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

Monday, the Ninth day of April Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice S.S.SUNDAR

CRL OP(MD) No.14756 of 2017
AND CRL OP(MD)NO.288 OF 2018

CRL OP(MD) No.14756 of 2017 :

M/S.GATI LIMITED REP BY SENIOR
EXECUTIVE LEGAL MANAGER,
M.SUDALAIYANDI,
AT PLOT NO.20, SURVEY NO.12.
KOTHAGUDA, KONDAPUR, HYDERABAD-500 084,
BRANCH AT 93C/84/31 DOLPHIN HOUSE RAJIV NAGAR NORTH,
4TH STREET,
TUTICORIN-628 008. ... PETITIONER

Vs

STATE REP. BY
1 THE INSPECTOR OF POLICE
(*) SIPCOT POLICE STATION, THOOTHUKUDI.
(*) AMENDED AS PER ORDER DT.28/11/2017 MADE IN
CRL.MP.(MD).No.10870/17 IN CRL.OP.(MD).No.14756/17

2 THE SUPERINTENDENT OF POLICE,
THOOTHUKUDI DISTRICT CRIME BRANCH,
THOOTHUKUDI.
... RESPONDENTS

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C praying this Court pleased to direct the respondent police to register a case on the basis of the petitioner complaint dated 01.09.2017 and to proceed to investigate the same in accordance with law.

CRL OP(MD) No.288 of 2018:

MR. T. NAGARAJAN PIRAMIAJEE
PROPRIETOR OF M/S, VEL LOGISTICS,
NO.16J/17, JP THANAM COMPLEX,
PALAYAMKOTTAI ROAD,
TURICORIN. ... PETITIONER / ACCUSED

Vs

STATE REPRESENTED BY
THE INSPECTOR OF POLICE
SIPCOT POLICE STATION,
THOOTHUKUDI, THOOTHUKUDI DISTRICT.
(CRIME NO. 364/2017) ... RESPONDENT/COMPLAINANT

PRAYER : Criminal Original Petition is filed under Section 438 of Cr.P.C praying this Court pleased to enlarge the Petitioner/Accused on Anticipatory Bail in the event of his arrest or surrender in Crime Number 364 of 2017 on the file of the Respondent Police.

ORDER : These petitions coming on for orders upon perusing the petitions and the affidavits filed in support thereof and upon hearing the arguments of M/S.J.RAVIKUMAR, Advocate for the petitioner in CRL OP(MD)NO.14756/2017 and the intervenor in CRL OP (MD)No.288 of 2018 and MR.T.LAJAPATHI ROY, Advocate for the Petitioner in CRL OP(MD)No.288/2018 and of M/S.A.ROBINSON, Government Advocate (Crl.Side) for the respondent in CRL OP(MD) No.288 of 2018 and for the 1st and 2nd Respondent in CRL OP(MD) NO.14756/2017, the court made the following order:-

Crl.O.P.(MD) No.14756 of 2017 is filed under Section 482 of Cr.P.C., to direct the respondents police to register a case on the basis of the petitioner's complaint dated 01.09.2017 and to proceed to investigate the matter in accordance with law. After hearing the parties, by order dated 28.11.2017, this Court directed the first respondent to register the complaint on or before 30.11.2017. This Court also directed respondents to report compliance.

2.It is submitted that the proposed accused is a proprietorship concern represented by its sole proprietor T.Nagarajan Piramaiajee. It is further submitted that the proposed accused is doing business as a clearing agent for importers and exporters.

3.It is the case of the petitioner that the petitioner and the proposed accused have entered into a contract on 15.06.2017. In terms of the agreement, the proposed accused has produced a bank guarantee to be enforced, in case, the proposed accused is unable to pay the money which is due to the petitioner. After the proposed accused utilising the services of the petitioner, it is stated by the petitioner that the amount due to the petitioner from the proposed accused to the tune of Rs.2.5 Crores as per two invoices had not been settled. When the petitioner wants to enforce the bank guarantee and approached the bank in connection with the terms of the agreement, which empowers them to encash the bank guarantee, the petitioner states that they found that the bank guarantee furnished by the petitioner is forged and that the proposed accused has cheated the petitioner to the tune of about Rs.2.5 crores. Hence, this Court directed the first respondent to register a complaint and to proceed further in accordance with law. Having regard to the nature of fraud and the amount involved, the matter was directed to be posted on 05.12.2017 for reporting compliance.

4.The learned counsel for the petitioner then reported that the case was registered only under Section 420 and 465 of I.P.C. instead of Section 467, 468 and 472 of I.P.C. It was thereafter, this Court adjourned the matter to alter the offences under Sections 467, 468 and 472 of I.P.C. It is only thereafter, the first respondent altered the case one under Sections 467, 468 and 472 of I.P.C. This Court also having regard to the nature of offences alleged to have been committed by the proposed accused and the conduct and attitude of the respondent police, passed an order directing the first respondent to arrest the accused. However, the first respondent could not trace down the accused for some reasons, which were not acceptable and there was no progress in the investigation.

5.In the meanwhile, the proposed accused filed an anticipatory bail application in Crl.O.P.(MD) No.288 of 2018, apprehending arrest at the hands of the police in crime No.364 of 2017 on the file of the respondent police. Therefore, the said anticipatory bail application was also posted along with Crl.O.P.(MD) No.14756 of 2017, after obtaining necessary orders from the Hon'ble Administrative Judge.

6.Though the proposed accused and the petitioner in Crl.O.P.(MD) No.288 of 2018, preferred a special leave petition before the Hon'ble Supreme Court, challenging the order of arrest, this Court is informed that the special leave petition preferred against the order of arrest was also dismissed by the Hon'ble Supreme Court.

7.The learned counsel for the petitioner pointed that the way in which the petitioner in Crl.O.P.(MD) No.14756 of 2017 was cheated would indicate that the proposed accused should be arrested and charge sheet has to be laid against him. However, the learned counsel for the proposed accused and the petitioner in Crl.O.P.(MD) No.288 of 2018 submitted that the claim has to be settled by the proposed accused, and that he wants some time to enable him to mobilise the funds.

8.Having regard to the rival submissions, this Court passed an order on 14.03.2018 and the relevant portion in paras 4 to 7 read thus:

> "4.It cannot be disputed that the whole money, which is due to the petitioner is now in the hands of accused and this Court is able to see that the application / petition filed by the accused in Crl.O.P.(MD)No.288 of 2018, cannot be considered in the light of earlier direction by this Court for arresting the accused. However, the learned Counsel appearing for the accused in this case, after understanding the situation and the

circumstances of the case, has given an undertaking that he will try to get some kind of security to protect the interest of the petitioner in this case. Though, the learned Counsel for the accused offered a sum of Rs.15,00,000/- (Rupees fifteen lakhs only), this Court suggested further to offer sufficient immovable property as security, since the amount offered is less than 5% of the amount due to the petitioner, as on date. Though the learned Counsel for the accused was hopeful in getting some security from the accused, today he expressed some difficulty. The learned Counsel for the accused, however, requested this Court to hear the matter after 19.03.2018, in view of the fact that his client has moved before the Honourable Supreme Court of India, against the order of arrest against him. However, this Court expressed that the accused's application will be favourably considered, in case the accused comes forward with an offer to the satisfaction of this Court as well as to the petitioner.

5.The first respondent has filed a status report, expressing the inability of the officer to find out the whereabouts of the accused. Even after a period of two months, the first respondent police is not able to locate the accused. The arrest of the accused in this case was only to secure at least the portion of the amount, which may be available with the accused, out of the money, which he has realized by the performance of the contract by the petitioner on behalf of the accused.

6.In the meanwhile, petitioner in Crl.O.P.(MD) No.14756 of 2017, filed an additional affidavit along with a paper book, pointing out that the accused has introduced two other proprietary concerns, by name, M/s.Vasan Logistics and M/s.NTM Pitchiah & Co. to the petitioner and defrauded a further amount of Rs.1.28 crores. Though M/s.Vasan Logistics and M/s.NTM Pitchiah & Co., were shown as proprietary concerns in the credit application form, it is stated by the learned Counsel for the petitioner that the other two proprietary concerns have also entered into similar contracts with the petitioner and as on date, they are liable to pay a sum of Rs.1.28 crores to the petitioner. It is further submitted by the learned Counsel for the petitioner that the other two proprietary concerns have also stopped payment, stating that they cannot make any payment unless the accused in this case instruct them. It is submitted by the learned Counsel for the complainant that the accused in this case has a sound financial background but has no intention to settle the dues dishonestly with ill motive. It is also suggested by him that the accused has imported minerals for his own uncle through the petitioner.

7.The learned Counsel for the petitioner has also produced before this Court, the business cards of the accused to show that the accused has shown himself as a person, recognized in association with other two concerns for all business purposes. The business visiting card proves this. Hence, it is stated that the accused and his associates have now cheated the petitioner to the tune of more than Rs.3.78 crores. It is further stated this sister concerns of the accused above mentioned are really the establishment of the accused in the name of his employees or associates who are proprietors for name sake. It is in these circumstances, the learned Counsel for the petitioner requested this Court that unless the accused is directed to furnish security in the form of fixed deposit or bank guarantee, it may not be possible for the petitioner to recover the money from the accused and his associates. The learned Counsel for the accused has made a submission that he will come before this Court by way of affidavit as to the arrangements, which he may make in settling the amount due to the petitioner. Considering the facts and circumstances of the case and in the interest of justice, this Court is inclined to pass the following order:

(a) the accused shall file an affidavit showing his unencumbered assets and liabilities apart from his stake holdings, the interest and control over the other sister concerns, namely, M/s.Vasan Logistics and M/s.NTM Pitchiah & Co., referred to in the credit application form and the security he can furnish in the form of either bank guarantee or fixed deposit;

(b) The accused then shall states the details of other securities, which can be offered by the accused with an undertaking to the petitioner and this Court to honour the statements made by him as to the enforceability of the security without any other encumbrance or hindrance;

(c) the accused may also state as to the flow of funds, and how he utilised the funds, which he has realized pursuant to the contract which he has entered into with the petitioner;

(e) he may also furnish the details of his bank accounts and the deposit, which he holds to his credit or to the credit of the company or any other establishments, where he has shares or stakes in any other forms;"

9.Pursuant to the said order, the proposed accused filed an affidavit before this Court stating that he owns an extent of 9.40 acres in S.No.125 in Thachanmozhi village near Sathankulam, Tuticorin District and the value of the said property is more than 9.40 crores. He further submitted that he offers the said property as security in the event of this Court granting anticipatory bail. The said affidavit dated 14.03.2018 filed by the proposed accused is not in tune with the direction of this Court. The proposed accused has also produced before this Court a certificate alleged to have been issued by the Zonal Deputy Tahsildar of Sathankulam dated 26.07.2017. As per the said certificate, the value of the land offered by the proposed accused is Rs.7 crores.

10.The learned counsel for the intervenor/defacto complainant submitted that the petitioner has not filed the affidavit in accordance with the direction of this Court. He further pointed out that the petitioner has also prevented others from honouring their commitment as per the agreement and as a result, the petitioner and his associates have cheated the intervenor to the tune of Rs.3.72 crores. He further pointed out that the value of the property is not as claimed by the petitioner and the certificate alleged to have been issued by the Zonal Deputy Tahsildar is neither admissible nor can be relied upon. It is further submitted that the Zonal Deputy Trahsildar is not competent to issue such certificate. Therefore, this Court, by order dated 26.03.2018 directed the learned Government Advocate (criminal side) concerned to ensure the presence of the Zonal Deputy Rahsildar, Sathankulam, who had issued the certificate dated 26.07.2017. Though the Zonal Deputy Tahsildar, Sathankulam is present before this Court today, he is not the person, who issued the said certificate dated 26.07.2017 and it is represented by the learned Government Advocate (criminal side) that the person, who issued the certificate dated 26.07.2017 is now working as a Supervisor in Excise Department in Tuticorin. The Tahsildar of Sathankulam has addressed a letter to the learned Government Advocate (criminal side) sating that the present Deputy Tahsildar has resumed office only on 03.11.2017 and the certificate was issued by one S.Malardevan, who was working as Deputy Zonal Tahsildar earlier.

