BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Wednesday, the Second day of September Two Thousand Fifteen
PRESENT
The Hon`ble Mr Justice K.KALYANASUNDARAM
CRL OP(MD) No.12920 of 2015

K.RAMASUBRAMANIAN ... PETITIONER / ACCUSED
Vs
THE INSPECTOR OF POLICE
CENTRAL CRIME BRANCH, MADURAI CITY ... RESPONDENT / COMPLAINANT
K.JEEVA ... PETITIONER/INTERVENOR

For Petitioner : M/S.N.DILIP KUMAR Advocate
For Respondent : Mrs.S.Prabha, Govt. Advocate (Crl. Side)
For Intervenor : Mr.B.Rooban,

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner, who is arrayed as A2 apprehends arrest at the hands of the respondent police for the alleged offences punishable under sections 120(B), 420 and 468 of IPC, in Crime No.57 of 2015 on the file of the respondent police and hence, seeks anticipatory bail.

2.According to the de-facto complainant, the accused represented that they are going to sell the company namely Kirthick chemicals for Rs.1.70 Crores and on 26.03.2012, the de-facto complainant has entered into an agreement to purchase the company for a total sale consideration of Rs.1.70 Crores and paid Rs.73 Lakhs towards advance and the accused have agreed to give possession to the de-facto complainant, but they were delaying to hand over the possession to the de-facto complainant and thereafter, the de-facto complainant had invested Rs.62 Lakhs to run the company and thereafter on 07.01.2013, the accused have agreed to pay Rs.85 Lakhs on or before 31.03.2013 and in the meantime, they also agreed to execute the Power of Attorney in favour of the de-facto complainant as security and A2 paid only Rs.3.50 Lakhs on 05.08.2014 and the balance was not paid and the cheque issued for exchange of the liability was also dishonoured and later, the de-facto complainant came to know that the accused had already made encumbrance in respect of the same property.

3.The learned counsel for the petitioner submitted that the dispute between the accused and the de-facto complainant is purely civil in nature and if there is any violation of the agreement, the de-facto complainant has to approach only the civil forum; that the accused are disputing their liability and for the dishonour of the cheque, the de-facto complainant had already filed a private complaint under section 138 of the Negotiable Instruments Act in C.C.No.96 of 2015 and the present case was registered, based on the direction issued by the Judicial Magistrate under section 156(3) of Cr.P.C.

4.It is further contended by the learned counsel for the petitioner that the occurrence said to have taken place on 26.03.2012, but the complaint was lodged only on 13.06.2015 without giving proper explanation for the delay and it is further submitted that the accused had already filed a suit in O.S.No.80 of 2013 against the de-facto complainant before the Principal District Munsif Court, Srivilliputhur and the earlier complaint given to the CCB, Madurai was enquired into and closed as 'Mistake of Fact' and the present complaint was given suppressing the material facts.

5.Per contra, Mr.B.Rooban, learned counsel appearing for the intervenor submitted that there were four agreements entered into between the accused and the de-facto complainant and the last agreement, dated 07.01.2013 annulled the earlier three agreements and as per the agreement, dated 07.01.2013, the accused have agreed to pay Rs.85 Lakhs to the de-facto complainant on or before 31.03.2013.

6.The learned counsel further submitted that the accused suppressing the mortgaged of the property of the company with the Bank by depositing the title deeds, agreed to give Power of Attorney in favour of the de-facto complainant, which shows their criminal intention to cheat the de-facto complainant.

7.It is further submitted that in the plaint O.S.No.80 of 2013, the accused have admitted the execution of the agreement, dated 07.01.2013, however, they are disputing the same only in the anticipatory bail petition and that based on the agreement, dated:26.03.2012, the accused have received Rs.85 lakhs and even after a lapse of three years, they are not repaying the amount and when the execution of the agreement and the quantum are not in dispute, the accused cannot plead that the de-facto complainant has to approach the civil court for his remedy and that in the instant case, ingredients for the offences are made out. Hence, the petitioner is not entitled for any indulgence of this court.

8.The learned Government Advocate (Criminal side) appearing for the respondent submitted that in the year 2012, the accused have received Rs.70 Lakhs and though they agreed to repay the same on or before 31.03.2013 as per the agreement, dated 07.01.2013, but they did not keep up their words and based on the false representation, the de-facto complainant parted with huge amounts and the accused caused wrongful loss to the de-facto complainant and therefore, the petitioner is not entitled for anticipatory bail.

9.Considering the gravity of the offence, this court is of the opinion that the petitioner is not entitled for anticipatory bail. Hence, this petition is dismissed.

sd/-
02/09/2015

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)

TO

1 THE INSPECTOR OF POLICE
CENTRAL CRIME BRANCH, MADURAI CITY

2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

3 THE PRINCIPAL DISTRICT MUNSIF COURT, SRIVILLIPUTHUR

+1. CC to M/S.N.DILIP KUMAR Advocate SR.No.51101

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ORDER
IN
CRL OP(MD) No.12920 of 2015
Date :02/09/2015