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

Wednesday, the Fourteenth day of March Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice R.PONGIAPPAN

CRL OP(MD) No.3339 of 2018

SANKARASUBRAMANIAN ... PETITIONER/ACCUSED No.1

Vs

1 THE INSPECTOR OF POLICE
CENTRAL CRIME BRANCH,
MADURAI CITY,
(CRIME NO. 80/2017)

(*)2 SIVAKUMAR
S/O.KARUPPAIAH,
D.NO.110, EB COLONY MAIN ROAD,
BETHANIAPURAM, MADURAI
(*) R2 IMPLEADED AS PER ORDER OF THIS HON'BLE COURT
MADE IN CRL MP(MD)No.1728/18 IN
CRL OP(MD)No.3339/18 DATED.07.03.2018) ... RESPONDENT / COMPLAINANT

For Petitioner : MR.J.BHARATHN for M/S.T.R.JEYAPALAM Advocate

For Respondent 1 : MR.A.ROBINSON, Govt. Advocate (Crl. Side)

For Respondent 2 : MR.AU.RAMANATHAN for MR.C.BHARATHI, Advocate

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

ORDER : The Court Made the following order :-

The petitioner, who apprehends arrest at the hands of the first respondent police for the alleged offences punishable under Sections 406, 420 and 120-B IPC, in Crime No.80 of 2017, seeks anticipatory bail.

2.The case of the prosecution is that the petitioner/A1 and the second respondent/*de facto* complainant are running a partnership firm under the name and style of ''Success Software'' from the year 2007 at Madurai and in Chennai. The said Software Company was engaged on various software works, such as; for preparing Voters' List for the Government, supplying Man Power to Elcot and CMC, Free Insurance Scheme Work, Data Entry Work for preparation of Farmers Protection Plan Identity Card and also for preparing Students' Free Bus Pass. As per the request made by the petitioner, the second respondent/*de facto* complainant has deposited a sum of Rs.41,01,565/- towards earnest money deposit, for various tender works undertaken by the Success Software in respect of four Districts, namely, Madurai, Ramanathapuram, Sivagangai and Virudhunagar. Thereafter, the petitioner has paid a part of the amount to the second respondent/*de facto* complainant and he has not paid a sum of Rs.1,44,60,369/- to him, as a result of which, from 26.12.2016 to 31.12.2016, a mediation was held in the house of the petitioner in front of some Mediators, in which, the petitioner/A1 and his brother *viz.*, Muthuraman, who is arrayed as A2 agreed to settle the amount payable to the second respondent/*de facto* complainant. Subsequently, as per the settlement, dated 02.08.2013, the petitioner and A2 agreed to allot the works with regard to the Districts, *viz.*, Madurai, Ramanathapuram, Sivagangai and Virudhunagar, to the second respondent. Thereafter, the petitioner threatened the second respondent, contrary to the abovesaid settlement, the petitioner deprived the works *viz.*, Voters List and Free Bus Pass to School Students relating to Madurai and Sivagangai Districts from the second respondent and gave it to A2. Further, they misappropriated a sum of Rs.2,00,06,934/- from the second respondent. Hence, the case has been registered for the offences as stated above.

3.The learned counsel appearing for the petitioner submitted that the entire case of the second respondent/*de facto* complainant is purely civil in nature and in order to give a criminal colour, the present case has been registered against the petitioner by the first respondent police. He further submitted that the second respondent had filed a suit in O.S.No.547 of 2017 before the Principal District Munsif Court, Madurai, against the accused, praying for a decree of permanent injunction, restraining the accused from cancelling the settlement deed, dated 02.08.2013 and also for other reliefs. The second respondent has also filed three Interlocutory Applications for temporary injunction. The learned District Munsif was not inclined to grant any order in favour of him till date. He further submitted that second respondent has not produced any document to prove that he is a Partner of the Firm and he has not produced any document with regard to the earnest money deposit made by him to the tune of Rs.41,01,565/- and with regard to the amount payable by the petitioner and A2 to the second respondent, he has not made any averment in the plaint filed by him. He also submitted that A2 has already been arrested and released on bail on 20.02.2018 by the learned Principal District and Sessions Judge, Madurai, in Cr.M.P.No.876 of 2018. The petitioner is an innocent person and he has not committed any offence and prays for anticipatory bail in favour of the petitioner.

4.The learned Government Advocate (Criminal side) appearing for the State submitted that the petitioner/A1 and the second respondent/*de facto* complainant are running a partnership firm under the name and style of ''Success Software'' from the year 2007 at Madurai and Chennai. As per the request made by the petitioner, the second respondent has deposited a sum of Rs.41,01,565/- towards tender deposit and bank deposit guarantee for Success Software. Thereafter, as per the agreed terms the second respondent, completed the works as instructed by the petitioner. But, as per the agreed terms, the petitioner herein had not paid any amount to the second respondent and thereby, cheated him to the tune of Rs.2,00,06,934/-. He also submitted that the investigation is still going on.

