



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

Friday, the Sixteenth day of November Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) No.19406 of 2018

MAHESWARAN

... PETITIONER / SOLE ACCUSED

Vs

STATE REPRESENTED BY,
THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
TRCIHY,
CRIME NO.18 OF 2018

... RESPONDENT / COMPLAINANT

For Petitioner : Mr.N.DILIP KUMAR, Advocate.

For Respondent : Mr.S.CHANDRASEKAR, Additional Public Prosecutor.

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 respondent police for the alleged offences punishable under Sections 406, 417, 420 and 506(i) of IPC., in Crime No.18 of 2018, seeks anticipatory bail.

2. The case of the prosecution is that the defacto complainant, having entered into an agreement for Road Over Birdge (ROB) at L.C 123 in Vellore District with the petitioner, had supplied 122 M.T. of steel materials, worth about to Rs.75,00,000/-. The materials were purchased from Steel Authority of India Limited. When the defacto complainant had enquired about the work progress, the petitioner has not responded. Therefore, the defacto complainant attempted to physically verify the same, but it was refused by the petitioner. On enquiry, the defacto complainant found that the materials supplied by them were not available in the premises of the petitioner and it was learnt that the petitioner had sold the materials supplied by the defacto complainant, for the urgent requirement for Railways Projects, which is of National importance and Public convenience. Further, the petitioner, knowing the consequences, had failed to carry on the work, as promised. Hence, the defacto complainant preferred a



complaint to the Superintendent of Police, which has been forwarded to the first respondent, to recover the materials supplied, since the petitioner had violated the legal contract agreement.

3. Mr.N.Dilip Kumar, the learned counsel appearing for the petitioner would submit that the petitioner, who is the proprietor of M/s.Maheswara Engineering Industries, is engaged in fabrication and construction work of Road Over Bridges (ROB) for Railways Department and others. He had entered into a business arrangement with the informant / defacto complainant, who had issued purchase orders, on 29.10.2016 and as per the said purchase order, the petitioner to purchase materials on his own costs and the cost incurred by the petitioner for purchase of materials and other charges would be settled along with interest by the defacto complainant. The petitioner has availed financial assistance for the work with the State Bank of India. The petitioner had arranged raw-materials partly through M/s.Lakshmi Theja Associates, which is owned by the petitioner's wife. The defacto complainant had placed purchase orders with M/s.Lakshmi Theja Associates and directed them to supply raw-materials to the petitioner.

4. It is his further contention that the job was done as agreed, and the ROB could not be erected and installed at the proposed site (Dindigul), since the defacto complainant had not obtained permission from the Railways, within the stipulated time. Further, the defacto complainant was negligent in supplying the deck sheet materials, within the time frame and an inordinate delay was caused. All the payments were made through Bank. Other than payments for materials, the defacto complainant has to pay the labour charges, fabrication charges and other related charges. There seems to have been some dispute with regard to payment, who has to pay GST and there was some outstanding. On completion of Dindigul ROB, the 2nd respondent had entered into an another agreement with the petitioner, on 07.05.2018, for construction of ROB, to be erected in Vellore, near Golden Temple. Continuing further, he would submit that due to financial crunches caused by the defacto complainant, the entire business of the petitioner stands crumbled and the business loan obtained from the Bank has to be repaid. The petitioner had lodged a complaint to the Police as early on 01.09.2018.

5. Mr.B.Jameel Arasu, the learned counsel appearing for the defacto complainant, while reiterating the averments made in the counter affidavit, submits that there seems to be a dispute with regard to quantum of payment between the petitioner and the defacto complainant. A letter has been addressed by the Chief Engineer (Construction), Southern Railways, to the Superintendent of Police, about the misdeeds of the petitioner. He filed invoices and transporting bills. Adding further, he would submit that timely completion of the project is being regularly monitored by the higher officials of the Railways with the State Government in the Monthly Joint Review Meeting. The delay in completion of the above work,



by the petitioner, would lead to serious consequences to the defacto complainant. Further, the petitioner, knowing the consequences, had failed to carry on the work, as promised. Hence, he objects for granting the relief of anticipatory bail to the petitioner.

6. Admittedly, it is a case of breach of contract. The petitioner had earlier done the sub-contract work for the Dindigul ROB and thereafter, the Vellore ROB had been entrusted to him. There seems to be some dispute with regard to payment for the Vellore ROB. The petitioner, who is running a small scale industry, has been put to financial crunch and he has also filed a complaint to Micro and Small Enterprises Felicitation Council, Trichy, seeking redressal of his grievance. