



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 03/04/2023

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PRESENT

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

CRL OP(MD). No.22222 of 2022

1. C.M.D Shanavas Saddique,
2. C.M.D.Mohammed Siddik,
3. Nazeem Fathima, ... Petitioners 1 to 3/Accused Nos. 1 to 3

Vs

State Rep.by
The Inspector of Police,
District Crime Branch,
Dindigul District.
Crime No.26 of 2022. ... Respondent/Complainant

Jamal Mohammed ...Intervener in CRL MP(MD)No.15984 of 2022

For Petitioners : M/s.Sarvagan Prabhu S, Advocate.

For Intervenor :M/s.H.Lakshmi Sankar, Advocate
in CRL MP(MD)No.15984 of 2022

For Respondent : Mr.R.M.Anubunithi,
Additional Public Prosecutor (Crl.Side)

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

PRAYER :-

For Anticipatory Bail in Crime No.26 of 2022 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioners/A1 to A3 who apprehend arrest at the hands of the respondent police for the offences punishable under sections 294 (b), 406,420, 506(i) of IPC in Crime No. 26 of 2022 on the file of the respondent police, seek anticipatory bail.

2. The case of the prosecution is that on 31.03.2021 the petitioners 1 and 2 approached the defacto complainant to help them to close a debt pending before the bank since the bank has initiated the sale proceedings to auction the properties of the first



and second petitioners. The petitioners herein also promise to repay the same by selling the properties which was given as secured asset to the said bank. Therefore the defacto complainant through bank transaction transferred a sum of Rs. 87 lakhs to the above petitioners, but they failed to repay the same. When the defacto complainant demanded repayment the petitioners herein threatened the defacto complainant with dire consequences.

3. Heard both side and perused the materials available on record including the First Information Report.

4. It is seen that the petitioners have approached the defacto complainant on 31.03.2021 and represented that their properties are being brought for sale by the bank under the SARFAESI proceedings. Since they were under urgent need of Rs.87 lakhs they sold the properties and they have also assured to repay the said amount within one month. Accordingly the defacto complainant through his son's account transferred the money. However the petitioners failed to repay the said amount as promised by the and threatened the defacto complainant by dire consequences. It is also seen from the record that Rs.50 lakhs was directly transferred to the account of the second petitioner herein and Rs.37 lakhs to the third petitioner herein, who is none other than the wife of the first accused. In fact their properties have been mortgaged with the said bank. It is also seen that the already the said property was sold and part of the amount was realized. Suppressing the said fact, the petitioners availed money the defacto complainant, hence the case. Even while pending anticipatory bail, the petitioners were given interim protection on condition that they shall mortgage the properties owned by them in favour of the defacto complainant to the tune of the loan availed by them. The learned counsel for the petitioner also assured that they will mortgage the property in favour of the defacto complainant. This Court though given enough opportunities, the petitioners failed to execute the mortgage deed in favour of the defacto complainant. The learned counsel for the petitioner would submit that the first petitioner is now bed ridden and his wife who is the third petitioner is with him and she is unable to execute the mortgage deed in favour of the defacto complainant. Therefore the second petitioner is ready and willing to mortgage the property insofar as his share is concerned. Though the first petitioner is admitted in hospital and taking treatment it would only take two hours to execute the mortgage in favour of the defacto complainant. The learned counsel for the petitioners represented the same on earlier occasions and he has not shown any fruitful execution of mortgage deed, it shows the wilful and wanton act of the petitioners in dragging the proceedings for execution of mortgage deed.



5. In view of the same, this Criminal Original Petition stands dismissed as custodial interrogation of the petitioners is required in this case.

sd/-
03/04/2023

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/04/2023

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

TO

1 THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH,
DINDIGUL DISTRICT.

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

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-5339[I] dated
03/04/2023)

+1 CC to M/s.S.SARVAGAN PRABHU, Advocate (SR-5386[I] dated
03/04/2023)

ORDER
IN
CRL OP(MD) No.22222 of 2022
Date :03/04/2023

PKP/BUC/SAR-4/11.04.2023/ **3P/5C**