further documents will have to be collected and further witnesses will have to be examined and the role of the accused will have to be verified. It was therefore very strongly objected for grant of any consideration to the accused.

Determination:

32.The learned counsels had broadly argued each asserting the facts as stated above.

33.I have carefully considered the materials on record.

34.Even though this common order relates to two separate First Information Reports registered by two separate Investigating Agencies with respect to separate properties, since the defacto complainant and at least the



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1st and 2nd accused are the same, and there is a chain which links all the transactions, it is only appropriate that the issues relating to both the complaints are taken up together for consideration.

35.The defacto complainant, was an actress of much prominence in the Film Industry in South India for at least two decades and more. She had been acting from the age of 17 years. In the year 2004, even according to her own statement, she was diagnosed with cancer. She had to take treatment for the same. At that time, her daughter was just four years old.

36.The defacto complainant had purchased properties across the State of Tamil Nadu in several districts more particularly at Ramanathapuram, Chengalpet, Tiruvannamalai and Thiruvallur.

37.The 1st accused, was a film producer and distributor and was acquainted of the defacto complainant. It is the specific stand of the defacto complainant, that he had gained her confidence and had also projected that he was involved in purchase and sale of lands. In view of that particular fact, being already inflicted with an agonising disease, she appointed him as her power of attorney.

38.The records reveal that she had executed four separate deeds of



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power of attorney in his name on 20.10.2015, 18.03.2016, 09.08.2018 and 17.06.2020, respectively. They had been registered in the Sub-Registrar offices at Chennai, Mudukulathur in Ramanathapuram District and Sunguvarchatram in Thiruvallur District. The deeds contained specific details of the properties for which they had been executed.

39.The main allegation by the defacto complainant is that the 1st accused had purchased lands at Aynkunam Village, Tiruvannamalai District on 08.03.2019 by using the deed dated 20.10.2015. It is her contention that she had paid Rs.55/- Lakhs as consideration for the purchase of lands but that lands worth about Rs.6/- Lakhs alone had been purchased. It is her claim that she had thus been cheated. It had been further stated that the 2nd accused had also been made as co-purchaser.

40.It is a further contention that the 1st accused with the help of the power of attorney dated 17.06.2020 had purchased lands measuring 15,895 sq.fts., at Neelankarai, but not in her exclusive name but again in the joint names of herself and the 2nd accused. As a matter fact, the 2nd accused had a larger share and the defacto complainant had a lesser share. It is the



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specific assertion that she had parted with the total sale consideration for the said lands and that the 2nd accused had not contributed any amount towards the sale consideration.

41.The further allegation of the defacto complainant was with respect to the sale of lands at Kottaiyur Village in Thiruvallur District. It had been very specifically stated that the accused had cheated her to a sum of Rs.83/- Lakhs which was the consideration received by sale of those lands.

42.With respect to the lands at Ramanathapuram, it is the specific allegation that the lands had been transferred to A3 and A4 though they had not paid her any consideration.

43.She had also alleged that between April 2014 and December 2022 by misusing several signed blank cheques available, the accused had transferred a total sum of Rs.5,96,43,900/- from her account to their individual accounts.

44.With respect to all these allegations, the learned counsel for the



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petitioners had urged consideration of two separate documents which according to the learned counsel explained the case of the accused that the defacto complainant was in the knowledge of the transactions and had acknowledged them and had verified them and had admitted to them.

45.The first such document on which strong reliance had been placed was a Reconfirmation Letter dated 06.02.2021. A copy of that document had been annexed along with the records. A perusal of the same shows that it would have more prudent had the accused not relied on the same.

46.Even a cursory glance shows that it is a document which on the face of it, makes it clear that it could not have been executed on 06.02.2021. It had been written down on stamp papers purchased on 02.08.2016 nearly about 4 ½ years prior to 06.02.2021. By that document, it is stated that the defacto complainant had confirmed validity of the power of attorney documents executed by her.

47.But further records have been produced, which established that



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she had suffered from Exertional Chest Pain from 02.02.2021 onwards and had undertaken Tread Mill Test on 06.02.2021 and the results were positive and she had to undergo immediate Coronary Artery Angiography on 07.02.2021 and was an inpatient in a hospital at Kottivakkam, Chennai. It is thus seen that she could never have executed the Reconfirmation Letter dated 06.02.2021.

48.It is also seen that several unconnected stamp papers have been used, wherein this particular document had been typed. It is evident that it had been typed on available blank signed stamp paper. During the course of investigation, the respondent had seized a bunch of blank signed non-judicial stamp paper. The originals had also been produced before the Court.

49.It is thus evident that the 1st accused and the other accused had conspired to cheat the defacto complainant of her valuable money and property taking advantage of her medical condition. They probably expected her to meet her maker but she had fought back bravely and had survived and is now present in flesh and blood to take on the accused and prove that they had cheated her when she was in dire circumstances. There could be no better



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example of betrayal of trust. It also signifies ingratitude. It does give a hoary feeling at the thought of the accused persons conspiring among themselves and rejoicing at the possibility of the defacto complainant falling to the disease which had afflicted to her and rubbing their hands in glee that properties for which they had not paid any consideration would flow to them in that eventuality. It is with foul object that the names of the 2nd, 3rd and 4th accused had been added as pseudo co-purchasers for the properties, which the defacto complainant had alone paid consideration by exerting herself to such an extent that only a disease, nobody wishes for, had halted her career. There is dishonest intention written in every act of the accused to deceive the defacto complainant.

50.The other documents, which had been relied on is a Memorandum of Understanding dated 21.10.2020. A perusal of the same shows that it is no better, and as a matter of fact still worse than the Reconfirmation Letter dated 06.02.2021.

51.The first two stamp papers had been purchased from a stamp



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vendor, A. Devamanohari at Madipakkam. The third stamp paper had been purchased from another vendor, V. Jayarani at Arumbakkam. This page contains the schedule of the property. The fourth, fifth and sixth stamp papers had been purchased on another date from the earlier stamp vendor, A.Devamanohari at Madipakkam. The seventh stamp paper had been purchased from yet another stamp vender, S.Geetharani on yet another date. It is inconceivable that a running document of seven pages would be typed in different stamp papers purchased from different stamp vendors on different dates. It is obvious even to naked eye and fledgling mind that the document had been prepared on blank stamp papers already available with signatures of the defacto complainant.

52.In *(2013) 2 SCC 801, Arun Bhandari Vs. State of Uttar Pradesh and Others*, the Hon'ble Supreme Court examined the issue of concurrent civil and criminal liability in an appeal by the defacto complainant aggrieved over an order of the High Court of Allahabad whereby criminal proceedings initiated for offences under Sections 406 / 420 IPC were quashed under Section 482 Cr.P.C.

53.The Hon'ble Supreme Court examined when cheating would



become a criminal offence

54.The facts had been stated in paragraph Nos. 2 and 3, which are as follows:

“2. The factual score as depicted is that the appellant is a non-resident Indian (NRI) living in Germany and while looking for a property in Greater Noida, he came in contact with Respondent 2 and her husband, Raghuvendra Singh, who claimed to be the owner of the property in question and offered to sell the same. On 24-3-2008, as alleged, both the husband and wife agreed to sell the residential plot bearing No. 131, Block Cassia Fistula Estate, Sector Chi-4, Greater Noida, U.P. for a consideration of Rs 2,43,97,880 and an agreement to that effect was executed by Respondent 3, both the husband and wife jointly received a sum of Rs 1,05,00,000 from the appellant towards part-payment of the sale consideration. It was further agreed that Respondents 2 and 3 would obtain permission from the Greater Noida Authority to transfer the property in his favour and execute the deed of transfer within 45 days from the grant of such permission.

3. As the factual antecedents would further reveal, the said agreement was executed on the basis of a



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registered agreement executed in favour of Respondent 3 by the original allottee, Smt Vandana Bhardwaj to sell the said plot. After expiry of a month or so, the appellant enquired from Respondent 3 about the progress of delivery of possession from the original allottee, but he received conflicting and contradictory replies which created doubt in his mind and impelled him to rush to Noida and find out the real facts from the Greater Noida Authority. On due enquiry, he came to know that there was a registered agreement in favour of the third respondent by Smt Vandana Bhardwaj; that a power of attorney had been executed by the original allottee in favour of Respondent 2, the wife of Respondent 3; that the original allottee, to avoid any kind of litigation, had also executed a will in favour of Respondent 3; and that Respondent 2 by virtue of the power of attorney, executed in her favour by the original allottee, had transferred the said property in favour of one Monika Goel who had got her name mutated in the record of the Greater Noida Authority. Coming to know about the aforesaid factual score, he demanded refund of the money from the respondents, but a total indifferent attitude was exhibited, which compelled him to lodge an FIR at Police Station Kasna, which gave rise to Criminal Case No. 563 of 2009.



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55. Thereafter the Hon'ble Supreme Court had examined the ingredients of cheating in the following paragraphs:

21. Before we proceed to scan and analyse the material brought on record in the case at hand, it is seemly to refer to certain authorities wherein the ingredients of cheating have been highlighted. In State of Kerala v. A. Pareed Pillai [(1972) 3 SCC 661 : 1972 SCC (Cri) 705 : AIR 1973 SC 326] a two-Judge Bench ruled that: (SCC p. 667, para 16)

“16. ... To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise [and] such a dishonest intention cannot be inferred from [a] mere fact that he could not subsequently fulfil the promise.”

22. In G.V. Rao v. L.H.V. Prasad [(2000) 3 SCC 693 : 2000 SCC (Cri) 733] this Court has held thus: (SCC pp. 696-97, para 7)

“7. As mentioned above, Section 415 has two parts. While in the first part, the person must ‘dishonestly’ or ‘fraudulently’ induce the complainant to deliver



any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in Jaswantraai Manilal Akhaney v. State of Bombay [AIR 1956 SC 575 : 1956 Cri LJ 1116] a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, 'mens rea' on the part of that person, must be established. It was also observed in Mahadeo Prasad v. State of W.B. [AIR 1954 SC 724 : 1954 Cri LJ 1806] that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered."

23. *In S.W. Palanitkar v. State of Bihar [(2002) 1 SCC 241 : 2002 SCC (Cri) 129 : AIR 2001 SC 2960] it has been laid down that: (SCC p. 250, para 21)*

"21. ... In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary



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to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating.”

24. *In the said case while dealing with the ingredients of criminal breach of trust and cheating, the Bench observed thus: (S.W. Palanikar case [(2002) 1 SCC 241 : 2002 SCC (Cri) 129 : AIR 2001 SC 2960] , SCC p. 246, paras 9-10)*

“9. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

10. The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so



deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by, (ii)(b) the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.”

56.The Hon'ble Supreme Court then examined the facts of the case and observed as follows:

25. Coming to the facts of the present case, it is luminescent from the FIR that the allegations against Respondent 2 do not only pertain to her presence but also about her total silence and connivance with her husband and transfer of property using power of attorney in favour of Monika Goel. It is also graphically clear that the complainant had made allegations that Raghuvendra Singh and his wife Savita Singh, had met him at the site, showed the registered agreement and the cash and cheque were given to them at that time. It is also mentioned in the FIR that on 28-7-2008, Savita Singh had received the possession



of the said plot and on the same day it was transferred in the name of Monika Goel. It is also reflectible that on 28-2-2007 Raghuvendra Singh and Savita Singh had got prepared and registered two documents in the office of the Sub-Registrar consisting one agreement to sell in favour of Raghuvendra Singh and another general power of attorney in favour of the wife. The allegation of collusion by the husband and wife has clearly been stated. During the investigation, as has been stated earlier, many a fact emerged but the same were ignored and a final report was submitted. In the protest petition the complainant had asseverated everything in detail about what emerged during the course of investigation. The learned Chief Judicial Magistrate after perusal of the case diary and the FIR has expressed the view that a case under Sections 406 and 420 IPC had been made out against both the accused persons. The learned Sessions Judge, after referring to the ingredients and the role ascribed, concurred with the same. The High Court declined to accept the said analysis on the ground that it was mere presence and further there was no privity of contract between the complainant and Respondent 2.

