



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

Thursday, the Twenty Second day of November Two Thousand Eighteen

PRESENT

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The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) Nos.18638 & 19538 of 2018

SRINIVASAN ... PETITIONER / ACCUSED RANK NOT KNOWN
...IN CRL OP(MD).NO.18638 OF 2018

SUREN KUMAR ... PETITIONER/ACCUSED NO.2
...IN CRL OP(MD).NO.19538 OF 2018

Vs

THE STATE REPRESENTED BY
THE DEPUTY SUPERINTENDENT OF POLICE,
DISTRICT CRIME BRANCH,
TUTICORIN,
TUTICORIN DISTRICT,
(CRIME NO.8/2018)

... RESPONDENT / COMPLAINANT
IN BOTH PETITIONS

For Petitioner : MR.N.SUNILKUMAR Advocate
IN BOTH PETITIONS

For Respondent : MR.K.CHELLAPANDIAN,
Additional Advocate General assisted by
Mr.S.CHANDRASEKAR, Additional Public Prosecutor
IN BOTH PETITIONS

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.
...IN CRL OP(MD).NO.18638 OF 2018

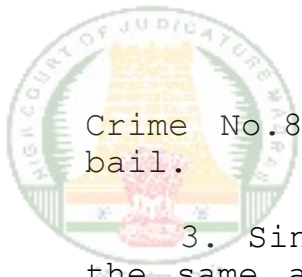
PETITION FOR BAIL Under Sec. 439 Cr.P.C.
...IN CRL OP(MD).NO.19538 OF 2018

ORDER : The Court Made the following order :-

[Orders Reserved on 19.11.2018]

The Petitioner in Crl.O.P(MD)No.18638 of 2018, apprehends arrest at the hands of the respondent police, for the alleged offences punishable under Sections 406, 465, 467, 468, 471, 420 and 120-B of IPC., in Crime No.8 of 2018, , on the file of the respondent police, seeks anticipatory bail.

2. The Petitioner in Crl.O.P(MD)No.19538 of 2018 was arrested by the respondent police on 27.09.2018, for the offences punishable under Sections 406, 465, 467, 468, 471, 420 and 120-B of IPC., in



Crime No.8 of 2018, on the file of the respondent police, seeks bail.

3. Since the issue involved in both the petitions are one and the same and all the cases arising out of a common Crime Number, this Court being passed a common order.

4. The case of the prosecution is that M/s.Ind Bharath Energies (Thoothukudi) Limited is a private coal based generator of electricity, having its plant with a capacity of 20 MW at Eppodumvendran Village, Ottapidaram Taluk, Thoothukudi District. The generating unit of M/s.Ind-Bharath Energies (Thoothukud) Limited, has commercial options that is to sell the power to TANGEDCO, to supply the power to its captive users, who has seeks prescribed in the generating plant. The accused in this case, had created forged documents and cheated the TANGEDCO and thereby caused a loss to the tune of several crore.

5. Mr.N.Sunil Kumar, the learned counsel appearing for the petitioner would submit that the petitioner in CrI.O.P(MD)No.19538 of 2018, was arrested on 27.09.2018. In this case Mr.M.N.V.Sudhakar, the Chairman of M/s.Ind-Bharath Energies (Thoothukkudi) Limited, who has been arrayed as A1, had approached this Court in CrI.O.P(MD)No.4759 of 2018 and this Court had granted anticipatory to the petitioner, on the strength of the report submitted by the respondent stating that on investigation it was found that the said Mr.M.N.V.Sudhakar, the Chairman of M/s.Ind-Bharath Energies (Thoothukkudi) Limited, had handed over the entire operations to M/s.Trishul Electric and Powergen Limited, in which A2 is the Chief Operating Officer.

6. It is his further contention that the petitioner had infused to the tune of Rs.14,00,00,000/-, for the revamping and to start generation of M/s.Ind-Bharath Energies (Thoothukkudi) Limited, and with the knowledge in tandem with the M/s.Ind-Bharath Energies (Thoothukkudi) Limited only, the entire operations have been carried out. M/s.Ind-Bharath Energies (Thoothukkudi) Limited, have now to escape from the case, had shifted the entire blame on the petitioner and now M/s.Ind-Bharath Energies (Thoothukkudi) Limited, has cancelled the lease agreement for which M/s.Trishul Electric and Powergen Limited, had laid a claim of Rs.28,00,00,000/-, initiating arbitration proceedings. M/s.Ind-Bharath Energies (Thoothukkudi) Limited, trying to shift the responsibility only to wriggle out of its financial obligations. The petitioner had earlier co-operated with the investigation and appearing several times for enquiry before the Investigation Officer and the TANGEDCO on several occasions and co-operated with them. The petitioner submits that he is a business man of repute having built his business over a long period of time by gaining confidence of people in the industry and he has not committed any offence. Further, all the documents are with the respondent Police and with Electricity Department, the petitioner has no access to these documents and hence, the question



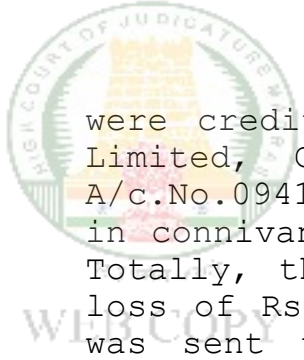
of tampering of the document does not arise. The petitioner is suffering from certain ailments and taking treatment, including heart ailment. Petitioner is ready to co-operate with the investigation and abide by any condition and prayed for bail, since he is in custody from 27.09.2018.

