



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

Tuesday, the Twenty Eighth day of March Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice A.M.BASHEER AHAMED

CRL OP(MD) No.22172 of 2016

R.MOHANAMURALI

... PETITIONER/ACCUSED

Vs

1 THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
DINDIGUL
(IN CRIME NO.38 OF 2016)

2 BALAJI SRINIVASAN, ... RESPONDENTS/COMPLAINANTS

For Petitioner : M/S.S.ARUMUGAM Advocate

For Respondent : MR.P.KANDASAMY, Govt. Advocate (Crl. Side)
for R1

MR.K.RAJESHWARAN, Advocate for R2

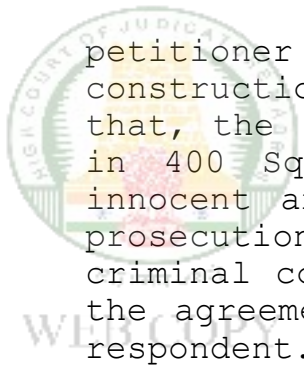
PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner, who is the sole accused, who apprehends arrest at the hands of the 1st respondent police for the alleged offence punishable under Sections 406 and 420 of IPC., on the basis of the written complaint given by the power agent of the 2nd respondent herein, in Crime No.38 of 2016, seek anticipatory bail. .

2. The learned counsel appearing for the petitioner would submit that the petitioner is running a building construction business viz., 'M/s Diamond Foundation' at Chennai and he entered into an agreement for construction with the power agent of the 2nd respondent for construction of a building in a land situated in Pannaikadu Village, Kodaikkanal Taluk, Dindigul, belonging to the 2nd respondent on 21.04.2014, for the total amount of Rs.85,13,600/-, as per terms mentioned in the agreement.

3. Adding further, he would submit that it is true that, as per the agreement, the petitioner is constructing a house and due to the various alteration instructed by the defacto complainant, the

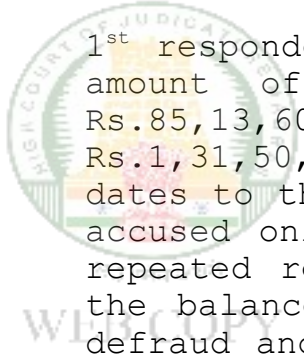


petitioner built 3620 sq.ft., but, as per the agreement, the construction of building is only for 3276 sq.ft and in addition to that, the petitioner laid road, three bore-wells and a guest house in 400 Sq.ft.,. He also submitted that the petitioner is an innocent and he has not committed any offence, as alleged by the prosecution and the complaint given is a false one by giving a criminal colour to a civil dispute by-passing arbitration clause in the agreement to achieve their ill-motive with the help of the 1st respondent. The learned counsel, in support of his contention, has relied on the decision of the Hon'ble Supreme Court in **Hridaya Ranjan Prasad Verma and Others Vs. State of Bihar and Another** reported in (2000 (4) SCC 168) and also the decision of the Principal Bench of this Court in **Suresh Babu Vs. State by The Inspector of Police Talampur Police Station, Kancheepuram District and Another** reported in (2016 (1) L.W. (Cr1.471).

4. The learned counsel appearing for the 2nd respondent / defacto complainant would submit that the petitioner after receiving the Legal Notice, dated 08.08.2016, have neither responded nor completed the construction and the present case was registered, as per the direction issued by this Court in Cr1.O.P(MD)No.18909 of 2016 on 30.09.2016 and the earlier Anticipatory Bail application in Cr1.O.P(MD)No.18528 of 2016 filed by the petitioner was referred for Mediation in which, though he agreed to settle the amount in the next hearing, he did not appear for Mediation and thereafter, the said petition was withdrawn by the petitioner's counsel on 17.11.2016 and in the meanwhile, the present complaint was registered against the petitioner and the petitioner has filed this second application seeking Anticipatory Bail.

5. Continuing further, he would submit that the claim of petitioner that he has spent on the amount received from the defacto complainant for construction is a false one and the Executive Officer, Public Works Department, Buildings (Constructions and Maintenance), Kodaikanal, Dindigul Division. on request by R1, through Assistant Executive Officer, Public Works Department, Public Works Department, Buildings (Construction and Maintenance) Kodaikanal have inspected the built up construction and have given a report, as per 2016-2017 price list of Public Works Department, all the built up construction, including the approach road in the site worth about to Rs.57,99,245/- and have to complete the construction and it is further stated that the petitioner have actually paid Rs.25,205/- towards TNEB deposit charges for the Government and a sum of Rs.37,638/- towards the building plan approval charges to the Pannaikadu Town Panchayat and so, totally the petitioner has spent Rs.58,62,088/- and the petitioner now is holding an excess sum of Rs.72,87,912/- and also have finished the work which itself confirms the criminal intention of the petitioner to cheat and to commit to breach of trust towards construction and it would be just, proper fair and appropriate in the interest of the justice and also judicial fair play to require the petitioner to deposit a sum of Rs.72,87,912/- swindled and swallowed by the petitioner.

