IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.25029 of 2018

M/s. Tata Motors Finance Ltd.,
No.64/5-9, GRDI Complex Ground Floor,
Perundurai Road,
Erode Rep. by its
Authorized Signatory
M.Dhanasekar ... Petitioner

Vs.

1. Govindasamy
S/o. Doraisamy

2. The State
rep. by the Inspector of Police,
District Crime Branch,
Erode.
(Crime No.14 of 2017) ... Respondents

Criminal Original Petition filed under Section 439(1)(b) Cr.P.C. praying to cancel the bail granted to the first respondent herein by order dated 05.10.2018 in Crl.M.P.No.1521 of 2018 on the file of the learned Principal District and Sessions Court, Erode.

For Petitioner : Mr.M.A.Venkata subramanian

For Respondents
For R1 : No appearance
For R2 : Mrs.M.Prabhavathi
Additional Public Prosecutor

O R D E R

This petition has been filed to cancel the bail granted to the first respondent herein by order dated 05.10.2018 in

Crl.M.P.No.1521 of 2018 on the file of the learned Principal District and Sessions Court, Erode.

2. The learned counsel for the petitioner would submit that the defacto complainant lodged a complaint alleging that the first respondent availed loan from the defacto complainant to purchase of 23 bus chassis and for body building and entered into 38 Loan agreement to the tune of Rs. 2 crores. Thereafter, without the knowledge of the defacto complainant, the petitioner created fabricated and forged documents of Form 35, as if issued by the defacto complainant and by producing the same to the Regional Transport Officer, Motor vehicle department, he cancelled the hypothecation endorsement in the registration certificate of the respective vehicles. Thereafter, the petitioner sold out all the vehicles to third parties and cheated the defacto complainant to the tune of Rs.2 crores. Hence, the complaint.

3. The learned counsel for the petitioner submitted that initially the first respondent/accused filed an anticipatory bail before this Court in Crl.O.P.No.6079 of 2018 and the same was dismissed by an order dated 12.04.2018, for the reason that the custodial interrogation of the petitioner is very much required and he committed serious offence by cheating the defacto complainant to the tune of Rs.2 crores. Again the first respondent filed another anticipatory bail petition in Crl.O.P.No.13914 of 2018 and this Court dismissed the same by an order dated 09.08.2018, for the same reasons. Since the second respondent/police did not take any action against the first respondent, the defacto complainant filed a direction petition before this Court under Section 482 of Cr.P.C., and this Court, by an order dated 11.09.2018 in Crl.O.P.No.21958 of 2018, was pleased to direct the second respondent to secure the first respondent and also seized the vehicles from the first respondent and further directed to complete the investigation and file final report within a period of four months from the date of receipt of a copy of that Order. Thereafter the first respondent was arrested and remanded to judicial custody on 24.09.2018. The first respondent suppressed all the above facts and filed a bail petition in Crl.M.P.No.1521 of 2018 before the learned Principal District and Session Judge, Erode, by stating false statement and obtained bail by an order dated 05.10.2018.

4. The learned counsel for the petitioner would further submit that the first respondent stated in the bail petition that the first respondent only stood as guarantor and not committed any offence as alleged by the prosecution. Further stated in the bail petition that, he posed himself mentioned as first accused and the second accused was granted bail in by an order dated 31.07.2018 in Crl.M.P.No.1083 of 2018 on the file of

the learned Principal District and Sessions Judge, Erode. He suppressed the fact that he arraigned as first accused and he is the main borrower of loan to the tune of Rs.2 crores from the defacto complainant and he only entered into the agreement with the defacto complainant. Whereas the first respondent stated that he stood only as guarantor in the agreement and not committed any offence as alleged by the prosecution.

5. Further the learned counsel appearing for the petitioner would submit that in the bail order one of the condition is that the first respondent shall appear before the second respondent/police daily at 10.00 am and 5.00 p.m., until further orders. But the first respondent never appeared before the second respondent and did not comply the condition imposed by the learned Principal District and Sessions Judge, Erode. Further he would submit that the first respondent never attended before the second respondent police and hence they are unable to complete the investigation and file charge sheet in this case.

6. The learned counsel would further submit that the one of the purchasers of the vehicle from the first respondent has filed a writ petition in W.P.No.19409 of 2017, and the same was dismissed by this Court by an order dated 28.07.2017. In the said writ petition, this Court observed that the first respondent submitted forged no objection certificate and Form 35 before the concerned Regional Transport Officer and cancel the Hypothecation in the registration of the vehicle and sold out the vehicle. Further he would submit that the first respondent not only cheated the defacto complainant but also cheated various finance company for heavy amount by fabricating and forged false documents. Therefore, he sought for cancellation of bail granted to the first respondent.

7. Though notice has been served on the first respondent, no one has entered appearance on behalf of him. Therefore, this Court directed the Registry to print the name of the first respondent and post the matter today ie., on 27.11.2018. Even though, when the matter is called today, no one is appeared on behalf of the first respondent.

