



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 28.04.2023

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PRESENT

The Hon`ble **Mr.Justice G.K.ILANTHIRAIYAN**

CRL OP(MD)No.4555 of 2023

Noor Mohamed ... Petitioner/Defacto complainant

Vs

1.Mohammed Shariff Sate .. Respondent/Petitioner/Sole
Accused

2.The Inspector of Police,
K.Pudur Police Station,
Madurai City.

(Crime No.519 of 2022) ... Respondent/Respondent/
Complainant

PRAYER : This petition is filed under Section 439(2) r/w 482 of the Code of Criminal Procedure, to call for the records relating to the anticipatory bail order granted by the learned Principal Sessions Judge, Madurai, in Crl.M.P.No.1198 of 2023 dated 17.02.2023 and cancel the anticipatory bail granted to the first respondent.

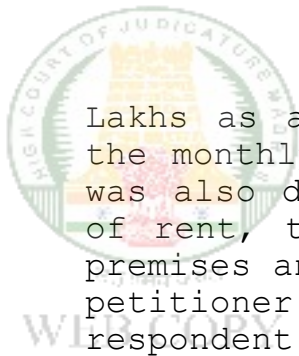
For Petitioner : Mr.N.Mohideen Basha, Advocate
For R1 : Mr.P.Sepha @ Sree, Advocate
For R2 : Mr.B.Thanga Aravindh
Government Advocate (crl.side)

ORDER

This criminal original petition has been filed to cancel the anticipatory bail granted to the first respondent by the learned Principal Sessions Judge, Madurai, in Crl.M.P.No.1198 of 2023 dated 17.02.2023.

2. On the complaint lodged by the petitioner herein, the second respondent registered an FIR against the first respondent in Crime No.519 of 2022 for the offences punishable under Sections 406, 420, 463 and 465 of IPC.

3. The crux of the complaint is that the petitioner leased out his building situated in Surya Nagar to the first respondent to run Super Market, namely, India Super Market, monthly rent was also fixed at Rs.80,000/- per month and the first respondent paid Rs.8



Lakhs as advance. Thereafter, the first respondent failed to pay the monthly rent and used to issue check for the same and the same was also dishonoured. When the petitioner asked about the arrears of rent, the first respondent told that he proposed to vacate the premises and he asked to return the advance amount paid by him. The petitioner paid the advance amount of Rs.8 Lakhs, but the first respondent demanded Rs.20 Lakhs for the interior works carried out by him in the petitioner's premises. After negotiations, the petitioner also paid a sum of Rs.18 Lakhs to him through various transactions. But, the first respondent demanded more money and thereafter, the petitioner visited his building, there was a ATM Centre in front of his building. On enquiry with the Bank and ATM Operator, it revealed that the first respondent forged the signature of the petitioner in the No Objection Certificate and leased out his building for ATM Centre without his permission. When the same was questioned by him, the first respondent replied evasively and also threatened him.

4. In pursuant to the registration of FIR, the first respondent filed a petition for anticipatory bail in CrI.M.P(MD).No.1198 of 2023 before the learned Principal Sessions Judge, Madurai. The Court below granted anticipatory bail on the following conditions:

"In the result, in the event of arrest or on his surrendering before the Court concerned, the petitioner is ordered to be enlarged on anticipatory bail on his executing a bond for a sum of Rs.10,000/- each with two sureties each for a like sum to the satisfaction of Judicial Magistrate No.6, Madurai, subject to the following conditions:

(i) The petitioner shall surrender before the Court concerned within 15 days from today without fail.

(ii) The petitioner shall appear and sign before the Inspector of Police, respondent police station daily at 10.00 am., until further orders.

(iii) The petitioner shall not tamper with the witnesses or in any manner interfere with or put obstacle to the smooth progress of investigation.

(iv) If there is any violation of condition, the Investigation Officer is within his discretion to approach the Court of the learned Judicial Magistrate concerned for cancellation of bail even though anticipatory bail granted by the Sessions Court as per the ruling of the Hon'ble Supreme Court reported in Shaji/Vs./State of Kerala, (2005) AIR S.C.W.5560.

5. The learned counsel for the petitioner/defacto complainant submitted that the Court below, without considering the veracity of



allegations levelled against the first respondent, and anticipatory bail to him. The first respondent had committed forgery and fabricated the document as if the petitioner entered into an agreement to instal ATM (SBI Bank, Surya Nagar Branch, Madurai) in the subject premises. However, the Court below viewed the same as it is the landlord and tenant dispute and granted anticipatory bail to the first respondent. That apart, while pending this petition for cancellation of anticipatory bail, the first respondent submitted that he is ready and willing to vacate the subject premises, which was rented out in his favour. Therefore, this Court referred the matter before the Mediation and before the Mediation the parties has not arrived for any amicable settlement between them.

6. The learned counsel appearing for the first respondent submitted that he paid a sum of Rs.8 Lakhs as advance. However, the petitioner failed to repay the same and as such, the first respondent did not able to vacate the premises.

7. It is seen that the petitioner owned the subject property and rented out the same to the first respondent in order to run the Super Market by name India Super Market. Monthly rent was fixed at Rs.80,000/- and also received a sum of Rs.8 Lakhs as advance. The period of lease was 10 years as per the lease deed dated 25.02.2013. The first respondent was irregular in paying the monthly rent and he used to pay the monthly rent by way of issuance of cheque, which was also dishonoured. While that being so, without consent and knowledge of the petitioner, the first respondent himself forged the signature of the petitioner and entered into an agreement with the State Bank of India to instal ATM centre in the subject premises, which was rented out in favour of the first respondent herein. In fact, the first respondent is not running any Super Market in the premises and it is locked and seal without running the business. Though the first respondent undertaken to vacate the premises before this Court, now said that he paid a sum of Rs.8 Lakhs as advance to the petitioner, which was not repaid. The first respondent also submitted that the petitioner had knowledge about the installation of ATM Centre of SBI. He also denied the fabrication of forgery of signature of the petitioner herein. However, the learned counsel for the petitioner submitted that the first respondent received the entire advance amount and he also possessed the necessary documents.

8. Considering the facts and circumstances of the case, the first respondent has committed very serious offence and his custodial interrogation is very much required. Hence, the Court below ought not to have granted anticipatory bail to the first respondent and it is hereby set aside.



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9. In result, the order passed by the learned Principal Sessions Judge, Madurai, in Crl.M.P.No.1198 of 2023 dated 17.02.2023 is set aside and this Criminal Original Petition is allowed.

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sd/-
28/04/2023

/05/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

RMK

TO

1.THE PRINCIPAL SESSIONS JUDGE, MADURAI.

2.THE INSPECTOR OF POLICE
K.PUDUR POLICE STATION,
MADURAI CITY.

3.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.MOHIDEEN BASHA N, Advocate (SR-7168[I] dated 03/05/2023

ORDER
IN
CRL OP(MD) No.4555 of 2023
Date :28/04/2023

PKP/VR/SAR-4/17.05.2023/ **4P/5C**