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

Monday, the Fourth day of June Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

CRL OP(MD) No.4211 of 2018

S.BABU KUMAR ... PETITIONER / ACCUSED NO.1

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
THOOTHUKUDI DISTRICT.
IN CRIME NO.15/2017 ... RESPONDENT / COMPLAINANT

For Petitioner : Mr.I.SUBRAMANIAN, Senior Counsel for
Mr.A.W.D.TILAK, Advocate

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

For Intervenor : Mr.K.M.KARUNAKARAN, Advocate

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

ORDER : The Court Made the following order :-

RESERVED ON : 26.04.2018
PRONOUNCED ON : 04.06.2018

The petitioner seeks grant of Anticipatory Bail as he apprehends arrest at the hands of the respondent for offences under Sections 408, 420, 465, 468, 471 and 120 (B) of I.P.C.

2. The case of the prosecution is that the petitioner was working as a Manager in M/s.Maris Associates Private Limited, Tuticorin and that he was given the entire charge of administration. Abusing the confidence reposed in him, the petitioner had swindled the company funds to the tune of Rs.6,82,51,745/-.

3. The learned Senior counsel appearing for the petitioner submitted that the present petition deserves to be considered notwithstanding the dismissal of his earlier applications for grant of Anticipatory Bail because there are change in circumstances. The materials now available for consideration of this Court would indicate that the petitioner is innocent. It is true that the money belonging to the company in which the petitioner was employed was

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transferred to the personal account of the petitioner. According to the learned Senior counsel this was done more as a matter of arrangement. The transfer was done on instructions of the de facto complainant / employer.

4. The case of the petitioner is that the petitioner was used as a scapegoat so as to enable the de facto complainant to personally enriched himself. According to the petitioner after transfer of funds from the company to the petitioner's personal account, the same would be withdrawn through other channels and that the money would be handed over to the company Auditor. The company Auditor would give receipts for the money. The petitioner had got those receipts forensically examined by a recognized and approved Laboratory at Bangalore, who had given a positive report stating that the signatures found in the said receipts are similar to the signatures found in the contemporaneous documents.

5. The learned Senior counsel would further highlight that the transactions date back to the year 2013. It cannot be that these transactions escaped the attention of the auditors of the management or the ultimate employer. The defence now projected by the petitioner stood probablised by the fact that these transactions were not questioned for almost four years. In any event, the case against the petitioner is founded entirely on documentary material and that therefore the custodial interrogation of the petitioner is not warranted.

6. When the matter was taken up, this Court directed the petitioner to file an additional affidavit indicating the details of formation of M/s.Shri.R.B. Associates, Shri.R.B. Enterprises, Shri R.B.Home Bazaar, Shri Vinayaga Bricks as funds had been routed through the accounts held in the aforesaid names. The Banks were also directed to issue bank statements of these entities. In compliance of the positive direction, the petitioner filed an additional affidavit and also enclosed the bank statements.

7. Heard the learned Senior counsel appearing for the petitioner and the learned Government Advocate (Crl side) appearing for the Police and the learned Senior counsel appearing for the intervenor/ de facto complainant and also went through the materials available on record.

8. Crime No.15 of 2017, was registered on the file of the Inspector of Police, District Crime Branch, Thoothukudi District on the information lodged by the petitioner's former employer A.V.M.V.Mani. The petitioner is shown as the first accused and his father and brother have been shown as accused Nos.2 and 3. The case set out in the First Information Report is that the petitioner was employed in M/s.Maris Associates Private Limited, Tuticorin for more than ten years. He was designated as a Manager. According to the First Information Report, the entire accounts of the company were managed only by the petitioner. The management had so much

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confidence in him that he was given complete charge of the entire administration. The company received an intimation from the Department that the dues payable to the Employees' Provident Fund Organization were not remitted. There upon, it came to know that the petitioner had not only fabricated Provident Fund Challans and also had siphoned off company funds in connivance with his father, brother and his friend Thiru Ramesh.