11.It is further stated that it is only the Tahsildar, who is competent to issue valuation certificate as per the Revenue Official Manual. It is further stated that valuation certificate is valid only for six months and that the certificate that was produced by the petitioner is not issued by the Tahsildar and therefore, it is invalid. It is further stated by the Tahsildar that the reference number 5439-2017 found in the certificate was allotted to a Clerk in A1 Section. Therefore, the Zonal Deputy Tahsildar has illegally issued the certificate to favour the proposed accused. From the conduct of the petitioner in this case, it is seen that he is not really interested in settling the amount and that he is capable of influencing the police department as well as the revenue officials to his convenience or to his advantage. The impression he wants this Court to get is that he is untouchable as any mafia group of this country chooses to be.

12.The petitioner is a person who has successfully cheated the defacto complainant to the tune of Rs.2.5 crores by furnishing a forged bank guarantee. This fact is not seriously in dispute. The manner and modus operandi, by which the petitioner has manipulated of forged bank guarantee and how the amount was cheated is a matter for enquiry. Further the proposed accused has not disputed the facts narrated and the documents produced by the defacto complainant. Therefore, the proposed accused is not entitled to any indulgence from this Court and the petition for anticipatory bail in Crl.O.P.(MD) No.288 of 2018 is liable to be dismissed.

13.As far as the petition in Crl.O.P.(MD) No.14756 of 2017 is concerned, this Court earlier directed the Zonal Deputy Tahsildar, Sathankulam to appear before this Court on 09.04.2018. As pointed out earlier, the Zonal Deputy Tahsildar, who is present before this Court is not the one, who issued the certificate. The person, who issued the said certificate is now working as Supervisor in Excise department, Tuticorin. The person, who issued the certificate is incompetent and it is only to aid the petitioner in getting some orders from this Court, such certificate is issued. The date of the certificate is doubtful and the false reference number gives an indication that the candidate is also manipulated.

14.This Court therefore direct the District Collector, Tuticorin District to take disciplinary action as against the said S.Malardevan, who issued the certificate dated 26.07.2017. The Registry is directed to forward a copy of this order along with the copy of certificate dated 26.07.2017. The learned Government Advocate (criminal side) appearing for the respondents is directed to enclose the copy of documents furnished by both parties before this Court in relation to the certificate dated 26.07.2017 including the communication of the Tahsildar, Sathankulam addressed to the learned Government Advocate (criminal side). As observed earlier, though the case was originally registered for the offences under Sections 420 and 465 of I.P.C., it is reported that the offences were altered into serious offence viz., under Sections 467, 468 and 472 of I.P.C. However, status report filed by the first respondent before this Court is not convincing.

15.Having regard to the nature of offence and the conduct of the proposed accused, this Court direct the first respondent to file charge sheet, within a period of two months from the date of receipt of a copy of this order. The learned counsel appearing for the defacto complainant submitted that the investigation may be transferred to some other agency. It is open to the petitioner in Crl.O.P.(MD) No.14756 of 2017 to file a separate petition, if he is advised so.

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16.Accordingly, Crl.O.P.(MD) No.288 of 2018 is dismissed and Crl.O.P.(MD) No.14756 of 2017 is disposed of with the above directions.

sd/-
09/04/2018

/ TRUE COPY /

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

TO

1 THE INSPECTOR OF POLICE,
SPICOT POLICE STATION, THOOTHUKUDI DISTRICT.

2 THE SUPERINTENDENT OF POLICE
THOOTHUKUDI DISTRICT CRIME BRANCH,
THOOTHUKUDI DISTRICT.

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

+1. CC to M/S.T.LAJAPATHI ROY Advocate SR.No.4812

ORDER
IN
CRL OP(MD) No.14756 of 2017
AND CRL OP(MD)NO.288 OF 2018
Date :09/04/2018

PK/RR-CSL/VK/11.04.2018 : 8P/5C