



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

Tuesday, the Ninth day of August Two Thousand Sixteen

PRESENT

The Hon`ble Ms.Justice V.M.VELUMANI

CRL OP(MD) No.12483 of 2016

P.SARAVANAN,

..PETITIONER/ACCUSED No.5

Vs.

STATE REP.BY

THE INSPECTOR OF POLICE,

CENTRAL CRIME BRANCH, MADURAI,

MADURAI DISTRICT.

(CRIME NO.55/2015)

..RESPONDENT/COMPLAINANT

For Petitioner : M/S.B.KUMAR, Senior Counsel for

Mr.S.KAMESWARAN Advocate

For Respondent : Mr.K.CHELLAPANDIAN, Additional Advocate General for

Mr.P.KANNITHEVAN, Government Advocate (Crl.Side)

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

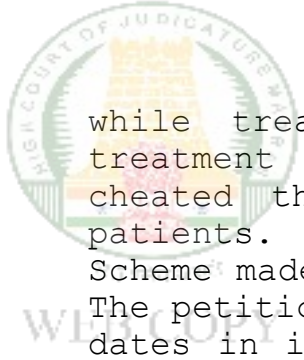
ORDER : The Court Made the following order :-

Reserved on	Pronounced on
25.07.2016	09.08.2016

V.M.VELUMANI, J.

The petitioner, who is arrayed as Accused No.5, apprehends arrest at the hands of the respondent police for the alleged offences punishable under Sections 336, 418, 420 and 380 read with Section 120(b) IPC and later on altered into Sections 201, 409, 420, 468, 120(b), 109 and 328 IPC and Sections 33(eea) and 27 of Drugs and Cosmetics Act, 1940, in Crime No.55 of 2015, on the file of the respondent police and hence, seeks anticipatory bail.

2. The case of the prosecution is that the petitioner is the Managing Director of Saravana Multi Speciality Hospital, Madurai. The said Hospital is authorized to treat the patients for heart ailments and also to treat the patients covered under "Tamil Nadu Government Comprehensive Health Insurance Scheme". As per the said scheme, poor patients given benefit of treatment in the notified list of Hospitals and the Government would pay such Hospitals, the charges for treatment as per the Scheme. Saravana Multi Speciality Hospital is one of such notified Hospitals. While treating the patients to remove the blocks in blood vessels, the petitioner used expired cardiac Stents after expanding the blood vessel and removing the same. The petitioner in collusion with A1 to A3, who were the dealers in supply of Stents, purchased the Stents after its expiry date, manipulated the expiry dates in invoices and used the same



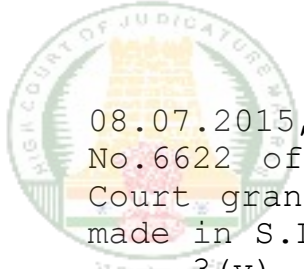
while treating the poor patients and claimed charges for the treatment from the Government, thereby, the petitioner not only cheated the Government, but also endangered the lives of poor patients. The fraud came to light when the Vidal Agency for Health Scheme made a surprise check in Saravana Multi Speciality Hospital. The petitioner in collusion with A1 to A3 had manipulated the expiry dates in invoices by instructing his employees thereby cheated the Government and also endangered the lives of poor patients by implanting expired Stents. On complaint, a case has been registered for the offences stated above.

3(i). The case of the petitioner is that he is the Managing Director of Saravana Multi Speciality Hospital, Madurai. He has been rendering his best services and cured many patients of their diseases at a low cost. In view of the services rendered by the petitioner, the Hospital was nominated as one of the scheduled hospitals under "Tamil Nadu Government Comprehensive Health Insurance Scheme". The Hospital has treated many patients for heart ailments and performed successful Angioplasty by implanting Stents and cured many patients. The Hospital used to purchase the Stents from Thirumala Traders run by A1 and his two sons, A2 and A3. They are the stockist of Medtronics Private Limited, who is the manufacturers of Stents. A1 to A3 by bribing A7 and A8, who are employees of the petitioner Hospital, supplied expired Stents by manipulating the delivery challan and invoices.

