



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

Wednesday, the Eighteenth day of March Two Thousand Fifteen

PRESENT

THE HON`BLE MR JUSTICE P.N.PRAKASH

CRL OP(MD) No.6320 of 2014

1 RAVICHANDRAN
2 S.VASUGI RAVICHANDRAN
3 YOGARAJ

... PETITIONERS / ACCUSED 1-3

Vs

THE DEPUTY SUPERINTENDENT OF
POLICE, DISTRICT CRIME BRANCH,
TUTICORIN DISTRICT.

... RESPONDENT / COMPLAINANT

For Petitioner : M/S.VEERA KATHIRAVAN Advocate
For Respondent : MR.A.P.BALASUBRAMANIAN Govt. Advocate (Crl. Side)
For Intervenor : MR.T.LAJAPATHIROY Advocate

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

ORDER : The Court Made the following order :-

The petitioners, who apprehend arrest at the hands of the respondent police for the alleged offences punishable under Sections 406 and 420 IPC in Crime No.15 of 2014, seek anticipatory bail.

2. Heard the learned counsel for the petitioners, the learned counsel for the Intervenor and the learned Government Advocate (Crl.Side) appearing for the State.

3. On 10.02.2015, this Court passed the following detailed order:

"It is seen that the case in Crime No.15 of 2014 was registered on 22.03.2014 pursuant to the order passed by the learned Judicial Magistrate No.I, Tuticorin under Section 156(3) Cr.P.C. for an offence under Section 420 I.P.C. While the investigation was pending, the de-facto complainant approached this Court in Crl.O.P.(MD).No.9863 of 2014 for a direction to the respondent police to complete the investigation and file a final report. This Court, on 06.06.2014, in Crl.O.P.(MD).No.9863 of 2014, passed the following order:

"In view of the submission made by the learned counsel for the petitioner and the learned Government Advocate (Crl.side), the Criminal Original Petition is closed with a direction to the respondent police to file a final report within a period of three months from the date of receipt of a copy of this order."

<https://hcservices.ecourts.gov.in/hcservices/>

2. In view of the order passed by this Court to complete the investigation and file a final report within three months,

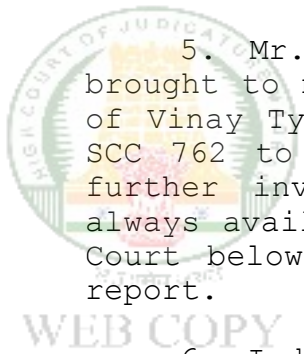


investigation was taken over and a closure report was filed by the Deputy Superintendent of Police, District Crime Branch, Tuticorin before the learned Judicial Magistrate No.I, Tuticorin on 04.10.2014. The Deputy Superintendent of Police conducted the investigation and came to the conclusion that there is no case made out against the accused and therefore, he preferred a closure report. He served RC Notice No.22 of 2014 to the de-facto complainant on 22.11.2014. After the order passed by this Court in Crl.O.P.(MD).No.9863 of 2014 dated 06.06.2014, the de-facto complainant has filed a petition on 09.06.2014 before the learned Judicial Magistrate No.I, Tuticorin in which he has made allegations against the Investigating Officer and has asked for further investigation under Section 173(8) Cr.P.C. It must be noted that as on 19.06.2014, the police had not even completed the investigation and therefore, there was no question of further investigation under Section 173(8) of Cr.P.C. Strangely this petition has been entertained by the learned Judicial Magistrate No.I, Tuticorin and on 24.06.2014 in Crl.M.P.No.3375 of 2014, the learned Judicial Magistrate has passed the following order:

"Hence, the course both the petitioners strong allegations has been leveled against the Investigating Officer. Hence, the Investigating Officer is directed not to file final report till the disposal of Crl.M.P.No.3375 of 2014."

3. This Court is surprised to note as to how the learned Judicial Magistrate could usurp the power to stop the police from filing a final report which power even the High Court does not have.

