



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 20.04.2023

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PRESENT

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

CRL OP(MD). No.14775 of 2022

K.Seenivasan

... Petitioner/2nd Accused

Vs

State Rep.by
The Inspector of Police,
District Crime Branch,
Theni District
Crime NO.19 of 2022

... Respondent/Complainant

D.Anbarasi

... Petitioner/Defacto Complainant
in Crl MP(MD).10510/2022 in Crl OP(MD).14775/2022

For Petitioner : Mr.R.R.Kannan, Advocate.
For Respondent : Mr.Kottaisamy,
Government Advocate (Crl. side)
For Intervenor : Mr.R.Babu Jaganath, Advocate

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

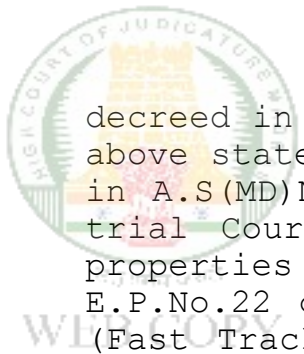
PRAYER :-

For Anticipatory Bail in Crime No.19 of 2022 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 Sections 406, 420, 506(i) and 120(b) of IPC in Crime No.19 of 2022 on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution is that the de-facto complainant's husband, Packiaraj and the petitioner are friends. On the basis of the sale agreement executed in favour of the de-facto complainant, dated 24.10.1999, the vendors namely, Murali, Gunasekaran and Saravanan have failed to execute the sale deed in favour of the de-facto complainant, who has entrusted an advance amount of Rs.25,00,000/-. Since the de-facto complainant was not able to retrieve the advance amount remitted by her, she has filed a money suit for recovery of money in O.S.No.264 of 2004, which was



decreed in favour of the de-facto complainant. Pursuant to the above stated vendors have preferred an appeal suit before this Court in A.S(MD)No.54 of 2010, which was also dismissed and thereby, the trial Court judgment and decree came to be confirmed. Since the properties belonging to the vendors situated in Theni District, E.P.No.22 of 2010 was filed before the learned Additional District (Fast Track) Judge, Theni in order to attachment of the immovable property of the defendants. In the E.P. Proceeding, the de-facto complainant has engaged the Advocate Mr.Gururadhakrishnan, through the petitioner and even though the amount has been settled by the defendants in the E.P. Proceedings, it was not entrusted to the de-facto complainant. Hence, the Advocate Mr.Gururadhakrishnan was arrayed as A1 and the petitioner was arrayed as A2 in this case on the basis of the petition filed by the de-facto complainant under Section 156(3) of Cr.P.C. before the learned Judicial Magistrate, Theni in Crl.M.P.No.3609 of 2022.

3.Heard the learned counsel on either side and perused the materials available on record.

4.It is seen that there are two accused in this case, in which, the petitioner is arrayed as A2. Originally, the petitioner and the de-facto complainant's husband invested money to purchase the property, in which, the petitioner also paid substantial amount along with the de-facto complainant to the original land owner. However, the original land owner has failed to register any sale deed. Therefore, the de-facto complainant alone has filed a suit for recovery of money in O.S.No.264 of 2004 and the same was decreed. Pursuant to the decree, the de-facto complainant filed execution petition, in which, the first accused was engaged as an Advocate. However, the first accused received a sum of Rs.44,75,000/- as per E.P.No.22 of 2010 as full and final settlement on 28.11.2020 without the knowledge of the de-facto complainant. According to the first accused, the entire money was handed over to the petitioner herein. The learned counsel for the petitioner would submit that the petitioner also invested huge amount and after receipt of the money, he has also settled to the tune of Rs.8,50,000/- to the de-facto complainant. In fact, the earlier complaint was enquired and closed. Thereafter, the de-facto complainant filed a direction petition under Section 156(3) of Cr.P.C. and the learned Magistrate has issued direction based on which, the present FIR came to be registered. While pending this application for anticipatory bail, the matter was also referred before the Mediation and in the mediation, there was no settlement arrived between the parties, since the de-facto complainant has failed to appear before the mediation centre. However, it is seen that all the allegations are civil in nature, since the petitioner also invested some amount in order to purchase the land along with the de-facto complainant, some of the amount has also been received by the de-facto complainant. Therefore, the custodial interrogation of the



5. Considering the above facts and circumstances of the case, this court is inclined to grant anticipatory bail to the petitioner with certain conditions.

6. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or his appearance, within a period of two weeks from the date of receipt of a copy of this order, before the learned Judicial Magistrate, Theni, 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 to 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 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 daily at 10.30 a.m for a period of two weeks and thereafter, 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 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]; and;

(f) if the accused/petitioner thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

sd/-

20/04/2023

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/04/2023

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

sjj

TO

1 THE JUDICIAL MAGISTRATE, THENI.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, THENI DISTRICT.

3 THE INSPECTOR OF POLICE, DISTRICT CRIME BRANCH, THENI DISTRICT.



CRL OP(MD). N



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

+2 CC to M/s.KANNAN R R, Advocate (SR-6192[I] dated 20/04/2023)

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ORDER

IN

CRL OP (MD) No.14775 of 2022

Date :20/04/2023

RS/VR/SAR-1 (24.04.2023) 4P 7C