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9. The First Information Report alleges that the petitioner had created entities such as R.B. Home Bazaar, R.B. Associates and R.B. Enterprises had transferred the company funds through the said accounts. It is also alleged that the petitioner had transferred the money to his own personal account. The amount misappropriated by the petitioner would come to a sum of Rs.6,82,51,745/-.

10. It is not in dispute that the petitioner's earlier attempt to secure relief at the hands of this Court was not fruitful. In fact, the petitioner had filed two petitions before this Court. While the first one was dismissed as not pressed, the second one suffered a positive dismissal. This Court while dismissing the Crl.O.P.(MD).No.6458 of 2017 filed by the petitioner herein by order dated 25.01.2018 observed that the petitioner's custodial interrogation is necessary.

11. It is not in dispute that there was transfer of funds from M/s. Maris Associates Private Limited, Tuticorin to the personal accounts maintained by the petitioner either in his name or in the names of the entities mentioned above. When this part of the allegations against the petitioner is clearly borne out by records, the claim of the petitioner that he handed over the withdrawn amounts to the Auditor, at this stage, is more a self serving statement of the petitioner without being backed by any concrete material. The defence of the petitioner is that he helped the de facto complainant to launder money or divert the company funds for the personal use of the Director / de facto complainant. Either way it is illegal. The petitioner stands condemned by his own conduct. The petitioner cannot hand over the company funds for private benefit of the Directors.

12. The learned Senior counsel appearing for the de facto complainant would strongly dispute the claim of the petitioner. He would point out that these are only self serving statements. The de facto complainant has produced some material to show that the company funds were actually routed and diverted to settle the personal liabilities of the petitioner. In fact, the voluminous typed sets were filed on either side.

13. This Court is not conducting any trial. The only issue that has to be seen is whether the petitioner can be granted the relief of Anticipatory Bail. This Court is of the view that the present petition deserves dismissal for three reasons.

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(i).This is the third petition for Anticipatory Bail filed by the petitioner. In the earlier dismissal order, this Court had specifically observed that the petitioner's custodial interrogation is necessary. Therefore, in the face of such observation, the subsequent petition would clearly not lie. The reasons assigned in the petition to establish change of circumstances are not really such circumstances at all.

(ii).The transfer of funds from the company account to the personal account of the petitioner is not really in dispute. It is established by the bank statements. It is his defence that subsequent to the withdrawl of cash by the petitioner, the said amounts were paid to the Auditor. There is no convincing material. The Auditor concerned had denied the signatures attributed to him. Therefore, this is clearly a matter for investigation.

(iii).Even if the defence projected by the petitioner is assumed to be true, the petitioner can still not escape from the consequences. He stands condemned by his own defence. The petitioner is a party to a money laundering arrangement. The funds of the company cannot be handed over on the platter even to his own boss. It is misappropriation and criminal breach of trust.

14. The amount involved is huge. It is yet to be recovered. The cash flow as on date now stops at the hands of the petitioner. He has withdrawn the same. The circle is not yet completed. To find out as to what happened after the funds were ultimately withdrawn by the petitioner, as rightly observed by this Court earlier, custodial interrogation is warranted. This Court is not impressed by the argument advanced by the learned Senior counsel appearing for the petitioner that transactions were spread over more than three years and that therefore this Court has come to the conclusion that they took place with the express knowledge of the de facto complainant. The de facto complainant's answer is that he trusted the petitioner so much that he left everything entirely in the hands of the petitioner. This sounds probable. Only those who trust get cheated. In this case, the de facto complainant submitted that he trusted the petitioner. There is absolutely no merit in this Criminal Original petition.

15. This Criminal Original Petition stands dismissed.

sd/-
04/06/2018

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

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TO
1 THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH, THOOTHUKUDI DISTRICT.

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

+1. CC to Mr.R.ANAND, Advocate, SR.No.9543
+1CC TO Mr.K.M.KARUNAKARAN, Advocate, SR NO.9413

ORDER
IN
CRL OP(MD) No.4211 of 2018
Date :04/06/2018

MS/PN/RNB/11.06.2018/5P.5C

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