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

Tuesday, the Fourteenth day of June Two Thousand Sixteen

PRESENT

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

CRL OP(MD) No.8491 AND 8474 of 2016

L. PRABHAKAR ... PETITIONER / ACCUSED No.A1 in both the petitions

Vs

State Rep.by
THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH,
TUTICORIN.
(CRIME NO. 34/2015) ... RESPONDENT / COMPLAINANT in Crl.OP.(MD).No.8491/16

(CRIME No. 36/2015) ... RESPONDENT / COMPLAINANT in Crl.OP.(MD).No.8474/16

SHADIRAM AND SONS.,
THROUGH ITS MANAGER
DESHRAJ SHARMA,
S/O.DHARAM CHAND SHARMA,
NO.19, SOUTH RAJA STREET,
TUTICORIN - 628 001. ... PETITIONER/INTERVENER/ DEFACTO COMPLAINANT in Crl.OP.(MD).No.8491/16

M/S.SRS EXPORTS PVT. LTD.,
THROUGH THEIR ASSISTANT MANAGER
M.KUTRALAM
S/O.S.MARIAPPAN
NO.19, SOUTH RAJA STREET,
TUTICORIN - 628 001. ... PETITIONER/INTERVENER/ DEFACTO COMPLAINANT in Crl.OP.(MD).No.8474/16

For Petitioner : Mr.Abudu Kumar Rajarathnam for M/S.F.DEEPAK Advocate

For Respondent : Mr.P.Kannithevan, Govt. Advocate (Crl. Side)

For Intervenor : Mr.A.D.Jegadish Chandra, Advocate

PETITION FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner/Accused No.1 was arrested and remanded to judicial custody on 05.05.2016, for the alleged offences punishable under Sections 406, 409 and 420 of I.P.C., in Crime Nos.34 and 36 of 2015 on the file of the respondent police and hence, seeks bail.

2. The case of the prosecution is that both the de-facto complainants are sister concern. The petitioner is the Managing Director of M/s.Shanmugam Traders Private Limited, Tuticorin. The said Company purchased goods from the de-facto complainants on credit basis and issued cheques for the total value of the goods purchased by them. The said Company stored the purchased goods in 13 individual names, who are the family members of the petitioner in Tamil Nadu Ware Housing Corporation, situated at Milavittan, Tuticorin, and obtained Negotiable Warehousing Receipts in the name of individuals. They pledged the goods with Industrial Development Bank of India [in short "IDBI"], Tuticorin and borrowed money. They did not pay the amounts to the de-facto complainants. The Company issued Stop Payment Letter to the Bank and when the cheques were presented by the de-facto complainants, they were returned with an endorsement "stopped payment". On complaint, cases have been registered for the offences stated above.

3. The case of the petitioner is that the entire transaction is civil in nature. The de-facto complainants are trying to convert the civil transaction into criminal case. A reading of the complaints show that no case has been made out by the de-facto complainants for any offence punishable under Sections 406, 409 and 420 of I.P.C. The petitioner Company is having transaction for more than Rs.300 Crores with the de-facto complainant from the year 1996 onwards. They purchased goods worth Rs.36,11,04,311/- and Rs.3,04,82,947/- during period of March 2015 to July 2015 and issued several post-dated cheques for the supplied goods. The goods supplied by the de-facto complainants were substandard than before and the price was also higher when compared to the current market price. The Company pledged a part of the goods and availed loan from IDBI and obtained a loan to the tune of Rs.6,45,20,000/-. The entire loan amount was paid to the de-facto complainants for the supply of goods and a sum of Rs.4,37,55,548/- is due and payable in Crime No.34 of 2015 and a sum of Rs.2,21,47,813/- is due and payable in Crime No.36 of 2015. The petitioner Company paid substantial amounts. In reply to the statutory notice issued by the de-facto complainants for dishonouring of cheque, the petitioner Company agreed to pay outstanding due in monthly instalments in order to avoid escalation of issue and filed an affidavit before this Court in a petition for anticipatory bail. The goods stored in Tamil Nadu Warehousing Corporation could not be sold due to the complaint given by the de-facto complainants. The first anticipatory bail applications in Crl.O.P.(MD)Nos.19370 and 19872 of 2015 filed by the petitioner and others were dismissed by this Court on 27.01.2016. The petitioner withdrew the second anticipatory bail applications in Crl.O.P.(MD) Nos.2408 and 2410 of 2016 filed by him, on 25.02.2016. The petitioner was arrested on 04.05.2016 and remanded to judicial custody on 05.05.2016 and is in judicial custody from that date

onwards. Police custody was given by the learned Judicial Magistrate, Tuticorin, on 11.05.2016. The bail applications in Crl.M.P.Nos.1690 and 1691 of 2016 were dismissed by the learned District and Sessions Judge, Tuticorin. The petitioner is an innocent person and he has not committed any offence as alleged by the prosecution.

4. The learned counsel for the Intervenor reiterated the averments made in the complaint and submitted that the petitioner Company borrowed monies from the Indian Overseas Bank Main Branch, Tuticorin, and pledged the goods purchased from the de-facto complainants. Subsequently, they stored the goods in Tamil Nadu Warehousing Corporation and obtained Negotiable Warehousing Receipts in the individual name of their 13 family members. Suppressing the fact that the Company already pledged the goods with Indian Overseas Bank, the family members pledged warehouse receipts with IDBI and borrowed monies. No amount was paid to the de-facto complainants and the amounts were utilised for other purposes. The family members gave a false declaration to IDBI that the goods pledged were cultivated in their farms at Tuticorin. The cheques issued by the Company to the value of the goods were returned with an endorsement "stopped payment". In reply to the notice issued, the petitioner agreed to pay the amounts due in monthly instalments, but he failed to do so. The intention of petitioner and others is only to cheat the de-facto complainants. The petitioner also filed an affidavit on 08.10.2015 admitting the liability and stated that he will make payment and failed to pay the same. The learned counsel for the Intervenor submitted that the first petitions for anticipatory bail filed by the petitioner and others were dismissed by this Court, on 27.01.2016. The second anticipatory bail petitions in Crl.O.P.(MD) Nos.2408 of 2410 of 2016 filed by the petitioner were dismissed as not pressed. The learned counsel for the Intervenor further submitted that it is not correct to state that the petitioner and the de-facto complainant having business transaction from the year 1996 onwards. The petitioner's Company was incorporated only in the year 2007 and it is not correct to state that the de-facto complainant supplied substandard goods at higher rate and the de-facto complainant agreed to reconcile the account. The learned counsel for the Intervenor also submitted that the Chief Manager of Indian Overseas Bank, Tuticorin, has given a complaint before the Superintendent of Police, Tuticorin, against the accused stating that the accused persons defrauded to the tune of Rs.16 Crores including Rs.6 Crores and purchased Dun Peas / Pulses from various parties on various dates. The Chief Manager has stated that after hypothecated the goods with the Bank, the accused have obtained loan from IDBI without informing them and by storing the goods in Tamil Nadu Warehousing Corporation. The petitioner and other accused have committed serious offences. The petitioner was remanded to judicial custody only on 05.05.2016. The petitioner attempted to interfere with investigation with the help of his Advocates and the same was brought to the notice of the learned District and Sessions Judge and the same has been recorded in the order. The petitioner siphoned off money cheated in the transaction and floated in new firm in the name of his wife with money cheated. If the petitioner is enlarged on bail, he will abscond and the amounts cheated cannot be recovered.

5. The learned Government Advocate (Criminal side) filed a status report stating that the investigation is in initial stage and the amount involved in these cases are more than Rs.5,99,38,167/- and Rs.1,87,69,976/- respectively. Only a portion of the goods worth Rs.2,72,54,000/- was identified and remaining goods are to be identified. The learned Judicial Magistrate, Tuticorin, gave police custody to the petitioner for one day i.e., on 12.05.2016. The respondent police took the petitioner to Tamil Nadu Warehousing Corporation, Milavittan, for identification of the goods. The respondent police was prevented from discharging his investigation duties by two Advocates engaged by the petitioner and the respondent police was forced to call for the Inspector of Police, Sipcot, for protection. The matter has been reported to the District Court, when the bail application was heard by the learned District and Sessions Judge. If the petitioner is enlarged on bail he will tamper with the evidence and the investigation will be hampered.

6. I have considered the rival submissions made by the learned counsel appearing for the parties.

7. I have elaborately referred to the complaint, contentions of the learned counsel for the petitioner, learned counsel for the Intervenor and the learned Government Advocate (Criminal side).

8. From the above narration of rival contentions and facts of the case, it is seen that serious allegations are made against the petitioner. The petitioner and other accused as Managing Director and Directors acted on behalf of the Company and borrowed various amounts from the Indian Overseas Bank Main Branch, Tuticorin, to the tune of Rs.16 Crores including Rs.6 Crores for purchase of pulses. The petitioner and other accused hypothecated the said goods as security with Indian Overseas Bank and suppressing this fact, the petitioner and others stored the goods purchased from the de-facto complainants in Tamil Nadu Warehousing Corporation, Milavittan, in the individual name of his family members. Again suppressing the facts, the goods are hypothecated with the Indian Overseas Bank, they borrowed money from IDBI on security for the same goods. Further, the petitioner agreed to pay the amounts due in instalments in reply notice and also filed an affidavit of undertaking before this Court in first petition for anticipatory bail filed by the petitioner and others, admitting their liability and agreed to pay the amounts. After the petitioner was arrested and remanded to judicial custody, he was given police custody for one day. When the petitioner was taken to Tamil Nadu Warehousing Corporation, Milavittan, for identification of goods, the respondent police was prevented from discharging his investigation duties by two Advocates engaged by the petitioner. The investigation is in preliminary stage and only part of the goods involved was identified and goods worth Rs.5 Crores are yet to be identified. Further, the allegation made against the petitioner is that he siphoned the amounts cheated by him to the account of his wife and started a new Company in the name of his wife. Considering these serious allegations and the complaint given by the Manager of Indian Overseas Bank, Tuticorin,

and the allegations that the Advocates prevented the respondent police on 12.05.2016 and the investigation is pending, this Court is not inclined to enlarge the petitioner on bail. Hence, these Criminal Original Petitions are dismissed.

sd/-
14/06/2016

/ TRUE COPY /

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

TO

1 THE OFFICERS INCHARGE, SUB JAIL,
SRIVAIKUNDAM, TUTICORIN DISTRICT

2 THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH,
TUTICORIN.

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

+1. CC to M/S.F.DEEPAK Advocate SR.No.30334
+1cc to Mr.A.D.Jegadish Chandra, Advocate Sr.No.30405

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ORDER
IN
CRL OP(MD) No.8491 & 8474 of 2016
Date :14/06/2016