

CRL.O.P.Nos.6248 & 6260 of 2015

S.VAIDYANATHAN,J.

Apprehending arrest at the hands of the respondent police for the alleged offences punishable under Sections 120(b), 406 and 420 IPC in Crime No.08 of 2016 on the file of the respondent police, the petitioners have come forward with this petition seeking anticipatory bail.

2. Heard the learned counsel for the petitioners, the learned counsel for the intervenor and the Government Advocate (Crl. Side) appearing for the respondent police.

3. The petitioners in Crl.O.P.No.6248 of 2016 are arrayed as A1 to A3 and the petitioner in Crl.O.P.No.6260 of 2016 is arrayed as A6. The case of the prosecution is that first petitioner in Crl.O.P.No.6248 of 2016/A1, who is the proprietor of M/s.Sri Arul Murugan Tex, Erode, the second petitioner/A2, who is the proprietrix of M/s.Sri Charan Tex and the third petitioner/A3, who is the proprietrix of M/s.Arul Murugan Fabrix, have jointly availed a loan of Rs.1,37,00,000/- from the defacto complainant's Bank, Erode Branch for purchase of power looms and other textile machineries and materials. The articles which were purchased out of the loan amount were hypothecated with the bank. A1 to A3 without discharging the loan amount together with interest, have sold forty hypothecated machineries to the petitioner in Crl.O.P.No.6260 of 2016/A6 without the knowledge and consent of the complainant's bank. Thus the petitioners have defrauded the bank and hence, the complaint.

4. Learned counsel for the petitioners in Crl.O.P.No.6248 of 2016 submitted that the first petitioner is taking care of the business and that since the first petitioner has suffered accident in the month of April 2015, he was not able to look after the business and he incurred heavy loss and that he availed loan in the year 2011 and till January 2016, he was paying the dues without any default and hence, there is no intention on the part of the petitioners to defraud the bank. He further submitted that the petitioners are ready to abide by any condition imposed by this Court and that they may be granted the relief of anticipatory bail.

5. Learned counsel for the petitioner in Crl.O.P.No.6260 of 2016 submitted that the petitioner is a yarn broker and to settle the outstanding dues to the petitioner, the first accused in this case handed over the looms to the petitioner and that he is not aware of the fact of hypothecation of the said machineries with the bank. He further submitted that A1 to A3 owe him a sum of Rs.50,00,000/- and that as A1 to A3 have not paid the amount due to him, he was not able to pay money to his customers.

6. Learned counsel for the intervenor submitted that A1 to A3 have availed a loan of Rs.1,37,00,000/- from the defacto complainant bank and before discharging the loan amount, sold the hypothecated machineries to A6 and some others, without the knowledge of the bank. The accused have not availed the loan by mortgaging their immovable properties. The machineries purchased by availing the loan amount have only been hypothecated. Hence, if anticipatory bail is granted to the petitioners, it will be very difficult to recover the amount from the petitioners and prayed for dismissal of these petitions.

7. Learned Government Advocate (Crl. Side) submitted that huge amount has to be recovered from the petitioners and the investigation is in the preliminary stage and if the petitioners are let out on anticipatory bail, they will abscond and tamper with evidence and will not co-operate with the investigation and hence, vehemently opposed for grant of anticipatory bail to the petitioner.

8. In so far as Crl.O.P.No.6248 of 2016 is concerned, it is submitted that after availing the loan of Rs.1,37,00,000/-, the machineries, purchased out of the loan amount, have been hypothicated. Even though there is no hypothecation of machineries, the fact that they have availed loan and that they have paid only a sum of Rs.27,00,000/- upto January, 2016 and that the action of the petitioners in selling the machineries without the knowledge of the bank has got to be seriously viewed. The fact that insolvency petition has also been filed by the petitioners only go to show that there is no intention on the part of the petitioners to pay the money and that they are avoiding payment of money to the bank and that as the money given to them is public money, this Court is not inclined grant anticipatory bail to the petitioners in Crl.O.P.No.6248 of 2016.

9. So far as the petitioner in Crl.O.P.No.6260 of 2016 is concerned, he has supplied raw materials to A1 to A3 and that he has purchased the machineries from A1 to A3 without the knowledge of hypothecation is the matter to be investigated by the police and that the custodial interrogation of the petitioner may not be required at this stage and hence, **this Court is inclined to grant anticipatory bail to the petitioner in Crl.O.P.No.6260 of 2016.**

10. Accordingly, the petitioner in Crl.O.P.No.6260 of 2016 is ordered to be released on bail in the event of his arrest or appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the **Chief Judicial Magistrate, Erode** subject to the following conditions:

(i) the petitioner in Crl.O.P.No.6260 of 2016 shall execute a bond for a sum of **Rs.50,000/- (Rupees fifty 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 Magistrate concerned;

(ii) the petitioner in Crl.O.P.No.6260 of 2016 shall report before the respondent police daily at **10.30 a.m.** until further orders.

(iii) the petitioner in Crl.O.P.No.6260 of 2016 shall not tamper with evidence or witness either during investigation or trial;

(iv) the petitioner shall not abscond either during investigation or trial.

[v] on breach of any of the aforesaid conditions, the Magistrate/Trial Court is entitled to take appropriate action against the petitioner in Crl.O.P.No.6260 of 2016 in accordance with law as if the conditions have been imposed and the petitioner released on bail by the 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]**.

11. So far as Crl.O.P.No.6248 of 2016 is concerned, the petition is dismissed.

12.08.2016

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