8. The learned Additional Public Prosecutor appearing for the second respondent police would submit that there are two accused in this case and the first respondent is arraigned as A1. A2 arrested and remanded to judicial custody and thereafter he was released on statutory bail under Section 167(2) of Cr.P.C. As far as the first respondent is concerned, he is the main borrower of loan from the defacto complainant to the purchase of 23 chassis of Tata bus and 38 body building to the tune of R.2 crores. Thereafter, he forged the defacto complainant signature and seal and fabricated the false Form-35,

as if the defacto complainant had issued, and the same were produced before the Regional Transport Office. On production of Form 35, the Regional Transport Officer cancelled the hypothecation endorsement in the registration certificate of the concerned vehicle. After cancellation of hypothecation endorsement, the first accused sold out the vehicles to the third parties and looted the entire amount. Therefore, this Court on two occasions dismissed the anticipatory bail petition in Crl.O.P.No.6079 of 2018 by order dated 12.04.2018 and in Crl.O.P.No.13914 of 2018 by order dated 09.08.2018.

9. Further she would submit that the defacto complainant filed a direction petition in Crl.O.P.No.21958 of 2018 and this Court by order dated 11.09.2018, directed the second respondent/police to secure the first respondent and seize the vehicles and also further directed that to file charge sheet within a period of four months from the date of the receipt of a copy of that Order. Accordingly, the first respondent was arrested and remanded to judicial custody on 24.09.2018. Thereafter the first respondent filed a bail petition in Crl.M.P.No.1521 of 2018 and falsely represented that he arraigned as second accused and he only stood as guarantor and the main accused was enlarged on bail and thereby the first respondent obtained bail on 05.10.2018, from the learned Principal District and Sessions Judge, Erode. Further she would submit that the condition imposed by the learned Judge has not been complied by the first respondent and he did not co-operate for enquiry. Therefore, they could not complete the investigation and file final report as directed by this Court in Crl.O.P.No.21958 of 2018 by order dated 11.09.2018.

10. Heard Mr.M.A.Venkata Subramanian, learned Counsel for the petitioner and Mrs.M.Prabavathy, learned Additional Public Prosecutor appearance appearing for the second respondent/police.

11. On perusal of the records, the case of the prosecution is that the first respondent has availed loan from the defacto complainant bank, for the purchase of 23 bus chassis and 38 body building under hypothecation, to the tune of Rs.2 crores. Thereafter, he forged the signature and seal of the defacto complainant and created forged No Objection Certificate and Form 35 and also submitted the same before the concerned Regional Transport Office. The Regional Transport Officer cancelled the hypothecation endorsement in the registration certificate of the concerned vehicles, and then the first respondent sold out all the vehicles to the third parties and also cheated the defacto complainant.

12. Thereafter the first respondent filed anticipatory bail before this Court on two occasions in Crl.O.P.6079 of 2018 and 13914 of 2018 and this Court dismissed the same for the

reason that the investigation is at the initial stage and the documents have to be recovered and the vehicles have to be seized and also the custodial interrogation of the petitioner is very much required.

13. It is also seen that as directed by this Court in Crl.O.P.21958 of 2018 by an order dated 11.09.2018, the first accused was arrested and remanded to judicial custody on 24.09.2018. It is also seen that in the bail petition, he falsely stated that he stood as only guarantor and he did not committed an offence as alleged by the prosecution. He further stated in the bail petition that the second accused was enlarged on bail. But the real fact is that the first respondent is the main accused and he is the borrower of the loan amount to the tune of Rs.2 crores for the purchase of 23 chassis and 38 body building. The second accused only stood as guarantor for the loan borrowed by the first accused. Further the second accused was enlarged on statutory bail under Section 167(2) of Cr.P.C.

14. It is also seen that the allegations are very serious in nature, since he forged the signature and seal of the defacto complainant and fabricated Form 35 as if the entire loan installments have been repaid by the first accused and produced the same before the concerned Regional Transport Officer. After receipt of the same, the Motor Vehicle Inspector cancelled the hypothecation endorsement in the registration certificate and on cancellation of the said hypothecation endorsement, the first respondent sold out all the vehicles to the various persons and looted the entire amount. Further the first respondent did not comply with the condition imposed on him, while granting bail by the learned Principal District and Sessions Judge, Erode by an order dated 05.10.2018 in Crl.M.P.No.1521 of 2018, that the first respondent shall appear before the second respondent police daily twice at 10.00 a.m., and 5.00 p.m., until further orders and also did not co-operate for interrogation. As such, the second respondent is unable to complete the investigation and file the final report. Therefore, the first respondent suppressed the entire fact and also on false statement before the learned Principal District and Sessions Judge, Erode obtained bail. Further he did not comply the condition imposed on him while granting bail and also absconded. Considering the above facts and circumstances, this Court is inclined to cancel the bail granted to the first respondent.

15. Accordingly, this criminal original petition is allowed and the bail granted to the first respondent in Crl.M.P.No.1521 of 2018 by the learned Principal District and Sessions Judge, Erode on 05.10.2018 is hereby cancelled. Further the second respondent is directed to secure the first respondent and complete the investigation and file final report within a

period of eight weeks from the date of receipt of a copy of this Order.

16. This Criminal Original Petition is ordered accordingly.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

rts

To

1. The Presiding Officer,
   Principal District and Sessions Court,
   Erode.

2. The Inspector of Police,
   District Crime Branch, Erode.

3. The Public Prosecutor,
   High Court of Madras,Chennai.

+1cc to Mrs.AL.Ganthimathi*, Advocate SR.No.81125

CRL.O.P.No.25029 of 2018

VGI(CO)
GMY(07/12/2018)