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7. Mr.K.Chellapandian, the learned Additional Advocate General, assisted by the Mr.S.Chandrasekaran, the learned Addition Public Prosecutor, appearing for the respondent, on instructions, would submit that the petitioner in Crl.P.(MD)No.19538 of 2018, is the Chief Operating Officer of M/s.Trishul Electric and Powergen Limited, who had invested huge sums of money and refurnished and operated the Plant of M/s.Ind-Bharath Energies (Thoothukkudi) Limited, for which, three operational agreements were entered into between them on 28.11.2015, 08.01.2016 and 02.08.2016. M/s.Ind-Bharath Energies (Thoothukkudi) Limited, was having a 20 M.W. Power Plant Eppodumvendran Village, Ottapidaram Taluk, Thoothukudi District, to generate power for sharing with captive consumers of M/s.Ind-Bharath Energies (Thoothukkudi) Limited. The operative and lease agreement were entered for operational reasons. M/s.Ind-Bharath Energies (Thoothukkudi) Limited, was granted open access by TANGEDCO, and also it approach TANGEDCO, seeking wheeling approval and entered into wheeling agreement, for the purpose of wheeling power to their captive users and have obtained approval for adjustment and the same to be adjusted and an approval for the same were obtained from State Load Despatch Centre (SLDC).

8. Adding further, the learned Additional Advocate General would submit that, as per Open Access Rules and as per Electricity Act, the sale to a third person was approved. The power generated by M/s.Ind-Bharath Energies (Thoothukkudi) Limited, could be infused into the TANTRANSOCO. On 27th of every month ABT Meter reading would be taken by Assistant Executive Engineer (Distribution), Kayathar and Executive Engineer, Kovilpatti and TANGEDCO Officers would assess the reading. Thereafter, the metre reading would be registered in the Registers. As per the wheeling agreement, the generated power was supplied to M/s.Sakthi Auto Components Ltd., in Erode Distribution Region and M/s.Apollo Tyres Ltd., Chengalpattu Circle, who are the captive users end. This Electricity Department Officials would be informed about the dates on which the generation would be infused into the grid and prior approval would be obtained from SLDC.

9. Continuing further, the learned Additional Advocate General would submit that M/s.Ind-Bharath Energies (Thoothukkudi) Limited, was in shutdown for maintenance, from August 2016 to December 2016. This being so, for November - 2016, it was projected as 65,38,434 Units were generated and for December, 79,81,103 Units were generated and in connivance with the employees of Electricity Department forged allotment orders, have been obtained and using the same, the captive users M/s.Sakthi Auto Components Ltd., and M/s.Apollo Tyres Ltd., were charged Rs.7,20,00,000/- and the amounts



were credited to the account of M/s.Trishul Electric and Powergen Limited, Canara Bank Account, Thousand Light Branch, Chennai, A/c.No.094121000025. This fraud and misappropriation had happened in connivance with the Electricity Department Officials and others. Totally, the Electricity Department had been cheated and sustained loss of Rs.9,17,73,379/-. When the same was questioned and Notice was sent to M/s.Ind-Bharath Energies (Thoothukkudi) Limited, a reply, by way of self-explanatory letter, dated 14.02.2018 was sent by them stating that the consultant has committed the mistake and the entire amount would be repaid and sought waiver of penal charges by. The said letter has been signed by A2/ Sushil Kumar. His father Srinivasan and his brother Sushil Kumar are the Authorized Signatory, who are operating the accounts of M/s.Trishul Electric and Powergen Limited. The said Sushil Kumar, brother of the Arun Prasad, who had been perpetrator of the forgery, fraud committed on the Electricity Department and the beneficiary, hence excluded the name of Mr.M.N.V.Sudhakar, President of M/s.Ind-Bharath Energies (Thoothukkudi) Limited.

10. I have heard the learned counsels appearing on either side and perused the materials available on record.

11. The petitioner S.Suresh Kumar / A2, his brother Arun Prasad / A3 and his father Srinivasan have all acted in tandem, in connivance with Electricity Department Officials and others to defraud the Electricity Department, by creating forged documents, using the same as genuine, had cheated the Electricity Department, Captive Users and thereby, caused a loss of Rs.9,17,73,379/-. The said S.Suresh Kumar / A2, being the Chief Operating Officer of M/s.Trishul Electric and Powergen Limited, his father Srinivasan and brother Arun Prasad / A3 are the Authorized persons, to operate the Bank Account, received crores of rupees. A3 / Arun Prasad had entered into all agreements with M/s.Ind Bharath Energies (Thoothukudi) Limited. As rightly contended by the learned Additional Advocate General, appearing for the respondent, huge funds have been cheated by the accused, by fabricating and forging documents and thereby caused loss of Rs.9,17,73,379 to the Electricity Department.

12. Considering the above facts and circumstances of the case and the investigation is at early stage and that the case involves well intellectual conspiracy between number of persons and the involvement of other accused have to be investigated, this Court is not inclined to grant the relief sought by the petitioners, at this stage. Hence, this Criminal Original Petitions are dismissed.

sd/-

22/11/2018

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TO

1 THE DEPUTY SUPERINTENDENT OF POLICE,
DISTRICT CRIME BRANCH,
TUTICORIN,
TUTICORIN DISTRICT.

2. THE SUPERINTENDENT,
CENTRAL PRISION, PALAYAMKOTTAI, TIRUNELVELI DSITRICT.

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

+2. CCS to MR.N.SUNILKUMAR Advocate SR.No.21996,21997

ORDER
IN

CRL OP (MD) Nos.18638 & 19538 of 2018

Date :22/11/2018

AE/PN/SAR4/03.12.2018/5P/6C