



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

Monday, the Eighteenth day of June Two Thousand Eighteen

WEB COPY

PRESENT

The Hon`ble Mr.Justice A.M.BASHEER AHAMED

CRL MP(MD) Nos.5163 and 5780 of 2017
and CRL MP(MD)No.5490 of 2017
IN CRL OP(MD) No.6246 of 2017

1 T.KARPAGAM
2 THONDEESWARAN

... PETITIONERS/PETITIONERS IN
CRL MP(MD)Nos.5163 & 5780/17 IN
CRL OP(MD)No.6246/17

KANNAMMAL

...PETITIONER/INTERVENER

Vs

STATE REP BY
THE INSPECTOR OF POLICE
CCB, MADURAI CITY,
MADURAI-19
CRIME NO.65/2016

... RESPONDENT/RESPONDENT IN
CRL MP(MD)Nos.5163 & 5780/17 IN
CRL OP(MD)No.6246/17

1 T.KARPAGAM
2 THONDEESWARAN

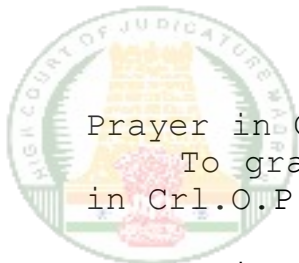
... RESPONDENTS 1 & 2/PETITIONERS
1 & 2 IN CRL MP(MD)No.5490/17 IN
CRL OP(MD)No.6246/17

STATE REP BY
THE INSPECTOR OF POLICE
CCB, MADURAI CITY,
MADURAI-19
CRIME NO.65/2016

...3rd RESPONDENT/RESPONDENT IN
CRL MP(MD)No.5490/17 IN
CRL OP(MD)No.6246/17

Prayer in CRL MP(MD)No.5163/17 in CRL OP(MD)No.6246/17

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to modify the order dated 25/05/2017 in Crl.O.P.No. 6246 of 2017 in so far as the condition to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs) To defacto complainant and order to release the petitioner on bail without paying any amount to the defacto complainant in connection with Crime No. 65 of 2016 on the file of respondent police herein and thus render justice.



Prayer in CRL MP(MD). 5780/ 2017 :

To grant further time to comply with the order dated 25.05.2017 in Crl.O.P.No.6246 of 2017 and thus render justice.

Prayer in CRL MP(MD). 5490/ 2017 :

To cancel the anticipatory bail granted by this Honourable Court to the respondents 1 and 2 in Crl.O.P(MD).No.6246/2017 on 25/05/2017.

Order : These petitions coming on for orders upon perusing the petitions filed in support thereof and upon hearing the arguments of M/S.S.BALAMURUGAN, Advocate for the petitioner in CRL MP(MD)Nos.5163 & 5780/17 IN CRL OP(MD)No.6246/17 and 1 & 2 respondent in CRL MP(MD) No.5490/17 IN CRL OP(MD)No.6246/17 and Mr.C.ARUL VADIVEL @ SEKAR , Advocate for the petitioner in CRL MP(MD)No.5490/17 IN CRL OP(MD) No.6246/17 and of Mr.A.RAMAR, Additional Public Prosecutor for the respondents in CRL MP(MD)Nos.5163 & 5780/17 IN CRL OP(MD)No.6246/17 and R3 in CRL MP(MD)No.5490/17 IN CRL OP(MD)No.6246/17 and the court made the following order:-

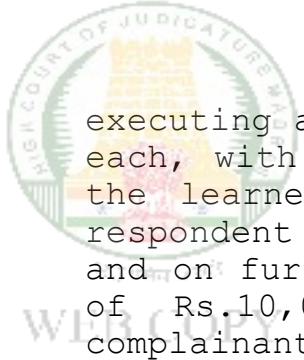
The petition in CRL M.P(MD)No.5163 of 2017 has been filed praying to modify the order dated 25.05.2017 in CRL O.P(MD)No.6246 of 2017 insofar as the condition to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs) to defacto complainant and order to release the petition on bail without paying any amount to the defacto complainant in connection with Crime No.65 of 2016, on the file of the respondent police.

2.The petition in CRLM.P(MD)No.5180 of 2017 has been filed praying to grant further time to comply with the order dated 25.05.2017 in Crl.O.P(MD)No.6246 of 2017.

3. The petition in CRLM.P(MD)No.5490 of 2017 has been filed praying to cancel the anticipatory bail granted by this court to the accused / respondents 1 and 2 in Crl.O.P(MD)No.6246 of 2017, on 25.05.2017.

4. The petitioners in Crl.M.P(MD)No.5163 of 2017 and in Crl.M.P (MD)No.5780 of 2017 are the accused Nos.1 & 2 respectively in Crime No.65 of 2016, for the offences under Sections 120(b), 406, 408 and 420 IPC., registered by the Inspector of Police, CCB, Madurai City, Madurai. The accused persons are wife and husband respectively.