3(ii). On 14.05.2015, when Cath-lab of the Hospital was inspected by Vidal Agency, A4/Raja, employee of Thirumala Traders entered into the Hospital and stealthily removed 30 expired Stents. In this regard, the petitioner on 25.05.2015 made a complaint to the Inspector of Medicines, Madurai and on 26.05.2015 made a complaint to the Deputy Director of Drugs Control, Madurai and on 27.05.2015 to the respondent police. The respondent police registered a case on 05.06.2015 in Crime No.55 of 2015 for the offences 336, 418, 420 and 380 read with Section 120(b) IPC. Subsequently, the respondent police implicated the petitioner, altered the charges under Sections 201, 409, 420, 468, 120(b), 109 and 328 IPC and Sections 33(eea) and 27 of Drugs and Cosmetics Act, 1940 and charge sheet has been filed before the learned Judicial Magistrate, Madurai.

3(iii). The respondent police registered the complaint lodged by the petitioner only after the order of this Court made in CrI.O.P.(MD)No.9615 of 2015. A1 to A4 filed CrI.M.P.No.4048 of 2015 before the Sessions Court (FAC), Madurai. The petitioner filed CrI.M.P.No.4097 of 2015 for intervening in the petition filed by A1 to A4. The said petitions were dismissed on 15.06.2015.

3(iv). Subsequently, A1 to A3 filed CrI.O.P.(MD)No.11119 of 2015 for anticipatory bail before this Court. The petitioner also filed M.P.(MD)No.1 of 2015, for intervening. This Court, by order dated 03.07.2015, granted anticipatory bail to A2 and A3 and dismissed the petition in respect of A1. A4 filed CrI.O.P.(MD) No.11972 of 2015 for anticipatory bail. The petitioner also filed intervening petition in that petition. This Court, by order dated



08.07.2015, granted anticipatory bail to A4. A1 filed S.L.P.(Crl.) No.6622 of 2015 before the Hon'ble Apex Court. The Hon'ble Apex Court granted anticipatory bail to A1, by order dated 14.08.2015, made in S.L.P.(Crl.)No.6622 of 2015.

3(v). Thereafter, the respondent police implicated the petitioner as an accused and altered charges under Sections 201, 409, 420, 468, 120(b), 109 and 328 IPC and Sections 33(eea) and 27 of Drugs and Cosmetics Act, 1940 and charge sheet has been filed before the learned Judicial Magistrate No.I, Madurai.

3(vi). The petitioner/A5 and one Dr.R.A.Janarthanan/A6 filed Crl.O.P.(MD)No.20749 of 2015 and S.Manikandan/A7, Revathi/A9 and Jothi/A10 filed Crl.O.P.(MD)No.20751 of 2015 for anticipatory bail. In the said original petitions, the respondent police misrepresented that the learned Judicial Magistrate No.I, Madurai, issued summons to the accused persons to appear before the Trial Court and the learned counsel for the petitioner submitted that the petitioner and other accused persons are ready to appear before the Trial Court. In view of the above submission, this Court, by order dated 30.10.2015, disposed of Crl.O.P.(MD)Nos.20749 and 20751 of 2015 filed by the petitioner and other accused persons for anticipatory bail. However, liberty was given to the petitioner and other accused persons to approach the appropriate forum for necessary relief. In fact, no summon was issued to the petitioner and it was recorded that summons were served and non-bailable warrant had been issued.

3(vii). The authorities under Drugs and Cosmetics Act investigated the issue and filed a report before the learned Judicial Magistrate No.II, Madurai, wherein, the petitioner is not arrayed as accused. Subsequently, the petitioner filed S.L.P.(Crl.) No.2452 of 2016 and the same was dismissed as withdrawn on 18.07.2016.

