IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.01.2024

Pronounced on : .02.2024

CORAM

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

Crl.O.P.Nos.15844, 18393 & 20141 of 2023

1.Eaby Kunjumon ... Petitioner in Crl.O.P.No.15844 of 2023

2.M. Jeevanandhan ... Petitioner in Crl.O.P.No.18393 of 2023

3.Muniyappan ... Petitioner in Crl.O.P.No.20141 of 2023

Vs.

The State Rep. by
The Inspector of Police,
Bank Fraud Investigation, Team-XII,
Central Crime Branch – II,
Vepery, Chennai – 600 007.

... Respondent in all both Crl.O.Ps

PRAYER: Criminal Original Petitions filed under Section 439 of Cr.P.C., prayed to enlarge the petitioners on anticipatory bail in the event of their arrest in Crime No.68 of 2023 on the file of the respondent police.

For Petitioner : Mr. D. Selvam for Mr.K.Kathiresan, in Crl.O.P.No.15844 of 2023

For Petitioner : Mr. R. Harikrishnan, in Crl.O.P.No.18393 of 2023

For Petitioner : Mr. M. Jaikumar in Crl.O.P.No.20141 of 2023

For Intervener : Mr.M. Bharath Venkatesh

For Respondent : Mr. R. Vinothraja, Govt. Advocate (Crl. Side)

COMMON ORDER

The petitioners, who apprehend arrest at the hands of the Respondent police for the offence punishable under Sections 120 B and 420 IPC in Crime No.68 of 2023 on the file of the Respondent police, seek anticipatory bail.

2.All these three petitions came up for consideration earlier before a learned Single Judge of this Court who had heard arguments on 19.09.2023 and pronounced the following order on 29.09.2023:

"The Petitioners, who apprehend arrest at the hands of

the Respondent police for the offence punishable under Sections 120 B & 420 IPC in Crime No.68 of 2023 on the file of the Respondent police, seek anticipatory bail.

2.Jeevanandhan/Petitioner in Crl.OP.No.18393 of 2023 is a Valuer/Chartered Civil Engineer of the State Bank of India in respect of home loan.

3.Eaby Kunjumon/A1/Petitioner in Crl.OP.No.15844 of 2023 is the purchaser of the flat.

4.Muniyappan/A2/Petitioner in Crl.OP.No.20141 of 2023 is the builder.

5.The case of the prosecution is that the Defacto Complainant is the Assistant General Manager of the State Bank of India, the borrower Eaby Kunjumon is the Proprietor of EAME Enterprise, who availed home loan to the tune of Rs.44.48 lakhs and Suraksha loan of Rs.0.70 Lakhs for the purchase of Flat at No.G1 Ground Floor, Brindhavan Avenue, Kayarambedu Village, Chengalpet Taluk, which is an approved layout. He signed the Loan agreement, Agreement to Mortgage, Deed of undertaking, MOD on the month of December 2021. Repayment schedule was fixed for 336 months and EMI was fixed at Rs.29,966/-. The purchaser has not paid the amount and the account was declared as NPA. Loan was sourced by Adyar Branch, Pre- sanction inspection of residence and property done by Adyar Branch, KYC Verification and income verification done by M/s.Adgi Risk Management Pvt Ltd. As per the valuation at *the time of sanction resalable value is fixed Rs.51.03 Lakhs by Jeevanandhan Jai Engineers dated 28.07.2021 (de-panelled) and latest valuation was done by RS Associates and the same is fixed at Rs.36.07 Lakhs. The disbursed amount was transferred to one Thavamani by the builder to the tune of Rs.4.69 Lakhs. The funds were not utilized for the purpose given. The property was in locked status. The builder, borrower and third person conspired and cheated the Bank. Hence the complaint.*

6.Heard the learned respective counsel for the Petitioner, learned counsel for the Intervener and the learned Government Advocate (Crl. Side) appearing for the Respondent Police.