4. Be that as it may, the Deputy Superintendent of Police completed the investigation and came to the opinion that there is no case made out and had prepared a closure report. Before filing the closure report, the Deputy Superintendent Police issued RC notice to the de-facto complainant and the same was served on the de-facto complainant on 22.11.2014. Since then the Deputy Superintendent of Police is struggling to file a closure report before the learned Judicial Magistrate, since the learned Judicial Magistrate is not receiving the closure report in view of the earlier order passed by her. Even before the closure report has been filed, the de-facto complainant is assailing the same by preferring a protest petition. While so, Crl.M.P.No.3375 of 2014 has been disposed by the learned Judicial Magistrate No.I, Tuticorin, on 02.02.2015 in which she has stated that the investigation done by the Deputy Superintendent of Police is illegal, because this Court had directed only the Inspector of Police to conduct the investigation in this case and therefore, she has rejected the report filed by the Deputy Superintendent of Police. The Deputy Superintendent of Police has given an explanation to the Magistrate that the Inspector was deputed for election duty. It is a Constitutional obligation on the part of every Government servant to place their services at the disposal for the Election Commission of India during election time. This explanation has been rejected by the Magistrate by stating that the reason given by the Deputy Superintendent of Police is not valid. Section 36 of Cr.P.C. empowers superior police officers with the power of a station house officer.



5. Mr.Lajapathi Roy, learned counsel for the defacto complainant brought to my notice a judgment of the Hon'ble Supreme Court in the case of Vinay Tyagi vs. Irshad Ali @ Deepak and others, reported in (2013) 5 SCC 762 to drive home the point that the power of the Court to order further investigation, fresh investigation or denovo investigation is always available and that this Court in a given case can even direct the Court below to ignore the intitial report and proceed with the further report.

6. I have no quarrel with the proposition laid down in the said judgment, because the Hon'ble Supreme Court has clearly stated that the Superior Court has such wide power, which it could exercise in the interest of justice sparingly under Section 482 Cr.P.C. or Article 226 of the Constitution of India.

7. Mr.Lajapathi Roy, learned counsel also brought to my notice the crux of the transaction between the parties. It appears that Bee Yem Gee Yem Impex, is a company belonging to the defacto complainant and that it had paid Rs.1,65,00,000/- to Surya Balaji Steels Ltd., a company run by the accused herein for purchase of ingots and it is alleged by the defacto complainant that Surya Balaji Steels Limited did not supply ingots and when the money was demanded, Surya Balaji Steels Limited has taken a specious plea that the money was returned to Royal Marketing, Tuticorin and SMT Traders, Tuticorin allegedly belonging to the defacto complainant. However, Mr.Lajapathi Roy, learned counsel submitted that Royal Marketing, Tuticorin and SMT Traders, Tuticorin had nothing to do with the defacto complainant and they are not involved in the said transation.

8. Be that as it my, this Court finds that there has been business transaction between the petitioners and the defacto complainant, which are borne out by records. Under such circumstances, this Court is of the view that this is a fit case to grant anticipatory bail to these petitioners. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate No.I, Tuticorin, on condition that each of the petitioner shall execute 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 respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

[a] the petitioners shall report before the respondent police daily at 10:30 a.m. for a period of two weeks and thereafter as and when required for interrogation;

[b] the petitioners shall not tamper with the evidence or witness either during investigation or trial.

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

[d] 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 on 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].



9. It is made clear that whatever observed shall not in any way prejudice the case of either parties and is limited for disposal of this petition only.

sd/-
18/03/2015

WEB COPY / TRUE COPY /

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

TO

- 1 THE JUDICIAL MAGISTRATE NO.I
TUTICORIN
 - 2 -DO- THOR THE CHIEF JUDICIAL MAGISTRATE
TUTICORIN DISTRICT
 - 3 THE DEPUTY SUPERINTENDENT OF
POLICE, DISTRICT CRIME BRANCH,
TUTICORIN DISTRICT.
 - 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. CC to M/S.VEERA KATHIRAVAN Advocate SR.No.12995

Sm:23.03.2015:4P/6C:

ORDER
IN
CRL OP(MD) No.6320 of 2014
Date :18/03/2015