3(viii). The learned Senior Counsel appearing for the petitioner submitted that the petitioner is an innocent person and he has not committed any offence as alleged by the prosecution. The petitioner is a heart patient and he underwent heart surgery. The respondent police completed the investigation and filed charge sheet in C.C.No.17 of 2015 and it has been converted as P.R.C.No.2 of 2016 before the Judicial Magistrate Court No.I, Madurai. The other accused persons are granted anticipatory bail. The petitioner sought for transfer of investigation to CBCID and therefore, the respondent police has falsely implicated the petitioner as accused.

4. The respondent police filed a counter affidavit. The learned Additional Advocate General appearing for the respondent submitted that,

(1) the earlier anticipatory bail petition in Crl.O.P. (MD)No.2432 of 2016 filed by the petitioner for anticipatory bail was dismissed by this Court on 22.03.2016. Further, on 18.07.2016 the petitioner withdrew S.L.P.(Crl.)No.2452 of 2016 in the Hon'ble Apex Court filed against the order dated 22.03.2016, when the Hon'ble Apex Court was not inclined to



grant anticipatory bail and there is no change of circumstances for entertaining this anticipatory bail petition filed by the petitioner now to grant anticipatory bail to him;

(2) the final report was filed before the learned Judicial Magistrate No.I, Madurai, on 05.10.2015 and the same is taken on file in C.C.No.84 of 2015. The learned Judicial Magistrate No.I, Madurai, has assigned P.R.C.No.2 of 2016 and also issued Non-Bailable Warrant against the petitioner on 04.02.2016. The fact of filing of the final report was taken note of by this Court in the earlier order dismissing CrI.O.P.(MD)No.2432 of 2016 on 22.03.2016 seeking anticipatory bail and although the petitioner is aware of the same, still he has filed this second application for anticipatory bail;

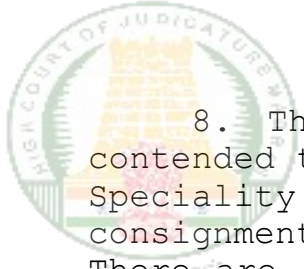
(3) the petitioner had committed a heinous crime by using expired Stents on 10 poor heart patients playing with their lives and also defrauded the Government. The fraud played by the petitioner was unearthed by the Vidal Agency during its surprise check on 14.05.2015 and 15.05.2015 respectively. Thirumala Traders supplied the expired Stents only to the petitioner's Hospital by manipulating the expiry dates in invoices. To other Hospitals, they have supplied genuine materials. The petitioner purchased the expired Stents with full knowledge from the dealer Thirumala Traders even after cancellation of dealership;

(4) after detection of fraud, A4, the employee of Thirumala Traders entered into the Hospital and stealthily removed 30 expired Stents. The petitioner even though aware of the inspection and fraud on 14.05.2015 itself, lodged a complaint only on 27.05.2015. The collusion between the petitioner and A1 to A3 could be seen clearly, when the petitioner has stated that they have compromised the matter in a quash petition filed by the accused; and

(5) the statement of evidence of doctors of Vidal Agency, the call details of the accused, the statement of Staff of the petitioner's Hospital and statement of Palaniappa Communications, the present agent of manufactures of Stents, clearly prove the guilt of the petitioner.

6. The learned Additional Advocate General also referred to Paragraph No.3 of the counter affidavit filed by the respondent police, dated 25.07.2016, wherein the details of 10 persons were given, on whom, the expired Stents were implanted.

7. I have carefully considered the rival submissions advanced on either side and perused the materials available on record.



8. The learned Senior Counsel appearing for the petitioner contended that the petitioner as Managing Director of Saravana Multi Speciality Hospital, Madurai, cannot verify each and every consignment of purchase of materials, especially, the expiry dates. There are staff members for receiving the consignment and verifying the details. This contention is without merit. The staff members of the Hospital gave evidence that the petitioner in collusion with A1 to A3 had purchased the expired Stents with an understanding to share the profits. When the Vidal Agency conducted the surprise check, A1 to A3 were informed about the same and A4/Raja, the employee of A1 to A3 came to the Hospital and stealthily removed the remaining expired Stents. Further, the petitioner called A2 and A3 to the Hospital and took a blank cheque alleging that he suffered a loss to the tune of Rs.35 lakhs. A2 / R.Amar Karthick on 03.06.2015 lodged a complaint with D1-Thallakulam Police Station for the offences punishable under Sections 147, 448, 427, 342, 294(b) and 506(i) IPC against the petitioner and 10 others. The respondent police registered the case in Crime No.683 of 2015 and enquired the staff of the Hospital. This *prima facie* shows that the petitioner knowing fully well purchased the expired Stents with a view to get more profit and defrauded the Government.

