

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

Friday, the Sixth day of October Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice M.DHANDAPANI

CRL OP(MD) No.13521 of 2017

1 PALPANDI
2 C.RAVI

... PETITIONERS / ACCUSED NO.1 & 2

Vs

THE STATE REP.BY,

1 THE SUPERINTENDENT OF POLICE

THENI, THENI DISTRICT

2 THE INSPECTOR OF POLICE

KADAMALAIKUNDU POLICE STATION, AUNDIPATTI,

IN CASE NO. CS/0006934/2017,

THENI DISTRICT

... RESPONDENT / COMPLAINANT

For Petitioners : M/S.M.SUBASH BABU Advocate

For Respondent : MR.K.ANBARASAN Govt. Advocate (Crl. Side)

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

ORDER : The Court Made the following order :-

The petitioners, who are arrayed as accused Nos.1 & 2, apprehend arrest at the hands of the respondent police for the offences punishable under Sections 406, 420 and 34 r/w Section 120 (b) of I.P.C., in Case No.CS/0006934/2017, on the file of the respondent police, seek anticipatory bail.

2. The petitioners filed this petition under Section 438 Cr.P.C, who have been accused of non bailable offences committed beyond the territorial jurisdiction limit of the State of Tamil Nadu, have approached this Court for Anticipatory Bail so as to enable them to approach the appropriate Court for re-calling the warrant issued by the Metropolitan Magistrate Court No.III, Calcutta.

3.The facts of the case leading to file this petition as follows:

One SREI Equipment Finance Ltd. lodged a complaint against the petitioner, on the file of the Metropolitan Magistrate Court No.III, Calcutta, alleging that the first petitioner has purchased JCB, bearing Registration No.TN-60-AA-2057 in the month of December 2015 at Jeyaraj Auto Mobiles, Madurai District, to tune of Rs.26,34,000/- (Rupees Twenty Six Lakhs and Thirty Four Thousand only). The second

petitioner, who is the father of the first petitioner, executed the surety in favour of the first petitioner. For non-payment of E.M.Is, the said SREI Equipment Finance Ltd., lodged a private complaint before the Metropolitan Magistrate Court No.III, Calcutta.

4.The petitioners did not receive any summons. Suddenly, the petitioners received the present non-bailable warrant and apprehending arrest by the Calcutta Police. Therefore, the petitioners approached this Court under Section 438 Cr.P.C.

5.The issue as to whether, in respect of the persons who have been accused of a non-bailable offence committed beyond the territorial jurisdiction of the State of Tamil Nadu, if their arrest is sought within the jurisdiction of this Court, irrespective of the fact that they are residents of the place over which this Court can grant anticipatory bail under Section 438 Cr.P.C, came up for consideration before the Division Bench of this Court in the case of S.P.Shanthi Swaroop v. State of Tamil Nadu , rep. By Asst. Commissioner of Police, Central Crime Branch, Madras reported in 1992 L.W.(CrI).475. After elaborate discussions, decisions and considering the ratio laid down by the Patna High Court in Syed Safrul Hassan v. State has passed the following order,

"For the foregoing reasons, we hold that the High Court or the Court of Session has got power under Section 438 Cr.P.C. To grant anticipatory bail irrespective of the locale of the Commission of the offence. In other words, in respect of persons who have been accused of a non-bailable offence committed beyond the territorial jurisdiction of the State of Tamil Nadu, if their arrest is sought within the jurisdiction of this Court, irrespective of the fact that they are residents of the place over which this Court can grant anticipatory bail. However, we wish to observe that while granting anticipatory bail, this Court has to restrict the relief for a limited period and to direct the concerned persons to move the Court which is having jurisdiction over the matter in the meantime and also impose such condition so as to make the petitioners available for interrogation by the concerned police in the meantime. The reference is answered accordingly."

6.Thereafter, a learned Single Judge of this Court in the case of P.Thangavelu and others v. State, rep. By the Inspector of Police and other reported in 2017 (2) MWN (Cr.) 633 has passed the following orders,

"9.Thus , it is seen that though in the State of Uttar Pradesh, the provisions of Section 438, Cr.P.C., enabling grant of Anticipatory bail has been deleted, still the Courts have power to grant Inter-State Anticipatory Bail, more particularly taking into account the provisions under Article 21 of the Constitution of India. In the light of the above Judgments and discussions, this Court is of the view that Inter-State Anticipatory Bail can be granted to the petitioners for a

limited period to enable them seek appropriate Bail Orders from the concerned Court.

