



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

Monday, the Thirteenth day of November Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice K.KALYANASUNDARAM

CRL OP(MD) No.8279 of 2017

YESU BALAN BOAZ @
BOZA AUGUSTIN GNANAKAN

... PETITIONER/ACCUSED NO.1

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH, MADURAI,
MADURAI DISTRICT.
CRIME NO.31/2015

... RESPONDENT/COMPLAINANT

RAHUL JESSEL MITTRA

... PETITIONER/PROPOSED RESPONDENT/
DEFACTO-COMPLAINANT

For Petitioner : MR.M.AJMAL KHAN Senior Counsel for
M/S.AJMAL ASSOCIATES Advocate

For Respondent : MR.A.RAMAR Additional Public Prosecutor

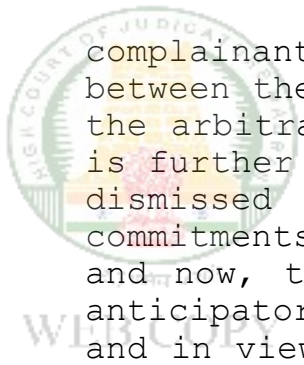
For Intervenor : MR.C.D.JOHNSON Advocate

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

ORDER : The Court Made the following order :-

Apprehending arrest at the hands of the respondent police in connection with a case in Crime No.31 of 2015 for the alleged offences punishable under sections 120(B), 294(b), 323, 406, 417, 420, 422, 423 and 506(i) IPC, the petitioner/A1 has filed this petition seeking anticipatory bail.

2.The Managing Director of Margaradshak Development Project and Consulting Private Limited lodged a complaint alleging that they are dealing with Solar Energy goods to various companies and after seeing the dealership advertisement issued by the accused company, he approached them and also paid Rs.4 Crores, but substandard goods were supplied for 2 Crores and therefore, they were returned. When the complainant visited the office of the accused company to get back his money, he was abused with filthy language and also threatened with dire consequences.



complainant is purely civil in nature and the agreement entered into between them contains arbitration clause, but instead of approaching the arbitrator, a false complaint was given against the accused. It is further contended that the earlier anticipatory bail petition was dismissed on the ground that the accused did not fulfill his commitments in honouring the cheques issued for Rs.3,35,85,279/- and now, the investigation is over and the 4th accused was granted anticipatory bail in CrI.O.P(MD)No.6210 of 2017, dated 18.05.2017 and in view of the change of circumstances, this application may be considered.

4.Per contra, Mr.C.D.Johnson, learned counsel for the de-complainant/intervener contended that the agreement referred by the Senior counsel for the petitioner, dated 26.11.2013 was already cancelled, which was also stated in the complaint. It is further submitted that the payment of Rs.2 Crores was made through Bankers on 12.12.2013 and 01.02.2014 and the accused are not disputing their liability to pay the amount of Rs.3,35,85,279/- and that the accused not only cheated the de-facto complainant in this case, but also others by adopting the same *modus operandi*.

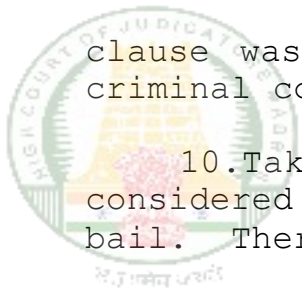
5.The learned counsel, referred the complaint given by one Smt. Thota Seetha Ram Laxshmi, a Member of Parliament, Rajya Sabha, in which, it is categorically stated that the accused have cheated the de-facto complainant in that case to the tune of Rs.1.14 Crores and the petitioner has also changed his name from Boaz Augustin to David Boaz by issuing Gazette notification and he also attempted to flee this country.

6.In reply, the learned Senior Counsel for the petitioner would submit that pursuant to the complaint given by the Member of Parliament, the petitioner was remanded to judicial custody and his entire bank account was frozen and he is not in a position to pay the amount to the de-facto complainant.

7.Heard the learned Additional Public Prosecutor for the respondent and also perused the materials available on record.

8.This court, having found the gravity of the charges levelled against the petitioner and for non-compliance of the commitment given in the Mediation Centre, by honouring the cheques issued for Rs.3.35 Crores, dismissed the earlier application and the contention that the 4th accused was granted anticipatory bail is of no avail due to the reason that the petitioner is a prime accused in this case. Further, when the petition was listed on earlier occasions, the accused have agreed to sell the immovable properties and also shown before this court, the Fixed Deposit receipts, but they were found to be false.

9.In the instant case, the accused have not denied issuance of advertisement and the receipt of Rs.4 Crores from the de-facto complainant. They, by admitting their liability to an extent of Rs.3,35,85,279/-, issued cheques before the Mediation Centre, but admittedly they have not been honoured. Merely because, arbitration



clause was incorporated in the agreement, it cannot be said, the criminal complaint is not maintainable.

10. Taking note of the above facts, this court is of the considered view that the petitioner is not entitled for anticipatory bail. Therefore, this petition is **dismissed**.

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sd/-
13/11/2017

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

TO

1 THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH,
MADURAI, MADURAI DISTRICT.

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

+1. CC to M/S.C.D.JOHNSON Advocate SR.No.34345

ORDER
IN
CRL OP(MD) No.8279 of 2017
Date :13/11/2017

MKV-PM-PN-SAR 4/28.11.2017/3P-4C