5.The learned counsel for the second respondent/*de facto* complainant submitted that the petitioner/A1 had a Partnership Firm under the name and style of ''Success Software'', having Head Office at Chennai and other Branch Offices in the District Head Quarters of few Districts. The said Company was engaged on various software works, such as, updating data's for Ration Card and School Students Free Bus Pass and various computer oriented programmes of the Government on tender basis. The second respondent was inducted as one of the Partners of the said Company. He further submitted that the second respondent has deposited a sum of Rs.41,00,000/- towards earnest money deposit for various tender works undertaken by the said Company, in the Bank Account of Success Software on various dates. The first accused with an intention to cheat the second respondent has taken away huge amount from the business. He further submitted that a sum of Rs.9,28,65,398/- was paid by the Government to various works. Out of the said amount, a sum of Rs.7,84,05,029/- alone was received by the second respondent and a sum of Rs.1,44,60,369/- was due and payable by the petitioner to the second respondent, in year 2016. Despite several requests, the petitioner has not paid the said amount to the second respondent. He further submitted that the entire transactions were done only through bank and the statements of accounts will prove the case of the second respondent. The petitioner with an intention to defraud and misappropriate the second respondent, in collusion with his brother/A2, attempted to cancel the settlement deed, dated 02.08.2013, for which, the second respondent has filed a suit in O.S.No.547 of 2017 before the District Munsif Court, Madurai, for permanent injunction, restraining the accused from cancelling the settlement deed, which is now pending. He also submitted that if anticipatory bail is granted to the petitioner, he will tamper the evidence and hamper the investigation and therefore, he prays for dismissal of the Criminal Original Petition.

6.The submissions made by the learned counsel appearing for either side are considered. It is alleged during the time of occurrence, the second respondent at the request made by the petitioner, deposited a sum of Rs.41,01,565/- towards tender deposit and for bank guarantee in favour of Success Software, which was run by the petitioner. Thereafter, as per the agreed terms, the second respondent has completed the works as instructed by the petitioner. But, he had not been paid any amount by the petitioner and therefore, compromise talks have been initiated in front of one M.K.Pandi, Saravanan, Krishna Pandi and M.Mohammed Ibrahim. In the said compromise talks, the petitioner herein and his brother/A2 agreed to pay the amount due to the second respondent. Further, the petitioner agreed to give sub-contract to the second respondent as agreed in the initial stage of business. Unfortunately, the petitioner and his brother had not acted upon the said compromise talks and thereby, they had cheated the second respondent to the tune of Rs.2,00,06,934/-.

7.Now, as per the submission made by the learned counsel appearing for the petitioner, it would appear that the second respondent herein filed a suit in O.S.No.547 of 2017 before the District Munsif Court, Madurai, in which, he is seeking the relief of permanent injunction against the petitioner and his brother, restraining them from cancelling the settlement deed dated 02.08.2013, which was entered between the petitioner and the second respondent and the same is pending.

8.So, in the above circumstances, this Court has to identify whether the petitioner having the dishonest intention or not. On going through the entire case of the second respondent, it appears that previous to the alleged occurrence, the second respondent completed works on behalf of the petitioner. But, the petitioner had not acted upon the compromise talks held between him and the second respondent. In this occasion, it is necessary, to go through the judgment of the Hon’ble Supreme Court in **Anil Mahajan Vs. Bhor Industries Ltd. and another** reported in **2005 (10) SCC 228**, wherein it has been held as follows:-

''From mere failure of a person to keep up promise subsequently, a culpable intention right at the beginning, that is, when he made the promises cannot be presumed. A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction. The substance of the complaint is to be seen. Mere use of expression ''cheating'' in the complaint is of no consequence.''

9.So, applying the above principles laid down by the Hon’ble Supreme Court to the case on hand, in this case also, the petitioner herein not denied the fact that as in the earlier period, he promised to pay certain amounts to the second respondent and collected some amount in order to do work, which was given by the Government and therefore, considering the facts and circumstances of this case shows in order to complete the investigation in this case, custodial interrogation may not be necessary. Hence, this Court is inclined to grant anticipatory bail to the petitioner, with certain conditions. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate No.I, Madurai, on condition that the petitioner shall execute a bond for a sum of Rs.25,000/-

(Rupees Twenty Five 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) the petitioner shall report before the respondent Police daily at 10.00 a.m. until further orders.

(ii) the petitioner shall not tamper with evidence or witness either during investigation or trial.

(iii) the petitioner shall not abscond either during investigation or trial.

(iv) On breach of any of the aforesaid conditions, the anticipatory bail granted to the petitioner shall stand automatically cancelled and the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner 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].**

sd/-
14/03/2018

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

TO

1 THE JUDICIAL MAGISTRATE NO.I, MADURAI

2 THE CHIEF JUDICIAL MAGISTRATE
MADURAI

3 THE INSPECTOR OF POLICE
CENTRAL CRIME BRANCH, MADURAI CITY,

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI

+1cc to MR.T.R.JEYAPALAM, Advocate in SR.No.4259

ORDER
IN
CRL OP(MD) No.3339 of 2018
Date :14/03/2018

SMA/VR/SAR-2/19.03.2018:5P/6c