10. Accordingly, Interim Anticipatory Bail is granted to the Petitioners herein till 01.08.2016. The Petitioners are directed to be enlarged on Bail in the event of their arrest or on their appearance before the Judicial Magistrate concerned, subject to the following conditions:

(i) Each of the Petitioners shall execute a Personal Bond for a sum of Rs.10,000- (Rupees ten thousand only) with two sureties, to the satisfaction of the Respondent-Police or the Police Officer, who intends to arrest or to the satisfaction of the Magistrate concerned;

(ii) within the said period, ie., before 01.08.2016, the petitioners shall appear before the concerned Court of Jurisdiction and move for Anticipatory Bail before the said Court.

11. This Court makes it very clear that Interim Anticipatory Bail pertaining to Inter-State disputes cannot be sought as a matter of right and it is purely the discretion of the Court in granting the same, considering the facts, circumstances and also the nature of offences. It is also made clear that this order, on being produced, shall be punctually observed and executed by all concerned."

7. In view of the decisions cited supra, I am inclined to grant interim anticipatory bail to the petitioners till 10.11.2017. Accordingly, interim anticipatory bail is granted to the petitioners till 10.11.2017. The petitioners are directed to be enlarged on bail in the event of arrest or on their appearance before the Metropolitan Magistrate Court No.III, Calcutta and on further condition that:

(i) Each of the Petitioners shall execute a Personal Bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, to the satisfaction of the Respondent-Police or the Police Officer, who intends to arrest or to the satisfaction of the Magistrate concerned;

(ii) within the said period, ie., before 10.11.2017, the petitioners shall appear before the concerned Court of Jurisdiction and file a petition to re-call the warrant before the said Court.

sd/-
06/10/2017

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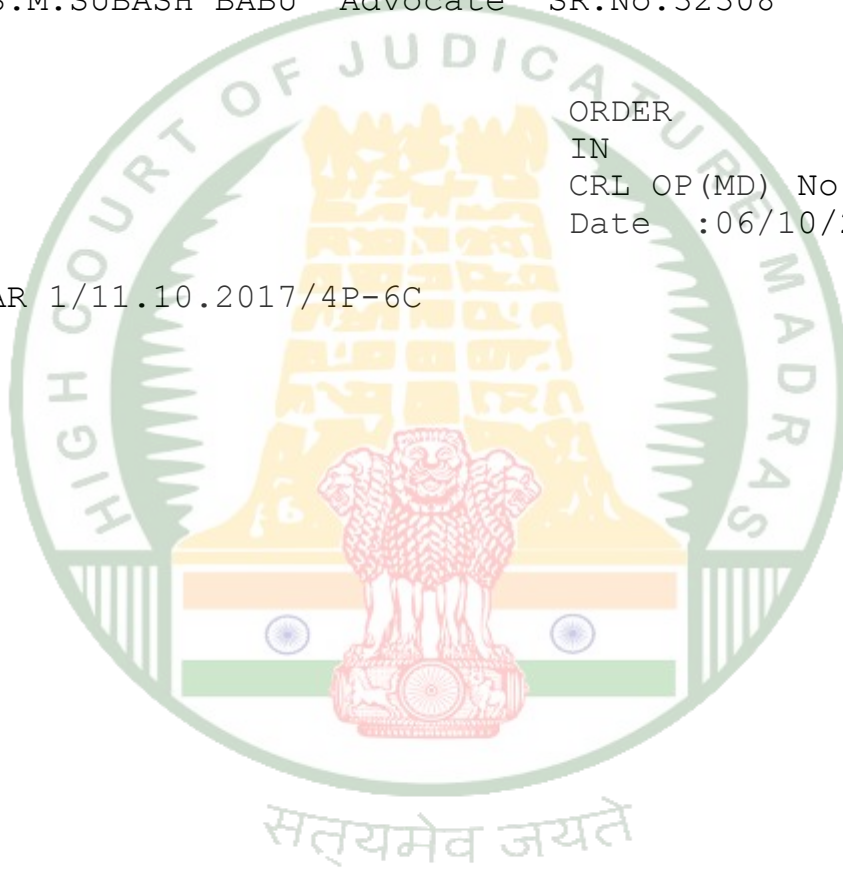
TO

- 1 THE METROPOLITAN MAGISTRATE NO.III, CALCUTTA.
- 2 THE SUPERINTENDENT OF POLICE,
THENI, THENI DISTRICT.
- 3 THE INSPECTOR OF POLICE,
KADAMALAIKUNDU POLICE STATION, AUNDIPATTI, THENI DISTRICT
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.M.SUBASH BABU Advocate SR.No.32308

ORDER
IN
CRL OP(MD) No.13521 of 2017
Date :06/10/2017

MKV-CM-MSA-SAR 1/11.10.2017/4P-6C



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