7.Learned Government Advocate (Crl. Side) would submit that as per the building report given by the Civil Engineer appointed by the State Bank of India, the extent of the area available in the Flat was inflated and the same was noted as follows:

S.No.	***Details***	***As per plan approval***	***As per Mr.Jeevanandhan /Valuer 1***	***As per Mr.Raghuraman /Valuer 1***
1	*Building Plan approved for ground floor*	*1130 sq. ft*	*1080 sq. ft.*	*765 sq.ft.*
		Area of construction (Flat No.G1, Plot No.22)		
2	*Carpet area*	*829 sq. ft.*	*864 sq. ft.*	*850 sq. ft.*
3	*Plinth area*	*995 sq. ft.*	*1036 sq. ft.*	*765 sq. ft.*
4	*Salable area*	*1243.75 sq. ft.*	*1295 sq. ft.*	*955 sq. ft*

8.Learned counsel for the Builder would submit that *there are many discrepancies in the report of Raghuraman, the second valuer appointed by the State Bank of India. Since the purchaser has not paid the amount, resulted in declaration of the account as NPA and DRT proceedings before the Debt Recovery Tribunal is on, disputed the report given by the second valuer viz., Raghuraman.*

9.Learned counsel for the Intervener would submit that by inflating the built up area in the building, Jeevanandhan, the approved valuer has made a false report, so as to give higher amount as loan. Subsequently second valuer was appointed by the State Bank of India viz., Raghuraman, according to him, the building plan approved for ground floor is only 765 sq. ft. not 1080 sq. ft. as stated by Jeevanandhan/A3. So also there is variation in carpet ares, plinth area and salable area.

10.Considering the dispute being factual in nature, I am inclined to pass the following orders:

The State Bank of India is at liberty to move the DRT for appointment of independent valuer by the orders of DRT and he shall visit and measure the site and file a report to the

Investigating Officer. Time to exercise such steps by the Intervener is eight weeks, till such time no coercive steps shall be taken against the Petitioners.

11.Post the matter after eight weeks i.e., 27.11.2023."

3.Thereafter, the matter had come up before this Court and a further counter had been filed by the respondent, wherein, it had asserted that the measurement of the land area as given by the Engineer, Raghuraman and extracted in the order of the learned Single Judge was correct. It had also been stated that the 1st accused was served with notice under Section 41A Cr.P.C., but that he had neither appeared nor co-operated during the course of investigation. He had also not produced any documents for verification. He had then absconded from his residential address. It had further been stated that he had availed housing loan by producing fake land documents and false valuation reports. He had failed to repay the loan. It had also been stated that there was sharing and diversion of funds of the loan proceeds from the 2nd accused. It had been stated that out of Rs.44.48/- Lakhs, Rs.9/- Lakhs was transferred to the bank account of A3, who was the mediator for furnishing the housing loan. Later A3 had transferred Rs.4.69/- Lakhs to the account of

1st accused. It had been stated that A3 had been remanded to custody on 21.09.2023.

4.With respect to the allegation relating to the role of bank officials, it had been stated that investigation will have to be done in that regard. Strong objections had been raised for grant of any relief.

5.A careful perusal of the records show that the accused had not only inflated the value of the land but the measurement of the land itself. That is beyond comprehension. Land is immovable in nature. The area is always fixed. It cannot vary. But the accused had submitted substantially larger extent of area and had obtained higher loan amount than what they were actually entitled to. They later divided the loan amount among themselves. It is the specific case of the respondent that the defacto complainant bank had suffered loss to a sum of Rs.51.82/- lakhs including interest as on 03.06.2023.

6.In view of these facts, since further investigation will have to be done and more specifically since the role of the bank officials will also have to be determined, I am not inclined to grant relief to any of the petitioners. Accordingly, these Criminal Original Petitions stand dismissed.

.02.2024

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Index: Yes / No
Neutral Citation: Yes / No
Speaking order : Yes / No

To

1.The Inspector of Police,
Bank Fraud Investigation, Team-XII,
Central Crime Branch – II,
Vepery, Chennai – 600 007.

2.The Judicial Magistrate – I, Alandur

3.The Public Prosecutor,
High Court of Madras.

C.V.KARTHIKEYAN, J.

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