5. On apprehension of arrest by CCB, Madurai City, the accused persons moved an application seeking anticipatory bail before this Court in Crl.O.P(MD)No.6246 of 2017 in which, the defacto complainant is arrayed as intervener and this Court was inclined to grant anticipatory bail in its order, dated 25.05.2017, after hearing both sides, ordering the accused persons to be released on bail in the event of arrest or on their appearance, within a period of 15 days from the date on which the order copy is made ready, before the learned Judicial Magistrate No.1, Madurai and on



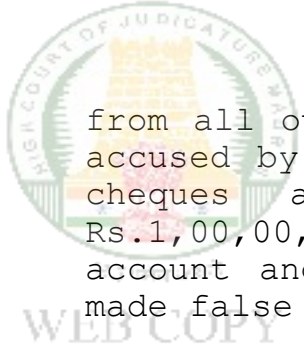
executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) each, with two sureties each for a like sum to the satisfaction of the learned Magistrate concerned or to the satisfaction of the respondent police or to the police officer who intends to arrest and on further condition that the accused persons shall pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) to the defacto complainant and on further condition that; a) the accused persons shall report before the respondent Police daily at 10.30 a.m., until further orders, b) the accused persons shall not tamper with evidence or witness either during investigation or trial, c) the accused persons shall not abscond either during investigation or trial d). On breach of any of the aforesaid conditions, the learned Magistrate / trial Court is entitled to take appropriate action against the accused persons in accordance with law, as if the conditions have been imposed and the accused persons released on bail by the learned Magistrate / trial Court himself / itself as laid down by the Hon'ble Supreme Court in P.K.Shaji Vs. State of Kerala, (2005 AIR SCW 5560).

6. The copy of the said order was made ready on 30.05.2016. But, the accused persons were not arrested, since they failed to appear before the concerned Magistrate within the stipulated time. Before the expiry of 15 days, as ordered, the accused persons filed CrI.M.P(MD)No.5163 of 2017 and also CrI.M.P(MD)No.5780 of 2017 on 13.06.2017, seeking modification of the order, dated 25.05.2017 in CrI.O.P(MD)No.6246 of 2017, insofar as the condition to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) to the defacto complainant and order to release the accused persons on bail without paying any amount to the defacto complainant and also to grant further time to comply with the order dated 25.05.2017 made in CrI.O.P(MD)No.6246 of 2017, respectively.

7. While the above miscellaneous petitions are filed on 13.06.2017 and are pending, the defacto complainant / intervener filed CrI.M.P(MD)No.5490 of 2017 on 23.06.2017, seeking cancellation of anticipatory bail granted to the accused persons by this Court in CrI.O.p(MD)No.6246 of 2017, dated 25.05.2017 only on the ground that the accused persons did not comply with the conditions imposed by this Court in granting anticipatory bail.

8. The brief facts of the defacto complainant case is as follows:-

The defacto complainant / petitioner in CrI.M.P(MD)No.5490 of 2017 is one of the partners in Lakshmi Eye Care Service, LLP running Optical and Pharmacy outlets in various towns of Tamil Nadu and the said Firm is having an outlet in 'Aravind Eye Hospital', Madurai in which the defacto complainant is the authorized signatory for issuing cheques on behalf of the Firm and the first accused is an employee in the said firm, who is incharge of finance section and used to prepare the cheques in the name of the parties. The said Firm is purchasing lenses, frames and medicines from various parties



from all over India. During Audit it came to light that the first accused by forging the signature of the defacto complainant, drawn cheques and swindled the money nearly to the tune of Rs.1,00,00,000/- and deposited the said money in her personal account and in the joint account of her husband / 2nd accused and made false entries in the account books.

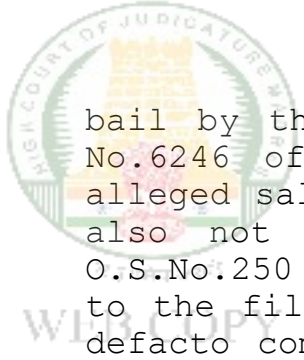
9. The learned counsel appearing for the defacto complainant would contend that both the accused conspired together with dishonest intention to cheat and misappropriate the money and deliberately transferred the amount to her personal account and also in the joint account of her husband and thereby committed criminal breach of trust. The present petition filed by the accused persons to modify the conditions in respect of payment of Rs.10,00,000/- to the defacto complainant is not maintainable in law and this Court cannot modify its own order and cannot invoke Section 482 of Cr.P.C., for exercising its inherent power, when there is a specific prohibition imposing Section 362 Cr.P.C. The learned counsel also relies the following decisions, in support of his contentions:-

