IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the First day of August Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice A.D.JAGADISH CHANDIRA

CRIMINAL ORIGINAL PETITION NOS.16692 & 17639 of 2018

PARIJAT [PETITIONER / ACCUSED IN CRL.OP.NO.16692 OF 2018]

MOHANLAL KASWAN [PETITIONER / ACCUSED IN CRL.OP.NO.17639 OF 2018]

Vs

THE STATE REP BY ITS,
THE INSPECTOR OF POLICE,
C-2 RACE COURSE POLICE STATION,
COIMBATORE DISTRICT-641 018
CR.NO.562 OF 2018.
[RESPONDENT IN CRL.OP.NO.16692 OF 2018]

STATE REPRESENTED BY
THE INSPECTOR OF POLICE, (CRIME),
B4(C2) RACE COURSE POLICE STATION,
COIMBATORE DISTRICT - 641018.
CR. NO. 562 OF 2018.
[RESPONDENT IN CRL.OP.NO.17639 OF 2018]

For Petitioner : M/S.C.DEIVASIGAMANI Advocate [IN CRL.OP.NO.16692 OF 2018]

For Petitioner : M/S.M.N.BALAKRISHNAN Advocate [IN CRL.OP.NO.17639 OF 2018]

For Respondent : MR.M.MOHAMED RIYAZ, ADDITIONAL PUBLIC PROSECUTOR [IN BOTH THE PETITIONS]

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

ORDER : The Court Made the following order :-

The petitioners seek anticipatory bail in Crime No.562 of 2018 registered by the respondent police for the offence punishable under Sections 406 and 420 of IPC.

2. The case of the prosecution as per the defacto complainant one Jagadesh Kaswan is that he was running a business in the name of Balaji Bearing Centre and the Proprietor was his wife and the Management was done by the defacto complainant. The business accounts of the defacto complainant were originally with State of Patiala and thereafter, it has been transferred to State Bank of India. The further allegation is that since the defacto complainant

and his wife were unable to come to the Bank in person, they have given authorization and special power to the first accused. Since the defacto complainant suspected the activity of the first accused he had given a letter on 03.11.2016 to the second accused, who was the Manager of the bank at the relevant period with an instruction withdrawing authorisation given to A1 and stop further transaction. The further allegation is that the first accused in collusion with the second accused, despite the letter given by the defacto complainant, had continued to allow the transaction and thereby, the defacto complainant was put to loss. When the defacto complainant had questioned the accused, both of them have intimidated him.

3. The learned counsel for the petitioner in Crl.O.P.No.17639 of 2018 would submit that the petitioner and the defacto complainant are brothers and that they were running family business together and due to disputes between them, they have partitioned the properties and there are also rival claims in respect of running of the business and other financial activities, thereby, the defacto complainant has given a false complaint against him. He would submit that the petitioner had operated the Bank account only based on the Power of Attorney given by the defacto complainant, whereas, strangely, the defacto complainant has given a complaint as if the Power of Attorney has been cancelled. He would submit that no notice has been given to him that the power was revoked and no letter has also given to the Bank cancelling the Power of Attorney.

4. The learned counsel for the petitioner in Crl.O.P.No.16692 of 2018 would submit that the petitioner was working as a Manager of State Bank of India during the relevant period. He would submit that he had allowed the first accused to operate the account of the wife of the defacto complainant only based on the Power of Attorney given to him. He would submit that the petitioner is presently working as a Manager, State Bank of India at Madurai and that the entire case of the prosecution is borne out by records and there is no need for custodial interrogation of the petitioner.

5. The learned Additional Public Prosecutor appearing for the State would submit that the case of the prosecution is that the first accused, who is the brother of the defacto complainant, who was given Power of Attorney to operate the accounts of the wife of the defacto complainant. He would submit that the further allegation is that the defacto complainant had withdrawn the authorization, whereas, the accused colluded together and thereby, the second accused allowed the first accused to transact with the accounts and thereby caused loss to the defacto complainant.

6. I have gone through the FIR. Taking into consideration the facts and circumstances of the case and the submissions made by the counsel on either side, I am inclined to grant anticipatory bail to the petitioners with certain conditions.

7. 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-III, Coimbatore, on condition that each of 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 to the Police Officer, who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

(i) if the petitioners failed to surrender before the concerned Magistrate within a period of 15 days from the date of receipt of a copy of this order, this order shall stand automatically cancelled.

(ii) the petitioner in Crl.O.P.No. 16692 of 2018 shall report before the respondent police daily at 10.30.a.m., for a period of one week and thereafter, as and when required for interrogation. The petitioner in Crl.O.P.No.17639 of 2018 shall report before the respondent police daily at 10.30.a.m until further orders.

(iii) the petitioners shall not tamper with evidence or witness either during investigation or trial;

(iv) the petitioners shall not abscond either during investigation or trial;

(v) 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];**

(vi) If the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

-sd/-
01/08/2018

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.III, COIMBATORE.

2 THE CHIEF JUDICIAL MAGISTRATE
COIMBATORE [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
C-2 RACE COURSE POLICE STATION,
COIMBATORE DISTRICT.

5 THE INSPECTOR OF POLICE, (CRIME),
B4(C2) RACE COURSE POLICE STATION,
COIMBATORE DISTRICT - 641018.

+1CC to M/S.C.DEIVASIGAMANI Advocate on payment of necessary charges SR NO.14304

+1CC to M/S.M.N.BALAKRISHNAN Advocate on payment of necessary charges SR NO.14357

CRL OP.16692 & 17639 OF 2018

Date :01/08/2018

MK:09/08/2018