



Crl.OP(MD)No.13948 and 14068 of 2023

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)**

Dated: 24/08/2023

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)No.13948 and 14068 of 2023

(1)Crl.OP(MD)No.13948 of 2023:-

A.Mohamed Shariff Sate

: Petitioner/Sole Accused

Vs.

1. State Rep.by

**The Inspector of Police,
K.Pudur Police Station,
Madurai.**

(Crime No.519 of 2022)

:Respondent /Complainant

2.Noor Mohamed

: 2nd Respondent

For Petitioner : Mr.C.M.Arumugam,Advocate

**For 1st Respondent : Mr.R.Sureshkumar
Government Advocate (Criminal Side)**

For 2nd Respondent : Mr.N.Mohideen Basha,Advocate

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

PRAYER:-For Anticipatory Bail in Crime No.519 of 2023 on the file of the Respondent Police.



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(2)Crl.OP(MD)No.14068 of 2023:-

1.Noor Mohamed

2.Babar Khan

: Petitioner/ Accused Nos 1 and 2

Vs.

State Rep.by

The Inspector of Police,

K.Pudur Police Station,

Madurai.

(Crime No.33 of 2023)

: Respondent/Complainant

Bayash Ali

: Petitioner/Defacto Complainant
in CRL MP(MD)No. 11958 of 2023

For Petitioners : Mr.N.Mohideen Basha,Advocate

For Respondent : Mr.R.Sureshkumar,
Government Advocate (Crl.Side)

For Intervener : MR.C.M.Arumugam, Advocate
in CRL MP(MD)No. 11958 of 2023

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

PRAYER:-For Anticipatory Bail in Crime No.33 of 2023 on the file of the Respondent Police.

COMMON ORDER: The Court made the following order:-

The petitioner in Crl.OP(MD)No.13948 of 2023, who is arrayed as sole accused apprehends arrest at the hands of the respondent police for the offences punishable under sections 406, 420, 463 and 465 IPC, in Crime No.519 of 2022 on the file of the respondent police, seeks anticipatory bail, whereas the petitioners in Crl.OP(MD) No.14068 of 2023, who are arrayed as A1 and A2 apprehend arrest at the hands of the



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respondent police for the offences punishable under sections 147, 323, 427, 448 and 506(i) IPC, in Crime No.33 of 2023 on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution in brief:-

Mohammed Shariff Sate became a tenant under Noor Mohammed, for which monthly rent was fixed at Rs.80,000/- and Rs.8,00,000/- was paid as advance. It started in 2013. After sometime, the tenant namely Mohammed Shariff Sate defaulted in payment of rent on regular basis payment. On demand he informed the owner of the premises that he wanted to vacate the business premises. But the Mohammed Shariff Sate agreed to purchase industrial materials, it was valued at Rs.25,00,000/-, later reduced to Rs.15,00,000/- after mutual negotiation. Rs.18,00,000/- was paid by Noor Mohammed on various dates. But after receiving the above said amount, the tenant namely Mohammed Shariff Sate failed to vacate the premises and without his consent, he also constructed a ATM Centre and let out the same to the third party.

3.That was enquired by the owner, at that time, he came to know that by forging the signature some document was created by Mohammed Shariff Sate and let out the same to a Bank.

4.The petitioner moved Cr.MP No.1198 of 2023 before the Principal District

Judge, Madurai. Anticipatory bail was granted with some conditions. Seeking

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cancellation of the above said anticipatory bail, the de-facto complainant filed Crl.OP (MD)No.4555 of 2023 before this court. By order, dated 28/04/2023, that came to be allowed by this court, cancelling the anticipatory bail that was granted to the petitioner and directed the custodial interrogation.

5.The relevant para of the order reads as follows:-

“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



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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."

6.After that, there was no action on the side of the respondent and the petitioner did not also surrender either before the trial court or before the respondent police. But moved Crl.OP(MD)No.9052 of 2023 during vacation. That was dismissed as withdrawn, on 18/05/2023.

7.Before that, another attempt was made by this petitioner by filing Crl.MP No.212 of 2023 before the Vacation Sessions Judge, Madurai, seeking anticipatory bail. On the ground of cancellation of anticipatory bail was ordered by this court, the Vacation Court dismissed the petition, on 11/03/2023. Thereafter only, as stated above, he moved this court by filing Crl.OP(MD)No.9052 of 2023 before the Vacation Court and that was also dismissed as withdrawn.