(1). The Judgments of Supreme Court in ***Hari Singh Mann Vs. Harbhajan Singh Bajwa and Others*** reported in (2001 (1) SCC 169); (2) in ***State of Kerala Vs. M.M.Manikantan Nair*** reported in (2001 (4) SCC 752; (3)) in ***Hindustan Construction Co.Ltd., and Anothers Vs. Gopal Krishna Sengupta and Others*** reported in (2004 SCC (Cri) 81); (4) In ***Sunita Jain Vs. Pawan Kumar Jain and Others*** reported in (2008 (1) SCC (Cri) 537); and (5), the Judgment of this Court in ***C.Manivannan Vs. State by Inspector of Police, Economic Wing, Coimbatore*** reported in 2015(2) TLNJ 152 (Criminal).

10. In the case on hand, modification of a condition imposed by this Court in granting anticipatory bail in favour of the accused persons to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) to the defacto complainant is being asked as relief by the accused persons for deleting the said condition before this Court. The cases referred by the defacto complainant is not applicable to the facts of the present case on hand. Granting or refusing bail with conditions is an interlocutory order and it is not a final order, as stated in Section 362 Cr.P.C. Hence, this applications seeking modification and also extension of time filed by the petitioner under Section 482 Cr.P.C., before this Court are legally maintainable.

11. In a catena of decisions, while granting bail or anticipatory bail this Court has modified its own condition. Hence, there is no bar to move an application for modification of condition imposed by this Court in granting bail or anticipatory bail before this Court, since it is not a final order.

12. There is no dispute that the earlier anticipatory bail applications fled by the accused persons were dismissed by this Court and thereafter, the accused persons were granted anticipatory



bail by this Court in its order dated 25.05.2017 in CrI.O.P(MD) No.6246 of 2017. It is further admitted that the execution of alleged sale deed, dated 22.09.2006 by the first accused, which was also not registered, is being questioned in a civil Suit in O.S.No.250 of 2016 filed by the first accused and is pending prior to the filing of the aforesaid anticipatory bail application. The defacto complainant would contend and admit that the first accused has dishonestly swindled a sum of Rs.97,86,570/- by resorting to forged cheques and out of the said sum, the accused had paid Rs.43,18,000/- on different dates, by way of cash, withdrawal from the bank account of the first accused and also on transfer to the bank account of the defacto complainant and the balance amount of Rs.54,68,570/- is yet due from the accused, for which O.S.No.47 of 2017 was filed by the defacto complainant and is pending on the file of the District Court, Madurai. The alleged balance amount is disputed and also is the subject matter of the civil Suit filed by the defacto complainant against the first accused and the said claim is subjudice in O.S.No.47 of 2017.

13. Considering the above facts and circumstances of the case, the conditions imposed in CrI.O.P(MD)No.6246 of 2017, directing the accused persons to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) by the accused persons during the pendency of the claim which was already seized by the civil court, to the defacto complainant, is an onerous one on granting anticipatory bail. The factum of filing and pending of O.S.No.47 of 2017 filed by the defacto complainant against the first accused was not brought to the notice of this Court on the date of order granting anticipatory bail. The commission of alleged offence is to be decided by the criminal Court, on the basis of evidence produced by the prosecution. The alleged offences are based on records. Hence, this Court is inclined to modify the condition by deleting the condition to pay a sum of Rs.10,00,000/-, by the accused to the defacto complainant, as ordered in CrI.O.P(MD)No.6246 of 2017 dated 25.05.2017. It is made clear that the other conditions stand unaltered.

14. In the result, the CrI.M.P(MD)No.5163 of 2017 is allowed deleting the condition to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only), to the defacto complainant, imposed in order dated 25.05.2017 in CrI.O.P(MD)No.6246 of 2017, in connection with Crime No.65 of 2016, on the file of the respondent Police. Further, the petition in CrI.M.P(MD)No.5780 of 2017 is also allowed granting one week time to comply with the order, dated 25.05.2017, in CrI.O.P(MD) No.6246 of 2017, from the date on which the copy of this order is made ready. The petition in CrI.O.P(MD)No.5490 of 2017 seeking cancellation of anticipatory bail stands dismissed.

sd/-

18/06/2018

/ TRUE COPY /



1 THE JUDICIAL MAGISTRATE NO.I, MADURAI.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, MADURAI.

3 THE INSPECTOR OF POLICE,
CCB, MADURAI CITY, MADURAI 19.

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

ORDER

IN

CRL MP(MD) Nos.5163 and 5780

of 2017 and CRL MP(MD)No.5490 of 2017

IN CRL OP(MD) No.6246 of 2017

Date :18/06/2018

SMA/CM-VR/ASVM/25.06.2018:6P/5C