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Crl.O.P.No.3665 of 2024

Crl.O.P.Nos.3665, 3280, 3585 & 4214 of 2024
and Crl.M.P.Nos.4243, 4241, 4737 & 4740 of 2024

C.V.KARTHIKEYAN, J.

A1 has filed Crl.O.P.No.3585 of 2024, A3 has filed Crl.O.P.No.3280 of 2024, A6 has filed Crl.O.P.No.3665 of 2024 and A8 has filed Crl.O.P.No.4214 of 2024 all in Crime No.77 of 2024 registered under Sections 120B, 109, 341, 384, 420 and 506(2) of IPC. They seek anticipatory bail.

2. This Court had considered the application for bail filed by A7 and A9 in Crl.O.P.No.5929 of 2024 and the following observations were made in that particular application:-

"2. It is the case of the prosecution that the mother and father of the defacto complainant had died in the year 2010 and 2013 respectively. The defacto complainant has two sisters namely Divya and Nadhiya. The father was also possessed of several properties including land at Nilavarapatty and Seelanaickenpatty at Salem and agricultural lands in Mekkanaickenpatty at Trichy District. They were in the name of the father of the defacto complainant.

3. It is claimed that a Will was said to have executed by the father in the year 2011 and on the basis of



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the said Will, in which A1, was the beneficiary, properties had been bequeathed to A1, subsequently A1 had executed power of attorney with respect to the properties and on the strength of those power of attorney, the power agent also conveyed the properties. As on date, the power of attorney that had been executed and the sale deeds have been cancelled. There has been an earlier complaint by the defacto complainant registered as FIR in Crime No. 252 of 2019 on 25.02.2019 by the same police station, where the present FIR in crime No.77 of 2024 had been registered. The earlier complaint was registered for the offences under Sections 465, 467, 468, 471 and 506(i) of IPC, relating to the same properties. The allegations are the same, that the Will was forged and further allegations against the power of attorney which had been executed After following due process, the investigating officer in FIR in Crime No.252 of 2019 had thought it fit to drop the charges and had filed an application before the jurisdictional Magistrate Court. The defacto complainant had filed an application which could be called a Protest Petition and the matter is still under consideration of the jurisdictional Magistrate Court. The second FIR was registered as FIR in Crime No.77 of 2024 again relating to the same properties and again relating to the Will that had been executed and again relating to the power of attorney that had been executed and again



relating to the sale deeds that have been executed.

4. The registration of the second FIR has to be explained by the investigating officer.

5. Further, one additional allegation is with respect to threat simpliciter and the same facts and twisting the facts a little bit to give a fresh colour to the complaint. The parties are the same. The properties are the same. The documents alleged to have been created are the same and as a matter of fact, the only further development is that the documents have been cancelled in manner known to law.

6. The facts stare in the face of the defacto complainant. Further, there is also a suit pending in which the reliefs sought are to declare the Will as null and void and also all sale deeds as null and void. This would only imply that the jurisdictional civil Court is now seized of the entire issue. The defacto complainant is also a defendant in the said suit.

7. I am careful in recording the facts since the issues are under consideration of the jurisdictional Magistrate Court where the Protest Petition is pending and by the civil Court where the suit is pending in O.S.No.437 of 2023. The jurisdictional magistrate and the District Judge will have to be taken a decision independent of these observations. But on the fact of registration of a second FIR



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on the same set of allegations, with one change, namely about the threat being advanced by the accused persons, two of the accused have been under incarceration from 05.02.2024.

8. The learned Senior Counsel pointed out all these aspects and also the entire issues surrounding the civil dispute within a family. The Protest Petition is still pending before the jurisdictional Magistrate Court. There cannot be examination of the same facts on the basis of two separate complaints by the same party. There cannot be registration of two First Information Reports by two separate investigating officers sitting in the same police station.

9. It is also pointed out the value of the property involved is far in excess of the jurisdictional authority granted to the investigating officer in the present case. These are all aspects which call for explanation from the officer who registered the FIR in Crime No.77 of 2024."

3. The learned Senior Counsel on behalf of A1 and A3 in Crl.O.P.No.3585 of 2024 and Crl.O.P.No.3280 of 2024 pointed out that the entire issue surrounds a civil dispute among the same family members and relating to such dispute, a civil suit had also been filed, withdrawn, and filed again and is still pending.



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4. It is also stated that there were occasions when the civil suit which had been filed was withdrawn, and a further civil suit had been filed. A Domestic Violence application which had also been filed was withdrawn.

5. This Court had been granted bail to A7 and A9 primarily on the ground that registration of FIR in crime No.77 of 2024 on practically the same allegation, requires explanation by the officer who registered the same.

6. It is pointed out on behalf of the defacto complainant by the learned counsel that there are further allegations, but the fundamental issues are about execution or non-execution of the Will, the execution of the power of attorney sale deeds executed on the strength of power of attorney. They are the initial documents which had given rise to various other allegations of payment of money, of cancellation of documents and of coercion to withdraw suits which had been filed. But, all have their genesis from the Will which is said to have been executed fraudulently respect to the original owner of the properties. That is the genesis of the both the First Information Reports.



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7. The learned counsel for the defacto complainant also pointed out about the legal heirs certificate which had been relied on by the accused person and stated that with the help of the Tashildar, such legal heirship certificate was falsely created for the benefit of the accused, but the issue before this Court is to whether to grant of anticipatory bail or not and the assertion that the registration of the First Information Report itself is questionable.

8. It is made clear that observations had been made only with respect to examining the issue of anticipatory bail alone and I am confident that the Court, where the civil suit is pending and the learned Judicial Magistrate where the Protest Petition is pending with respect to an earlier FIR in crime No.252 of 2019 would render findings on the basis of documents available in those particular matters and the oral submissions made by the learned counsels.

9. However, taking all the other factors into consideration 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



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the event of arrest or on their appearance, within a period of fifteen days from the date on which the order copy made ready, before the **learned Judicial Magistrate-IV, Salem**, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties 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 further condition that:

[a] the petitioners 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 petitioners/A1, A3, A6 and A8 shall report before the respondent police everyday at 10.30 a.m., for a period of two weeks and thereafter, as and when required for interrogation.

[c] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioners 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



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action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners 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.

10. The Commissioner of Police, Salem City may examine the registration of FIR in crime No.252 of 2019 and FIR in crime No.77 of 2024 and examine the surrounding circumstances leading to registration of FIR, particularly the second First information Report.

11. Consequently, connected miscellaneous petitions are ordered.

20.03.2024

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