



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

Monday, the Twenty Sixth day of March Two Thousand Eighteen

WEB COPY

PRESENT

The Hon`ble Mr.Justice R.PONGIAPPAN

CRL OP(MD) No.3960 of 2018

1 C.M.S. BALASUBRAMANIAN

2 B. CHANDRADEVI

... PETITIONERS / ACCUSED

Rank Not Known

Vs

THE INSPECTOR OF POLICE

CENTRAL CRIME BRANCH, MADURAI CITY POLICE,

MADURAI- 625 001

... RESPONDENT

For Petitioners : Mr. T.K.GOPALAN Advocate

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

For Intervenor : Mr.R.RAJAMOHAN, Advocate

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

ORDER : The Court Made the following order :-

The petitioners, who are arrayed as Accused, apprehend arrest at the hands of the respondent police for the alleged offences punishable under Sections 420, 355, 294(b) and 506(ii) IPC, in Crime No.13 of 2018 and hence, seek anticipatory bail.

2.The case of the prosecution is that the de-facto complainant is running a cold storage construction business under the name and style of ''Sivapathi Claimaters''. The petitioners/accused approached the de-facto complainant and entered into an agreement on 27.12.2014 to construct a cold storage at the cost of Rs.8,56,45,000/- in S.No.213/2A, at No.5, Avaniyapuram, Madurai South Taluk. But, contrary to the agreement, the first petitioner himself purchased all machineries relating to cold storage construction without the knowledge of the de-facto complainant and thereby, the first petitioner owed to pay a sum of Rs.1,05,15,000/- to the de-facto complainant. Without paying the said amount, the first petitioner is running the cold storage and having income through the same. Therefore, legal notices were exchanged by both parties. In the meanwhile, on 05.11.2017, at 7.00 p.m., the petitioners along with four unknown persons trespassed into the house of the de-facto complainant with knife, sickle and wooden rod and threatened him to sign in the blank stamp papers. When the de-



facto complainant refused to do so, the first petitioner took the knife and threatened him with dire consequences. The second petitioner and four unknown persons also intimidated him with dire consequences. Hence, the present complaint.

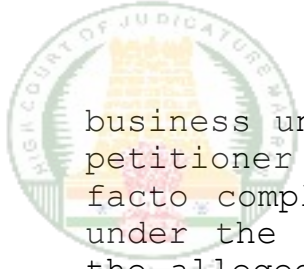
3.The learned counsel appearing for the petitioners submitted that the first petitioner is the Manager of CMS Cold Storage and Power Agent of the second petitioner, who is his wife and the Proprietrix of CMS Cold Storage, having Office at Door No.130-A, East Masi Street, Madurai. The first petitioner and the de-facto complainant entered into an agreement to erect cold storage in S.No.213/2A at Avaniyapuram Village. As per the agreement, the materials were supplied by M/s.Roja Steels, Chennai, METECNO INDIA PVT LTD., Chennai, International Coil Ltd., Gurgaon and Metaflex Doors India Pvt. Ltd., Greater Noida, Uttar Pradesh. For erecting the cold storage, Karur Vysya Bank, Kamarajar Salai, Madurai, granted loan to the tune of Rs.6,89,00,000/-. All the transactions were carried out under the supervision and knowledge of the Bank Officials legally. He further submitted that the de-facto complainant omitted to complete the cold storage erection by setting up the conveyor belts to place the goods to be stored in the compartments arranged for the purpose of loading and unloading the goods, for which, the de-facto complainant already received Rs.21,44,163/-. As the de-facto complainant committed breach of contract, by fixing the conveyor belt, the first petitioner himself engaged qualified men by spending his own money to set up the conveyor belt. In the meanwhile, the de-facto complainant and his brother Dasarathan committed theft of Cooling Compressor unit worth about Rs.9,30,198/- and some other goods, totally worth about Rs.17,65,391/-. Hence, the first petitioner lodged a complaint before the Commissioner of Police, Madurai City. On enquiry, the de-facto complainant admitted his guilt and sought time for returning all the stolen goods. Aggrieved over the same, the de-facto complainant has preferred the present complaint against the petitioners. Totally, the de-facto complainant has to pay an amount of Rs.36,21,799/- to the petitioners. Apart from this, the de-facto complainant has to return the stolen properties to the first petitioner. He also submitted that the petitioners are innocent persons and they have not committed the offence as alleged by the prosecution, and hence, prays for anticipatory bail in favour of the petitioners.

