BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Twenty Fifth day of August Two Thousand Fifteen

PRESENT

THE HON`BLE MR JUSTICE K.KALYANASUNDARAM

CRL OP(MD) No.15063 AND 4268 of 2015

1 K.SELVAM
2 THANGAPANDI ... PETITIONER/ ACCUSED NO.3 AND 4 IN CRL.O.P.(MD)NO.15063

1 ANWAR SADIQ
2 M.H.UBAIDULLAH ... PETITIONERS/ACCUSED 5&6 IN CRL.O.P(MD)NO.4268

Vs

STATE REP BY
THE INSPECTOR OF POLICE,
SATTUR POLICE STATION,
VIRUDHUNAGAR DISTRICT.
(IN CR NO.168 OF 2015) ... RESPONDENT/ COMPLAINANT IN BOTH CRL.O.P(MD)NOS.15063 & 4268

For Petitioner : M/S.C.M.ARUMUGAM Advocate

For Respondent : MS.S.PRABHA, Govt. Advocate (Crl. Side)

For Intervenor : Mr.N.DILIP KUMAR, Advocate

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

ORDER : The Court Made the following order :-

The petitioners, who are arrayed as A3 to A6 apprehend arrest at the hands of the respondent police for the alleged offences punishable under sections 408, 415, 418, 420, 424, 465, 468, 474 and 477(A) of IPC, in Crime No.168 of 2015 on the file of the respondent police and hence, seek anticipatory bail.

2.According to the de-facto complainant, he is one of the partners in Kasi Jothi Company and they are involving in whole sale business of selling Urad Dhall and Coriander seeds. A1 is an employee of the firm and he was collecting orders from various places and after despatch, he has to collect the bill amount. A2 is the wife of A1 and A3 and A4, who are the father and son were engaging transportation of the goods from Sattur to various places. A1 to A4 prepared fake bills and diverted the goods to A5 and A6, thereby misappropriated and caused wrongful loss to the de-facto complainant to the tune of Rs.57,00,000/-.

3.The learned counsel appearing for the petitioners/A3 and A4 submitted that the petitioners are innocent persons and they have been falsely implicated in this case. The learned counsel further submitted that the bills were prepared by A1 and A2 and there were entrusted to A3 and A4 to deliver the goods and as per the bills prepared by A1, who was working as Manager in the de-facto complainant's firm, A3 and A4 have delivered the goods. It is further submitted that there is absolutely no allegation that A3 and A4 have collected money from the purchasers, nor the goods were not delivered to the distinction as per the bills.

4.The learned counsel for the petitioners/ A5 and A6 submitted that A5 and A6 are having business transaction with the de-facto complainant and their annual turn over is Rs.12 to 15 crores and as per the accounts maintained by them, they have made excess payment to the de-facto complainant. It is further submitted that they are nothing to do with the allegations made against A1 to A4. The learned counsel for the petitioners/ A5 and A6 has filed two typed set of papers containing the transactions between the petitioners/A5 and A6 and the de-facto complainant and submitted that the the petitioners/A5 and A6 have made excess payment.

5.Per contra, Mr.N.Dilip Kumar, learned counsel appearing for the intervenor opposed granting of anticipatory bail to the petitioners contending that only recently the Manager of the Kannan Departmental Stores, Coimbatore visited the petitioners shop at Sattur and made trade enquiries. The purchasers were asked that they are not purchased the goods and only thereafter, they have verified the records and found out that the accused have entered into a criminal conspiracy and by creating fake documents, misappropriated amount to the tune of Rs.57,00,000/-. However, learned counsel appearing for the de-facto complainant submitted that the accounts produced by the accused are not proper and the goods delivered to them were not properly mentioned in the accounts and as per the account of the de-facto complainant, the accused are liable to pay huge amount.

6.The learned counsel for the intervenor further submitted that A3 and A4 were engaged by A1 and they are instrumental in committing the fraud and they are the beneficiaries of the amount swindled from the de-facto complainant. It is further submitted that the police have already recovered the material documents from the place of A5 and A6 and therefore, they are not entitled for anticipatory bail.

7.The respondent has filed detailed counter opposing grant of anticipatory bail to the accused.

8.The learned Government Advocate (Criminal side) submitted that A3 and A4 are the transporters of the goods of the de-facto complainant and they have not delivered the goods to the specific destination mentioned in the bill and by diverting the goods, they have misappropriated huge amount and the witnesses namely, Shanmugavel, the Assistant Purchase Manager of Kannan Departmental Stores, Arputharaj, Proprietor of Annai Super Market, Mr.Selva Kumar, Proprietor of Nanayam Super Market and Mr.Santha Moorthy, Gokul Super Market have given statements stating that they have not placed orders, however, bills were prepared in their names and goods were diverted by the accused. It is further submitted that the respondent has recovered the despatch cover sent from Kasi Joth Company and Kannan Departmental Stores. The originally bills contain signature of Gajendran, who was a partner of the firm, but the fabricated bills bear the signature of the accused.

9.Both the learned counsel appearing for A5 and A6 and the de-facto complainant have filed typed sets. This court heard the arguments and perused the records.

10.Considering the serious allegations made against A3 and A4, this court is of the view that they are not entitled for anticipatory bail and accordingly, their anticipatory bail petition filed in Crl.O.P(MD) No.15063 of 2015 is dismissed.

11.Admittedly, even after lodging this complaint, A5 and A6 made payments to the de-facto complainant. Considering the business transaction of A5 and A6 with the de-facto complainant, this court is of the view that they are entitled for anticipatory bail. Hence, Crl.O.P(MD) No.4268 of 2015 filed by A5 and A6 is allowed subject to certain conditions.

12.Accordingly, the petitioners in Crl.O.P(MD)No.4268 of 2015 are ordered to be released on bail in the event of arrest or on their appearance before the learned Judicial Magistrate No.II, Sattur and on each of them executing 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 learned Magistrate concerned and on further condition that the petitioners shall appear before the respondent police daily at 10.30 a.m until further orders. The petitioners shall comply with the condition stipulated under Section 438 Cr.P.C. Scrupulously.

13.The petitioners shall appear before the concerned Magistrate within a period of 15 days from the date on which the order copy made ready, failing which, the petition for anticipatory bail stands dismissed.

sd/-
25/08/2015

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO
1 THE JUDICIAL MAGISTRATE NO.II,SATTUR.
2 DO THRO THE CHIEF JUDICIAL MAGISTRATE, VIRUDHUNAGAR
3 STATE REP BY INSPECTOR OF SATTUR POLICE STATION, VIRUDHUNAGAR DISTRICT.
4 THE ADDITIONAL PUBLIC PROSECUTOR, MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.C.M.ARUMUGAM Advocate SR.No.49126 in Crl.O.P(MD)No.15063
+1. CC to M/S.N.DILIP KUMAR Advocate SR.No.49041 in Crl.O.P(MD)No.15063
+1. CC to M/S.N.DILIP KUMAR Advocate SR.No.49042 in crl.O.P(MD)No.4268
+1. CC to M/S.S.MARIMUTHU Advocate SR.No.48916 in Crl.O.P(MD)No.4268

ORDER
IN
CRL OP(MD) No.15063&4268of 2015
Date :25/08/2015

NS/SKS-RR/SAR I/07.09.2015 : 3P/9C