



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

( Criminal Jurisdiction )

Date : 21/04/2023

WEB COPY

PRESENT

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

CRL OP(MD) . No.7460 of 2023

Saranya

... Petitioner/2<sup>nd</sup> Accused

Vs

State rep., by  
The Inspector of Police,  
Orathanadu Police Station,  
Thanjavur District.  
(Crime No.307 of 2023)

... Respondent/Complainant

For Petitioners : Mr.A.Sivasubramanian, Advocate

For Respondent : Mr.R.M.Anbunithi  
Additional Public Prosecutor

For Intervenor : Mr.K.Pragadeshkumar, Advocate

PETITION FOR Anticipatory BAIL Under Sec.438 of Cr.P.C.

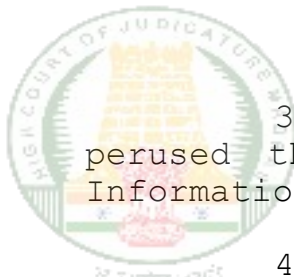
PRAYER :-

For Anticipatory Bail in Crime No.307 of 2023 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner/A2, who apprehends arrest at the hands of the respondent police for the offences punishable under section 420 of I.P.C., in Crime No.307 of 2023 on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution is that on 03.09.2021, a sale agreement was entered between A1 and defacto complainant in respect of the subject property, for which, the defacto complainant paid a sum of Rs.28 Lakhs to A1 through bank transaction and so far, the defacto complainant paid totally a sum of Rs.23,21,500/- in favour of A1. Thereafter, the petitioner, who is the wife of A1 and A1 failed to execute the sale deed. Hence, the complaint.



3. Heard the learned counsel appearing on either side and perused the materials available on record, including the First Information Report.

4. It is seen that there are totally two accused, in which, the petitioner is arrayed as A2. The first accused owned property and entered an agreement for sale with the defacto complainant. After receipt of money, A1 refused to register the sale deed in his favour. Hence, the complaint. As far as the petitioner is concerned, she is nothing to do with the alleged allegation, since the petitioner is only the wife of A1 and she no way connected with the property. That apart, the defacto complainant instead of filing a suit for specific performance, lodged a complaint. Considering the facts and circumstances of the case and also the fact that all the issues are civil in nature. Hence, the custodial interrogation of the petitioner does not require and this Court is inclined to grant anticipatory bail to the petitioner.

5. It is pertinent to note that the Honourable Supreme Court of India and this Court repeatedly issued suitable directions to the Director General of Police in respect of the registration of F.I.R. Accordingly, the registration of F.I.R is mandatory under Section 154 of Cr.P.C., if the information discloses commission of a cognizable offence. If the information received does not disclose a cognizable offence but indicates the necessity for an enquiry, a preliminary enquiry may be conducted to ascertain whether cognizable offence is disclosed or not. Further, this Court recommended to form Monitoring Committee and action against erring officials. The Monitoring Committee shall be constituted in Cities and Districts headed by the Additional Deputy Commissioner in Corporations and the Additional Superintendent of Police in District assisted by the Assistant Commissioner of Police and the Deputy Superintendent of Police respectively. The Monitoring Committee shall review all the cases once in two months with regard to whether the Station House Officers have followed the guidelines/directions issued by the Honourable Supreme Court of India in respect of registering F.I.R in letter and spirit and submit the report to the unit officer concerned for taking necessary action. However, so far no Monitoring Committee has been constituted in order to form the guidelines issued by the Honourable Supreme Court of India and this Court.

6. In fact, the learned State Public Prosecutor, by its communication, dated 14.03.2023, forwarded to the Director General of Police, Chennai, issued suitable instructions to all the Station House Officers to act cautiously while registering the F.I.R for the offence under Section 420 of I.P.C., since the officers concerned are registering the F.I.R mechanically by invoking the offences under Sections 420, 464, 465 and 471 of I.P.C without disclose any commission of cognizable offence.



7. For an example, in the case on hand, the petitioner's husband, who is arraigned as Accused No.1, owned property. The defacto complainant and others agreed to purchase and advanced a sum of Rs.23,21,500/-. They also settled the amount while redemption of mortgage and received the title deeds from the mortgagee. Even then, the petitioner's husband did not come forward to register the sale deed in favour of the defacto complainant and others. Hence, the complaint.

8. On perusal of the entire complaint, no allegation constitutes any cognizable offence. However, the respondent registered the F.I.R in Crime No.307 of 2023 for the offence under Section 420 of I.P.C. It is a classical F.I.R registered by the respondent against the directions/guidelines issued by the Honourable Supreme Court of India and this Court. However, the Monitoring Committee has not been constituted and no directions have been followed so far. Therefore, the Director General of Police is hereby directed to constitute the Monitoring Committee and issue suitable directions to all the Station House Officers to follow the directions issued by the Honourable Supreme Court of India and this Court within a period of four weeks from the date of receipt of a copy of this order. The learned State Public Prosecutor is also directed to assist the Director General of Police to constitute the Monitoring Committee and ensure that the directions are to be followed in letter and spirit.

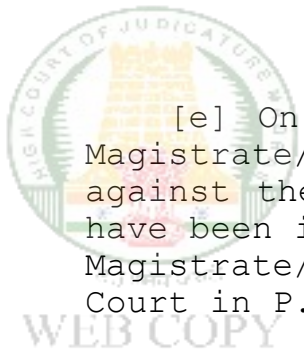
9. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on her appearance, within a period of fifteen days from the date on which the order copy made ready, before the learned Judicial Magistrate, Orathanadu, on condition that the petitioner shall execute a bond for 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 satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on the 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 as and when required for interrogation.

[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 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.

sd/-

21/04/2023

/ TRUE COPY /

/ 04/2023

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

RMK/PS

TO

- 1.THE JUDICIAL MAGISTRATE, ORATHANADU.
- 2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,  
THANJAVUR @ KUMBAKONAM.
- 3.THE INSPECTOR OF POLICE,  
ORATHANADU POLICE STATION,  
THANJAVUR DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO

- 1.THE DIRECTOR GENERAL OF POLICE/  
HEAD OF POLICE FORCE,  
DR.RADHAKRISHNAN ROAD,  
CHENNAI-600 004.
- 2 THE PUBLIC PROSECUTOR,  
HIGH COURT, CHENNAI.

+1 CC to M/s.A.SIVASUBRAMANIAN, Advocate ( SR-6355[I] dated  
21/04/2023 )

ORDER

IN

CRL OP(MD) No.7460 of 2023

Date :21/04/2023

RK/BUC/SAR-1(28/04/2023) 4P/8C

<https://www.mhc.tn.gov.in/judis>