



Crl.O.P.No.5929 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM

THE HON'BLE MR. JUSTICE **C.V.KARTHIKEYAN**

Crl.O.P.No.5929 of 2024

1.S.Anbumani

2.K.Kumar

...Petitioners

Vs.

State rep. by
Inspector of Police,
Annadanapatty Police Station,
Salem District.

(Crime No.77 of 2024)

...Respondent

PRAYER:

Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioners on bail in Crime No.77 of 2024 on the file of the respondent.

For Petitioner : Mr.C.Iyyappa Raj

For Respondent : Mr.L.Baskaran
Government Advocate (Crl. Side)



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ORDER

The petitioner seeks bail in Crime No.77 of 2024, registered by the respondent police for the offences punishable under Sections 120(b), 109, 341, 384, 420 and 506(ii) of IPC. The petitioners had been taken into custody on 05.02.2024.

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 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



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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.



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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 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.



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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.

10. Taking into consideration, all facts and I am inclined to grant bail to the petitioners subject to the following conditions:

11. Accordingly, the petitioners are ordered to be released on bail on condition to execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties for a like sum to the satisfaction of the **learned Judicial Magistrate-IV, Salem**, and on further conditions that:-

[a] 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.



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[b] the petitioners shall report before the respondent police everyday at 10.30 a.m., for a period of three weeks and thereafter, as and when required for interrogation.

[c] the petitioners shall not abscond either during investigation or trial.

[d] the petitioners shall not tamper with evidence or witness 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 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.

20.03.2024

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C.V.KARTHIKEYAN. J.

rjr

To

1. The learned Judicial Magistrate-IV, Salem
2. The Central Prison, Salem.
3. The Inspector of Police,
Annadanapatty Police Station,
Salem District.
4. The Public Prosecutor,
High Court of Madras.

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