IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Eleventh day of July Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

CRIMINAL MISCELLANEOUS PETITION Nos.7170 & 7171 of 2018

IN CRL OP.13741/2017

JAYA [PETITIONER]

Vs

STATE REP. BY [RESPONDENT]
INSPECTOR OF POLICE,
CENTRAL CRIME BRANCH,
SALEM. CR.NO.13 OF 2017

Petition praying that in the circumstances stated therein the High Court will be pleased to

(i) modify the condition as imposed by this Honourable Court in Crl.O.p.No.13741 of 2017 dated 04.08.2018 by directing the petitioner to deposit a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) with Lakshmi Vilas Bank towards the loan account. [IN CRL.MP.NO.7170 OF 2018]

(ii) extend the time to execute the surety as per the direction of this Hon'ble Court in Crl.OP.NO.13741 of 2017 dated 04.08.2018. [IN CRL.MP.NO.7171 OF 2018]

Order : These petitions coming on for orders upon perusing the petitions and upon hearing the arguments of M/S.R.NALLIYAPPAN, Advocate for the petitioner [IN BOTH THE PETITIONS] and of M/S.KRITIKA KAMAL.P., GOVERNMENT ADVOCATE [CRL.SIDE] on behalf of the Respondent [IN BOTH THE PETITIONS]the court made the following order:-

Jaya, the petitioner herein and her husband T.Paramasivam filed Crl.OP.No.13741 of 2017, seeking anticipatory bail, in which this Court has passed the following order on 04.08.2017:

> "The petitioners, who apprehend arrest at the hands of the respondent police for the alleged offences punishable under Sections 408 and 380 IPC in Crime No.8 of 2017, seek anticipatory bail.
>
> 2. On the complaint lodged by Ramakrishnan, Branch In-charge of MAIIA Commodity Management Pvt. Ltd.,(hereinafter referred to as "MAIIA Commodity"), the respondent police registered a

case in Crime No.8 of 2017 on 02.05.2017 for the offences under the aforementioned Sections against M/s.Rajapriyasivam Enterprises(A1) and its partners, viz., Paramasivam(A2), Jaya(A3) and others. It may be relevant to state here that A4 to A6, who are named in the FIR are employees of MAIIA Commodity.

3. It is the case of the *de facto* complainant that they were appointed by Lakshmi Vilas Bank for providing collateral Management Services, pursuant to which, MAIIA Commodity entered into an agreement with M/s Rajapriyasivam Enterprises for maintaining the stocks of sago that were pledged by M/s.Rajapriyasivam Enterprises with Lakshmi Vilas Bank. In other words, MAIIA Commodity were required to maintain the stocks of sago for and on behalf of Lakshmi Vilas Bank, which had sanctioned a loan of Rs.2 Crores to M/s Rajapriyasivam Enterprises. While so, when MAIIA Commodity checked the stocks of sago, they found that Rs.40 lakhs worth of sago had been removed with the connivance of A4 to A6, who are the staff of MAIIA Commodity. Hence, the FIR.

4. The learned counsel for the petitioners, who were partners of M/s.Rajapriyasivam Enterprises submitted that MAIIA Commodity have no *locus standi* to lodge the complaint and it is only the Lakshmi Vilas Bank, which can have any grievance in this regard.

5. The police have filed their counter narrating the facts and circumstances of the case and objection for the grant of anticipatory bail.

6. Mr.T.Mohan, learned counsel for MAIIA Enterprises submitted that the stock of sago was kept by MAIIA Commodity for and on behalf of Lakshmi Vilas Bank and therefore, if there is any shortage in the stock, MAIIA Commodity will be held liable.

7. This Court gave its anxious consideration to the rival submissions.

8. On a perusal of the lease deed dated 28.03.2016 entered into between M/s Rajapriyasivam Enterprises and MAIIA Commodity, it is seen that in clause 13, it has been clearly stated that the goods are being kept for and on behalf of the Lakshmi Vilas Bank in the godown belonging to the petitioners, but, under the control of MAIIA Commodity. If there is any pilferage, MAIIA

commodity will be held liable for it. Therefore, it cannot be stated that they do not have *locus standi* to lodge a complaint. That apart, *locus* standi is foreign to criminal jurisprudence unless it is specially governed by a statute.