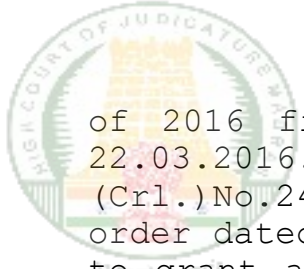
9. Further, the witnesses have given statements that the petitioner and A1 and A3 decided to use the expired Stents in the treatment of poor patients, so that the poor people will not lodge any complaint.

10. The respondent police in the counter affidavit has given the full details of 10 persons, on whom, the expired Stents were implanted. All these 10 persons are poor patients, who availed the Health Insurance Scheme of the Government.

11. The contention of the learned Senior Counsel appearing for the petitioner that all other accused are granted anticipatory bail and similarly placed petitioner also is entitled to anticipatory bail is untenable. The petitioner, who is a Medical Practitioner practicing a noble profession, the petitioner has allegedly committed the heinous crime by implanting the expired Stents and endangered the lives of poor patients.

12. The learned Senior Counsel for the petitioner's contention that the respondent police filed final report and therefore, custodial interrogation of the petitioner is not necessary was considered by this Court and rejected the same following the decision of the Hon'ble Apex Court in **CBI Vs. Rathin Dandapat and others** reported in **2016 (1) SCC 507**. The petitioner challenged the order dated 22.03.2016 made in CrI.O.P.(MD)Nos.2432 to 2434 of 2016 before the Hon'ble Apex Court and subsequently, he withdrew the same.

13. The contention of the learned Additional Advocate General that the earlier anticipatory bail petition in CrI.O.P.(MD)No.2432



of 2016 filed by the petitioner was dismissed by this Court on 22.03.2016. Further, on 18.07.2016 the petitioner withdrew S.L.P. (Crl.) No. 2452 of 2016 in the Hon'ble Apex Court filed against the order dated 22.03.2016, when the Hon'ble Apex Court was not inclined to grant anticipatory bail and there is no change of circumstances for entertaining this anticipatory bail petition filed by the petitioner now to grant anticipatory bail to him, has considerable force.

14. While considering the petition for anticipatory bail, the Court has to consider;

- (a) the nature and gravity of offence;
- (b) quantum of punishment if convicted;
- (c) prima facie case against accused; and
- (d) possibility of the accused absconding, tampering with evidence and witness.

15. In the present case, the allegation against the petitioner is that he committed a heinous crime violating the ethics of noble profession and not only defrauded the Government, but also endangered the lives of poor persons suffering from heart disease. The statement of witnesses reveal that this is a *prima facie* case. The petitioner is absconding and there is no changed circumstances from 22.03.2016, when this Court dismissed the earlier petition and on 18.07.2016 when the petitioner withdrew the petition for anticipatory bail filed by him before the Hon'ble Apex Court. Further, the petitioner is trying to make his staff responsible for the alleged offence.

16. In view of the above facts, this Court is of the view that custodial interrogation of the petitioner is necessary and the present petition for anticipatory bail is liable to be dismissed. Accordingly, the Criminal Original Petition is dismissed.

sd/-

09/08/2016

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

TO

- 1 THE ADDL. PUBLIC PROSECUTOR MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- 2 THE INSPECTOR OF POLICE, CENTRAL CRIME BRANCH, MADURAI, MADURAI DISTRICT.

+1. CC to M/S S.KAMESWARAN Advocate SR.No.42981

ORDER IN

CRL OP(MD) No.12483 of 2016

Date : 09/08/2016