57. Thereafter on examining whether the facts contain the ingredients of a criminal offence, it was held as follows:



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“33. Applying the aforesaid parameters we have no hesitation in coming to hold that neither the FIR nor the protest petition was mala fide, frivolous or vexatious. It is also not a case where there is no substance in the complaint. The manner in which the investigation was conducted by the officer who eventually filed the final report and the transfer of the investigation earlier to another officer who had almost completed the investigation and the entire case diary which has been adverted to in detail in the protest petition prima facie makes out a case against the husband and the wife regarding collusion and the intention to cheat from the very beginning, inducing the appellant to hand over a huge sum of money to both of them. Their conduct of not stating so many aspects, namely, the power of attorney executed by the original owner, the will and also the sale effected by the wife in the name of Monika Singh on 28-7-2008 cannot be brushed aside at this stage.

58.No doubt the above judgment was held while examining an order passed under Section 482 Cr.P.C., but the ingredients of cheating had been discussed. The ratio therein applies directly to this case. It makes it all



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the more imperative that investigation is done and grant of anticipatory bail would certainly hamper the investigation.

59.In **(2021) 8 SCC 753, Supreme Bhiwandi Wada Manor Infrastructure Private Limited Vs. State of Maharashtra and Another**, the Hon'ble Supreme Court laid down the guidelines to be followed while considering an application for anticipatory bail. It was held as follows:

25. The High Court, in granting anticipatory bail under Section 438 CrPC in the first two appeals and following that order in disposing of the challenge to the order of the Sessions Judge in the companion appeals, has evidently lost sight of the nature and gravity of the alleged offence. This Court in Sushila Aggarwal v. State (NCT of Delhi) [Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1 : (2020) 2 SCC (Cri) 721] has enunciated the considerations that must govern the grant of anticipatory bail in the following terms : (SCC p. 110, para 92)

“92.3. ... While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of



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investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. ...

92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.”

60. When examining the nature and gravity of the offence in the instant case, it is seen that the accused have intentionally planned and schemed to cheat the defacto complainant. There is every possibility of the investigation being scuttled if the Court was to condone their acts and grant anticipatory bail. Investigation in both the cases is at an extremely nascent stage.



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61.The question whether multiple First Information Reports can be registered or not is not directly in issue in the present application.

62.The learned counsel for the petitioners, however, stated that not only the 1st and 2nd accused / husband and wife and the 3rd and 4th accused / son and daughter-in-law of the 1st accused had been arrayed as accused but in FIR in Crime No.232 of 2023 in which Crl.O.P.No.24313 of 2023 had been filed, the brother-in-law and the driver of the 1st accused had also been added as parties.

63.The learned counsel wondered as to their role and projected them as innocent persons. It is not so. They have also played a very important role in the generation of documents. The driver particularly had signed at various places as witness and was directly involved in threatening the defacto complainant and her daughter.

64.The statement of the Investigating Officer that several more witnesses will have to be examined and that investigation is at a crucial stage



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and that documents will have to be collected merit deep consideration.

65.Intention to cheat had been nurtured from embryo and put to devastating effect on a damsel, already in distress, afflicted with a debilitating disease, who just wanted to provide security for her young daughter.

66.The facts reveal not only cheating but also misappropriation and siphoning of funds for the personal gain of the accused persons in both the cases registered by the two separate Investigating Agencies.

67.In view of these facts, both the Criminal Original Petitions are dismissed with respect to each one of the petitioners.

18.12.2023

smv

Index: Yes / No

Neutral Citation: Yes / No

Speaking order : Yes / No



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To

- 1.The Inspector of Police,
District Crime Branch,
Tiruvannamalai District.
- 2.The Assistant Commissioner of Police,
Central Crime Branch,
EDF – I Wing,
Vepery, Chennai.
3. The Public Prosecutor,
High Court of Madras.



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C.V.KARTHIKEYAN, J.

smv

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18.12.2023