4.The learned counsel appearing for the Intervenor/de-facto complainant reiterated the averments made in the complaint and prayed for dismissal of the Criminal Original Petition.

5.The learned Government Advocate (Criminal side) submitted that based on the directions given by the Court below on the complaint preferred by the de-facto complainant, a case has been registered and the investigation is in progress.

<https://hcservices.ecourts.gov.in/hcservices/>

6.Admittedly, the petitioners herein are running a cold storage

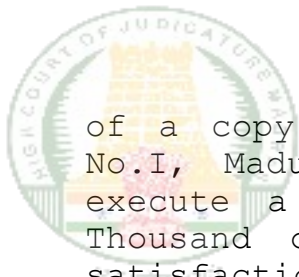


business under the name and style of 'CMS Cold Storage'. The first petitioner herein is the husband of the second petitioner. The de-facto complainant - V.Raguraman is running a construction business under the name and style of 'Sivapathi Claimaters'. Previous to the alleged occurrence, the petitioners and the de-facto complainant introduced themselves and entered into an agreement dated 27.12.2014, for the construction of cold storage in S.No.213/2A, at No.5, Avaniyapuram, Madurai South Taluk. At the time of entering into the contract, the petitioners have agreed to pay a sum of Rs.8,56,45,000/- to the de-facto complainant towards the construction cost. As of now, after completing the construction works, the petitioners herein opened the cold storage and running a business. While so, before registration of the case, the de-facto complainant made allegation against the petitioners by mentioning that the first petitioner purchased some Machineries in violation of the terms and conditions mentioned in the agreement, dated 27.12.2014. Due to which, as of now, the petitioners owed to pay Rs.1,05,15,000/- to him. On the other hand, as per the case of the petitioners, in the course of construction, the de-facto complainant stolen away some Machineries worth about several crores of rupees and committed the breach of contract and thereby, the de-facto complainant has to pay Rs.36,21,799/- to the petitioners.

7.For the abovesaid dispute, advocate notices were exchanged by both sides. In this occasion, the first petitioner herein made a complaint against the de-facto complainant for the offence of theft before the Commissioner of Police, Madurai, only on 18.05.2017 after a lapse of two months from the date of registering the petition mentioned offences. So, the lodging of the complaint against the de-facto complainant may be an afterthought and that has nothing to do with this anticipatory bail application. Moreover, as per the case of both parties, they have breached the contract entered on 27.12.2014 and thereby, this Court is of the view that the remedy available would be only through the Civil Forum.

8.With regard to Section 420 IPC, the evidences, which are necessary for completing the investigation, are all available in the form of documents. With regard to the other allegations, the de-facto complainant averred that at the time of occurrence, the petitioners herein are unlawfully entered into the house of the de-facto complainant and demanded to pay the balance amount. Further, the persons, who accompanied with the petitioners, were made life threat towards the de-facto complainant and no one has injured in the alleged occurrence. Despite that, the de-facto complainant does not say any specific averment with regard to obtaining the signature in the blank Stamp Paper.

9.Considering the abovesaid facts and circumstances, custodial interrogation of the petitioners may not be necessary for completing the investigation. Hence, this Court is inclined to grant anticipatory bail to the petitioners. Accordingly, they 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 No.I, Madurai, on condition that each of the petitioners 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 petitioners shall report before the respondent Police daily at 10.00 a.m. until further orders.
- (ii) the petitioners shall not tamper with evidence or witness either during investigation or trial.
- (iii) the petitioners shall not abscond either during investigation or trial.
- (iv) On breach of any of the aforesaid conditions, the anticipatory bail granted to the petitioners shall stand automatically cancelled and 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]**.

sd/-

26/03/2018

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)

TO

1 THE JUDICIAL MAGISTRATE NO.I, MADURAI

2 DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE, MADURAI

3 THE INSPECTOR OF POLICE
CENTRAL CRIME BRANCH, MADURAI CITY POLICE,
MADURAI- 625 001

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

+1. CC to Mr.R.RAJAMOHAN, Advocate SR.No.4785

SMN2

JAM/27/03/2018/ CM-VR / SAR 2 / 4P-6C

ORDER

IN

CRL OP(MD) No.3960 of 2018

Date :26/03/2018