8.Subsequent to that, this petitioner moved this court. When the matter was taken up for hearing, this court made a query with the learned counsel appearing for the petitioner as to how the second anticipatory bail application will lie, when cancellation was already ordered by this court in Crl.OP(MD)No.4555 of 2023. For



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which, the learned counsel appearing for the petitioner would submit that certain important facts were not brought to the notice of this court and there is change of circumstances also. On that account, the matter was ordered to be heard.

9. Simultaneously, when this matter is going on, the de-facto complainant along with one another filed Crl.OP(MD)No.14068 of 2023 seeking anticipatory bail in respect of Crime No.33 of 2023. So, noting that in respect of the very same issue, the present application is also pending before this court, I directed this petitioner to inform the de-facto complainant about the pendency of this petition. On that account, the de-facto complainant was informed and both the matters were heard together.

10. So far as Crl.OP(MD)No.14068 of 2023 is concerned, Mr.C.M.Arumugam, learned counsel appearing for the petitioner in Crl.OP(MD)No.13948 of 2023 has submitted that he has no objection to grant anticipatory bail. So, we need not discuss much about the Crime No.33 of 2023.

11. Suffice to say that the de-facto complainant, who is the petitioner herein, has no objection, Crl.OP(MD)No.14068 of 2023 is liable to be allowed without going into other aspects.

12. Now coming back to the issue, Mr.C.M.Arumugam, learned counsel appearing for the petitioner in Crl.OP(MD)No.13949 of 2023 would rely upon the



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order of this court passed in the case of *Senthil Vs. The Inspector of Police, Central Crime Branch, Chennai (CDJ 2011 MHC 1801)* by contending that when new facts and grounds are raised, second anticipatory bail application is very well maintainable.

13. Reading of the above said order shows that if new grounds and facts are raised, anticipatory bail application may be entertained, even after cancellation of anticipatory bail already granted.

14. Now here, the question, which arises for consideration is what is the new ground or fact available to the petitioner.

15. The learned counsel appearing for the petitioner would rely upon a Document of Understanding reached between the de-facto complainant and the petitioner, dated 01/03/2023, in addition to the lease agreement entered on the very same date. The following agreement was entered between the parties:-

"NOW THIS DEED OF MUTUAL AGREEMENT WITNESSETH

1. This Mutual Agreement shall effect from 1st March 2013 and shall be for a period of TEN years from the date of this Agreement. It shall be renewable after the initial term of Ten Years at the Option of the PARTY ONE on the Terms to be determined at the time of such renewal.

2. The PARTY TWO agrees to PARTY ONE shall construct additional floor over the ground floor (INTHIYA SUPERMARKET



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PRIVATE LIMITED) at his own building in Plot No.20 Survey No.RS
NO.65/2 AT S.KODIKULAM, MADURAI.

3.The cost of the construction of the first floor shall be initially met out by the PARTY ONE. The said cost so incurred shall be treated as the advance repayment to the PARTY ONE by the PARTY TWO at the time of vacating the premises.

16.By pointing out this, it is submitted that this fact, which is important, was not brought to the notice, either at the time of filing the anticipatory bail petition before the Principal District Judge or cancellation before this court.

17.But the learned counsel appearing for the de-facto complainant would submit that after the lease agreement was over, the petitioner, even though has cleared the articles, but kept the premises under lock and key. Without his permission, he let a portion to the ATM Centre. According to him, the above said agreement namely 'No Objection Certificate' has been forged by this petitioner. Only on that account, anticipatory bail that was granted by the District Judge was cancelled by this court in Crl.OP(MD)No.4555 of 2023. Even after clearing the articles, he is keeping the premises under lock and key, but whereas the de-facto complainant is paying Electricity bills and other taxes. So, because of that, he is suffering a lot

financially

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18. According to him, the document, which has been mentioned by the petitioner is not a genuine one. But the learned counsel appearing for the petitioner would submit that the above said additional construction was put up by him only with the consent of the de-facto complainant and incurred more than Rs.80,00,000/- towards expenses. He is also ready to sit and sort out the differences across the table. Even, he went to the extent of suggesting that he will ask the petitioner to go to the office of the de-facto complainant's counsel and produce the vouchers, which are available with him to show the expenses met out by him in putting up the construction.