6. The learned Government Advocate (Cr1.side) appearing for the

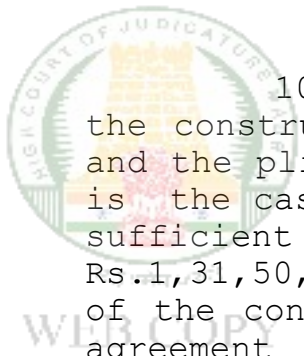


1st respondent, on instructions, would submit that though the total amount of the construction stipulates in the agreement is Rs.85,13,600/-, the 2nd respondent has parted with a sum of Rs.1,31,50,000/- through Net-banking, in various amounts on various dates to the petitioner and after receiving such a huge amount, the accused only completed 50% of the construction and in spite of the repeated request by the defacto complainant, he has not completed the balance work by hiding himself with an intention to deceive, defraud and cheat the principal of the complainant / R2 and hence, the accused has committed an offence for criminal breach of trust and cheating and he has no intention to complete the construction work and investigation is still pending.

7. Perused the materials on records produced by the petitioner and the second respondent and also heard the arguments advanced by either counsels.

8. The terms and conditions mentioned in the agreement, dated 21.04.2015 for construction entered into between the parties are admitted. Agreed amount of Rs.85,13,600/- towards the construction of built up area 3276 Sq.ft., overhead tank, underground sump, septic tank, elevation / skylight roofing and laying road inclusively mentioned in the agreement is also admitted by both parties. It is also seen from the report of Public Works Department that approach road was laid and guest house was also constructed and there are two bore-wells instead of three bore-wells, as stated by the petitioner, were found in the site and the valuation for the construction made in the site is arrived at Rs.57,99,245/-. Receipt of various amounts on various dates totally Rs.1,31,50,000/- by the petitioner towards for putting up construction is also not denied by the petitioner. It is further admitted that the petitioner has not completed the construction work, as agreed. It is admitted by both sides that construction agreement entered into between the parties contains an arbitration clause stating that any dispute regarding the interpretation of this agreement or any matter covered by this agreement or any disagreement during construction, as per this agreement, in the event no resolution is reached mutually, then, the same shall be referred to the decision of Tribunal or a local legal body by the client.

9. The second respondent has stated in his Legal Notice issued against the petitioner that though the time for agreement stipulates eight months from the date of the said agreement and the construction was not completed and even six months further time was given, at request by the contractor / petitioner, he has not completed the full construction. It is further stated that the petitioner has delayed the construction and also there is a deficiency in service and the petitioner has not fulfilled the contract and there is a breach of contract and, if the petitioner does not complete the construction within the two months, the matter will be referred to the arbitrator, as per the agreement clause.



10. It is not the case of the defacto complainant / R2 that the construction was not done in accordance with the specification and the plinth area is not in accordance with the agreement, but it is the case of the defacto complainant that even after giving sufficient time of more than six months and also a sum of Rs.1,31,50,000/-, for construction, though the time for completion of the construction is given within eight months from the date of agreement in a condition fit for occupation and also for a total construction of Rs.85,13,600/- in the agreement, he has not completed the construction, as agreed and he has no intention to complete the construction work. The above contact of the petitioner shows the breach of contract by him, as per the terms of the construction agreement. There is a specific clause of arbitration, as per the clause 23 and also a clause imposing penalty for the delay in causing construction by the petitioner herein.

11. Considering the above facts and circumstances of the case and also there is specific clause of arbitration in respect of the delay in construction of the dispute and also commission of breach of contract by the petitioner herein, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

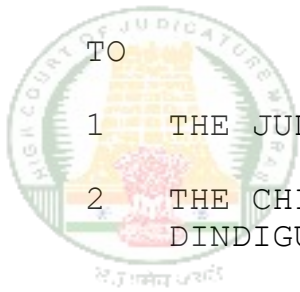
12. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, before the learned Judicial Magistrate No.I, Dindigul, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a 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 the petitioner shall report before the respondent daily at 10.30 a.m., until further orders, for interrogation. The petitioner shall comply with the condition stipulated under Section 438 Cr.P.C., scrupulously.

13. The petitioner shall appear before the concerned Magistrate within a period of 15 days from the date on which the order copy is made ready, failing which, the petition for anticipatory bail stands dismissed.

sd/-
28/03/2017

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



TO

1 THE JUDICIAL MAGISTRATE NO.I, DINDIGUL

2 THE CHIEF JUDICIAL MAGISTRATE
DINDIGUL

3 THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
DINDIGUL

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

+1. CC to M/S.JANATH AHMED @ JANARTHKUMAR, Advocate SR.No.18676

+1 cc to Mr.K.RAJESHWARAN, Advocate SR.No. 18626

ORDER

IN

CRL OP(MD) No.22172 of 2016

Date :28/03/2017

SMA/CM-MSA/SAR-4/03.04.2017:2P/7C