9. In this case, the offences alleged against the petitioners are under the Indian Penal Code and there is no prohibition in MAIIA Commodity setting the criminal law into motion.

10. Taking into consideration the serious allegations in the FIR against the petitioners, this Court is of the view that this is not a fit case to grant anticipatory bail to the petitioners. However, the learned learned counsel for the petitioners submitted that the petitioners are ready and willing to deposit a sum of Rs. 20,00,000/- without prejudice to this defence.

11. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate, Salem on condition that the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each 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:

[a] the petitioners and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioners shall deposit a sum of Rs.20,00,000/- (Rupees twenty lakhs only) with Lakshmi Vilas Bank towards the loan account.

[c] the petitioners shall report before the respondent police daily at 10.30.a.m. for a period of four weeks and thereafter, as and when required for interrogation.

[d] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[e] the petitioners shall not abscond either during investigation or trial.

[f] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].**

[g] If the accused thereafter abscond, a fresh FIR can be registered under Section 229-A IPC."

2. From the reading of the above order, it is seen that this Court was not inclined to grant anticipatory bail to T.Paramasivam and his wife Jaya, in view of serious nature of allegations against them. However, they came forward to deposit a sum of Rs.20 Lakh with Lakshmi Vilas Bank, Salem and therefore, this Court granted them anticipatory bail on condition that they should deposit Rs.20 Lakh with Lakshmi Vilas Bank, Salem, towards the loan account. T.Paramasivam and Jaya filed Crl.MP.No.10996 of 2017 in Crl.OP.No.13741 of 2017 for modification of the said condition and this Court has dismissed the petition on 14.09.2017. Thereafter, it is represented that T.Paramasivam surrendered before the Judicial Magistrate No.I, Salem and he was taken to police custody. Interrogation of T.Paramasivam revealed that Jaya was equally involved in the offence. While so, Jaya has filed Crl.MP.No.7170 of 2018 in Crl.OP.No.13741 of 2017 for modification of the condition relating to the deposit of a sum of Rs.20 Lakh and also filed Crl.MP.No.7171 of 2018 in Crl.OP.No.13741 of 2017 for extension of time to surrender.

3. Heard Mr.R.Nalliyappan, learned counsel for the petitioner, Mrs.Kritika Kamal.P, learned Government Advocate (Crl. Side) for the respondent and Mr.T.Mohan, learned counsel for the *de facto* complainant.

4. The learned counsel for the petitioner submitted that unable to make the payment T.Paramasivam surrendered before the Judicial Magistrate No.I, Salem and was taken into custody and that Jaya being a lady, indulgence should be shown by this Court.

5. The learned Government Advocate (Crl. Side) submitted that further investigation conducted by the police revealed that a total loss has been estimated to Rs.40 Lakh.

6. Taking into consideration the fact that the fraud runs to Rs.40 Lakh, this Court cannot completely modify the condition relating to the deposit of a sum of Rs.20 lakh, because, the Lakshmi Vilas Bank is a public institution, has advanced huge amount to T.Paramasivam and Jaya and they have cheated the bank. However, taking into consideration the fact that T.Paramasivam has been arrested, this Court is of the view that the interest of justice will be served, if the deposit amount of Rs.20 lakh is reduced to Rs.5 lakh. Accordingly, this Court modifies the deposit amount of Rs.20 lakh to Rs.5 lakh. Four weeks time is granted to the petitioner from the date of receipt of a copy of this order to surrender, furnish sureties and also deposit Rs.5 lakh. Rest of the conditions imposed by this Court on 04.08.2017 in Crl.OP.No.13741 of 2017 shall remain the same.

With the above modification, these petitions are ordered, accordingly.

-sd/-
11/07/2018

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
NO.I, SALEM.

2 THE JUDICIAL MAGISTRATE,
SALEM.

3 THE CHIEF JUDICIAL MAGISTRATE
SALEM. [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
CENTRAL CRIME BRANCH, SALEM.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

C.C. to M/S.R.NALLIYAPPAN Advocate on payment of necessary charges

Order

in
CRL MP.NOS.7170 & 7171 OF 2018

in
CRL OP.13741/2017

Date :11/07/2018

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MLT-16/07/2018