19. But the learned counsel appearing for the de-facto complainant was very strong in his submission that when serious allegation of forgery of his signature is made and that too, it has been taken serious note of by this court, while cancelling the anticipatory bail, he has also incurred loss. So, he is not ready to accept the above said proposal that has been made by the petitioner's counsel.

20. Even at the time of the argument, I suggested both parties to sit and sort out the differences. Even the learned counsel appearing for the petitioner is ready, but the de-facto complainant was not. So, the matter has to be disposed of on its own merit.

21. With regard to the above said additional construction issue, the learned counsel appearing for the de-facto complainant would circulate the notice that was



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issued by this petitioner to the de-facto complainant. Para 2 of the legal notice, reads as follows:-

“2.My client states that he got lease of the premises from your client by giving advance amount of Rs.80,00,000/-, which is 100 times the actual, agreed rent, and which is barred under the Rent Control Act.”

22.By pointing out this contradiction, he would submit that the petitioner has not approached this court with clean hands. The lease agreement reads that only Rs.8,00,000/- paid as advance.

23.The learned counsel appearing for the petitioner would submit that it is a mistake on the part of the counsel, who sent the above said legal notice.

24.Now whatever it may be, even though, the above said issue exists between the parties with regard to the additional construction, incurring of expenses, etc, but the important issue is the forgery of signature of the de-facto complainant. There is no new ground or fact brought on record as to the important allegation. On that account, the anticipatory bail was cancelled by this court in Crl.OP(MD)No.4555 of 2023. So, I find no new ground or fact has been brought on record with regard to the specific averments.

25.But however, the learned counsel appearing for the petitioner would submit that for this purpose, no custodial interrogation is required and if at all, a direction



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may be issued to him to appear before the respondent police and produce the sample signature. According to him, he is ready to abide by any sort of condition that may be imposed upon him by this court.

26.Now, the question, which arises for consideration is whether this can be taken into account. If this has been taken into account, it will virtually amount to reviewing the order of the observation that was made by this court in Crl.OP(MD) No.4555 of 2023 as extracted above.

27.So, I am afraid that whether such a venture can be taken either by the petitioner or by this court. So, it may not be appropriate on the part of this Bench to review the above said order. It is totally impermissible in law. Even though, it is an issue between the landlord and the tenant, they have lost mutual trust with each other. But even the suggestion that was made by this court was not accepted by the de-facto complainant.

28.So, I find that no relief can be granted to the petitioner. Accordingly, Crl.OP (MD)No.13948 of 2023 is liable to be dismissed.

29.In the result, **Crl.OP(MD)No.13948 of 2023 is dismissed.** In so far as **Crl.OP (MD)No.14068 of 2023 is concerned, this court is inclined to grant anticipatory bail** to the petitioners with certain conditions. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on their appearance before the learned



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Judicial Magistrate No.VI, Madurai and on each of them executing 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 learned Judicial Magistrate concerned and on further condition that the petitioners shall appear before the respondent police daily at 10.30 am until further orders. The petitioners shall comply with the condition stipulated under [Section 438](#) Cr.P.C. Scrupulously. (*) **The petitioners shall appear before the concerned Magistrate within a period of 15 days from the date on which the order is made ready, failing which, the petition for anticipatory bail will stand dismissed.**

sd/-

24/08/2023

(*)FOR BEING MENTIONED AS PER THE ORDER OF THE HON'BLE COURT DATED 10/10/2023 IN CRL OP(MD)Nos.13948 and 14068 OF 2023.

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/10/2023

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

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TO

TO BE SUBSTITUTED WITH THE ORDER DATED 24/08/2023 ALREADY DESPATCHED

1 THE JUDICIAL MAGISTRATE NO.VI

MADURAI.

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- 2 DO THROUGH:
THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.
- 3 THE INSPECTOR OF POLICE
K.PUDUR POLICE STATION, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.C.M.ARUMUGAM, Advocate (SR-12828[I] dated 25/08/2023)

+1 CC to M/s N.MOHIDEEN BASHA, Advocate (SR-12882[I] dated 28/08/2023)

ORDER

IN

Crl.OP(MD)No.13948 and 14068 of 2023

Date :24/08/2023

PKP/VR/SAR- /15.09.2023/ **13P/ 7C**

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SS/JGB/20/10/2023/13P 7C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023