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

Tuesday, the Thirteenth day of March Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice R.PONGIAPPAN

CRL OP(MD) No.2669 of 2018

MOHAMMED SIRAJUDEEN ... PETITIONER/SOLE ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
CITY CRIME BRANCH, TRICHY CITY,
TRICHY,
CR.NO.2/2018 ... RESPONDENT/ COMPLAINANT

T.N.SIRAJUDEEN ...INTERVENE PETITIONER/DEFACTO COMPLAINANT

For Petitioner : MR.M.AJMAL KHAN, SENIOR COUNSEL, FOR M/S.R.DIWAKARAN Advocate

For Respondent : MR.A.ROBINSON Government Advocate (Crl. Side)

For Intervener : MR.R.SENTHIL KUMAR, Advocate

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

ORDER : The Court Made the following order :-

Reserved on : 01.03.2018
Delivered on : 13.03.2018

The petitioner, who is arrayed as Sole Accused, apprehends arrest at the hands of the respondent police for the alleged offence punishable under Section 406, 465, 468, 471 and 420 IPC, in Crime No.2 of 2018 and hence, seeks anticipatory bail.

2.The case of the prosecution is that the petitioner was working in the defacto complainant's company *viz.,* T.S.N. Eco Tech International Private Limited. Since the defacto complainant, who is the Managing Director of the said Company, was undergoing neurological treatment and based on the Board's Resolution dated 01.09.2016, the petitioner was authorised as Managing Director in the place of the defacto complainant and also authorised to operate the account of the defacto complainant's company, maintained with the Punjab National Bank. Taking advantage of the ill-health of the defacto complainant, the petitioner entered into criminal conspiracy with his associates *viz.,* Vikranth Chowdhry and Pawan HB and fraudulently opened the Branch Offices of the defacto complainant's Company in Delhi, West Bengal and some other places. The abovesaid persons contacted some companies for the supply of mobile phones and accessories without the knowledge of the defacto complainant's Company and they went to the extent of creating bogus Bank guarantees in the names of various Banks in Delhi, West Bengal and Bombay, which are not known to the defacto complainant. They also created forged documents and purchased materials worth Rs.5,68,29,341/- from Intex Technologies Limited, Redington (India) Limited and Ingram Micro India Private Limited. The petitioner and his associates entered into an agreement with the abovesaid company officials, who acted without even verifying the Bank guarantee either with the Bank or with the Directors or contacting the Registered Office, Trichy, whether they are the authorised persons to enter into an agreement and to receive the materials worth several crores of rupees. Hence, a case has been registered for the offences as stated above.

3.The learned Senior Counsel appearing for the petitioner submitted that the petitioner joined as Financial Consultant in the said Company and due to the ill-health of the defacto complainant, who is the Managing Director of the said Company, he was requested to act as Power Agent of the Company. He further submitted that the petitioner was also running business under the name and style of ''Roshan Agencies'' and ''Green Land Agencies''. Based on the request of the defacto complainant, he had paid Rs.3,00,00,000/- to him through bank transfers on various dates. The defacto complainant's company had on various dates paid a sum of Rs.85,00,000/- to the petitioner. He further submitted that all the bank accounts including the ICICI Bank as well as the Bank of Baroda, were opened by the defacto complainant and all the requisite account opening forms were duly signed by him in the presence of the Bank Officials and therefore, the claim of the defacto complainant that the petitioner had opened the bank accounts without informing or getting the consent from him is not true. He further submitted that the alleged resolution dated 01.09.2016 was never passed on the said date and it is a pre-dated document, since the petitioner's signature in the said document was only obtained on 10.04.2017. He also submitted that the petitioner is innocent and he has been falsely implicated in this case and therefore, prays for anticipatory bail in favour of the petitioner.

4.It is submitted by the learned Government Advocate (Criminal side) that the petitioner colluded with the other persons and indulged in fabrication of fake bank guarantees and thereby, cheated the defacto complainant. He further submitted that the investigation is going on and therefore, enlarging the petitioner on bail is not conducive for completing the investigation in this case and it is not a fit case for the grant of anticipatory bail to the petitioner and therefore, he prayed for dismissal of this Criminal Original Petition.

5.The learned counsel for the Intervenor/defacto complainant vehemently opposed the anticipatory bail application that the petitioner is the person responsible for all the activities and that he is the person, who had created the bank guarantees. He further submitted that by resolution, dated 01.09.2006, the petitioner has also been inducted as Managing Director in lieu of T.N.Sirajudeen, who was then undergoing medical treatment and that he is responsible for the entire affairs of the business and that if the relief sought by the petitioner is granted, there is no chance for recovery to the tune of Rs.5,68,29,431/- and therefore, he prayed for dismissal of the Criminal Original Petition.

6.The submissions made by the learned counsel on either side are considered. As per the Minutes of the Meeting, dated 03.01.2014, the petitioner was authorised to digitally sign and file necessary forms with the Registrar of Companies, Chennai, in connection with the increase in the Authorised Capital from Rs.5 Lakhs to Rs.1 Crore. It is alleged that by using the said power, the petitioner herein in connivance with his associates, *viz.*, Vikranth Chowdhry and Pawan HB, after hatching conspiracy, opened the Branch Offices of the defacto complainant's Company in Delhi and West Bengal. Thereafter, the associates of the petitioner contacted several Offices for supplying mobile phones and accessories without the knowledge of the defacto complainant. Finally, they went to the extent of creating bogus Bank guarantees in the names of various Banks in Delhi, West Bengal and Bombay, which are all not known to the defacto complainant. By using the bogus Bank guarantees, the petitioner purchased materials worth Rs.5,68,29,431/- from Intex Technologies Limited, Redington (India) Limited and Ingram Micro India Private Limited. The abovesaid crime came into light only after the cheque issued by the petitioner got bounced.

7.Now, for identifying the truth in the abovesaid crime, extensive investigation is necessary. According to the case of the petitioner, the petitioner was already arrested and remanded to judicial custody for a period of 81 days in connection with Crime No.310 of 2017 on the file of the Central Crime Branch, Team-I, Egmore, Chennai. The said case was registered based on the complaint given by Redington (India) Limited, which was mentioned in the alleged FIR. So, the abovesaid case, which was registered at Chennai, is for a single transaction with Redington (India) Limited. But, in the complaint given by the defacto complainant, he clearly mentioned the creation of bogus companies and also creation of bogus Bank Guarantees. In the above situation, this petition has been filed by the petitioner for anticipatory bail. With regard to the relief of anticipatory bail, the Court has to decide whether the application is to be allowed or dismissed only after considering the following factors, namely:-

''(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested.''

8.Now, applying the above factors to the case on hand, it reveals that the offence committed by the petitioner is a heinous one. Further, the petitioner himself admitted that he was arrested previously in respect of another case, which was registered for the cognizable offence. Moreover, anticipatory bail has to be granted only in exceptional cases, where it appears that a person is falsely implicated or a frivolous case is lodged against him. But, that is not the situation here. Hence, this Court is not inclined to grant anticipatory bail to the petitioner.

Accordingly, this Criminal Original Petition is dismissed.

sd/-
13/03/2018

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

TO

1 THE INSPECTOR OF POLICE
CITY CRIME BRANCH, TRICHY CITY, TRICHY,

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

+1. CC to M/S.SENTHIL KUMAR Advocate SR.No.3962

SMN2
GJM/MM/PN/SAR-3-13.3.18-4P-4C

ORDER
IN
CRL OP(MD) No.2669 of 2018
Date :13/03/2018