Criminal O.P. Nos. 5891, 6145, 13812 and 13831 of 2024
and
Criminal M.P. No. 10766 of 2024

C.V.KARTHIKEYAN, J.

A1 has filed a criminal OP No. 13812 of 2024, A2 has filed a criminal O.P. No. 6145 of 2024, A3 has filed a criminal O.P. No. 13831 of 2024 and A4 has filed a criminal O.P. No. 5891 of 2024, all in Crime No. 1 of 2024 registered under Sections 120B, 468, 471 and 109 of IPC.

2. The applications seeking anticipatory bail filed by all these four petitioners had come up for consideration earlier on 08.02.2024, on which date, it had been observed that the defacto complainant had stated that he had filed an intervening application but still since the learned counsel for the petitioner /accused had insisted that this Court should take up the matter and therefore, the matter had been taken up. Even today one of the intervening application, viz., criminal M.P. No. 10769 of 2024 filed by the intervenor has not been listed.

3. The learned counsel for the Government Advocate (Criminal Side) also stated that he would like to file a counter in the applications, but however, a representation was made on behalf of the petitioner that

the court should take up the matter. Accordingly, heard the learned counsel for the petitioner and also the learned counsel for the intervenor and also the learned Government Advocate (Criminal Side).

4. It is the case of the prosecution that the defacto complainant, was the owner of the property at Nasuvanpalayam Village in Erode District in Survey No. 63, R.S.No. 63/10, measuring 8105 sq. ft. which is a vacant land. The title holders are still alive. They had initially granted a power of attorney to A1. A2 is the mother of the A1. A1 executed an agreement of sale in favour of the mother/ A2. Thereafter, that particular agreement of sale had been cancelled on 19.12.2022 and on the very same day, the property was sold by A1 to A4. A3 is the Doctor, who had issued a life certificate since the sale deed had been executed through a power of attorney document that the principal is still alive. The photographs in that particular life certificate was not of the principal as on that particular date, but the photograph taken at a very young age. It is insisted by the learned counsel for A3/Doctor that the party had come over to the office and she had also seen the Aadhar card and thereafter, had issued the life certificate.

5. It is the specific contention of the learned Government Advocate (Criminal Side) that the photographs had been tampered to alter the age of the principal and it is alleged that it had been so issued with knowledge that the photographs had actually been tampered. This Court had directed that the original document should be produced in the Court, where the trial is to take place. It was represented on the previous hearing dates that the originals had actually been produced. But today a representation is made on behalf of the defacto complainant that what was produced as original was also infact a xerox copy and this exposes a lack of bonafide on behalf of the accused persons.

6. The power of attorney had been subsequently cancelled by the defacto complainant, which is only natural since the defacto complainant will have to protect the property and ensure that no further encumbrances are made. The learned counsel for the first accused stated that the defacto complainant had left behind dues nearly more than Rs. 2,00,00,000/- towards the Tamil Nadu Electricity Board and suppressing that particular fact, had sold the property to A1.

7. It is further contended that this issue was also agitated

independently in a writ petition, where a direction has been given that the said amount should be paid by the defacto complainant to the electricity board.

8. The learned counsel therefore stated that A1 had actually been mislead into purchasing the property and had suffered with a burden to pay the amount of Rs. 2,00,00,000/- to the electricity board, which charges he had not incurred personally or was the cause of such charges.

9. It is therefore contended that the defacto complainant is also not a person, who can be termed as somebody with clean hands to cause imputation on the conduct and character of A1. It is therefore contended that the petitioners herein are entitled for anticipatory bail.

10. It had also been stated that in criminal O.P. 914 of 2024, a learned Single Judge had also granted anticipatory bail to A5, A6 and A7.

11. It had been stated that the said anticipatory bail had been granted on condition that the original documents should be produced. But it is today represented that the documents, which had been produced as originals are not original documents. The learned Single Judge, who

had imposed such condition on the belief that the original certificate had actually been produced and on the next hearing date when the matter was listed for compliance, and it was reported that the compliance had been done, had granted anticipatory bail. But again it is seen that the same order has not been obtained by making a correct representation before that particular Court. That particular order therefore cannot be binding on this Court.

12. Sofar as A2 is concerned, it is stated that A2 is only the mother of A1. Initially an agreement of sale had been executed in favour of A2 and later that agreement of sale had also been cancelled. It is stated by the learned counsel that A2 had no further dealing with the property and thereafter, A1, had not dealt with the property.

13. The necessity for registering the FIR also under Section 468 IPC is owing to the life certificate, which had been issued by A3/ the doctor. Had the Doctor verified the individual and thereafter issued the life certificate, none of the other accused would be facing the agony they are facing today.

14. A4 is the purchaser and he would have to establish his

bonafide only during the course of trial.

15. Even though a plea had been made on behalf of A1 that defacto complainant had left dues payable to the electricity board the sum of Rs. 2,00,00,000/- it would only show that A1 is a speculative purchaser and wanted to walk away with substantial property of 8105 sq.ft. of land. A1 should have exercised more caution and should not have executed a sale deed in favour of the A4, particularly on the basis of a power of attorney document, in which a life certificate had been wrongly and unlawfully issued. Whether it was deliberately issued or not is a fact that can be decided only during the course of trial.

16. In view of these facts, I am not inclined to grant anticipatory bail to A1, A3 and A4 but I would grant anticipatory bail to A2 in whose favour only an agreement of sale had been executed and subsequently cancelled.

17. A2 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, this petitioner shall stand dismissed and on further condition that:

(a) A2 and the sureties shall affix their photographs and left thump impressing in the surety bond and the Court concerned shall obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(b) A2 is directed to appear before the respondent police every day for a period of two weeks and thereafter, as and when required;

(c) A2 shall not tamper with evidence of witness eight during investigation or during trial;

(d) A2 shall not abscond either during investigation or during trial;

(e) on breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the A2 in accordance with law as if the conditions have been imposed and the A2 are 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 A2 thereafter abscond, a fresh FIR can be registered under Section 229-A IPC.

15. A representation has been made, after the order had been dictated that A1 would deposit the sale consideration received from A4 before the Trial Court. Let that representation be made before the learned Judicial Magistrate No.2, Erode, where the FIR is pending, who may take an independent decision about the same.

29.07.2024

Maya

C.V.KARTHIKEYAN,J.

Maya

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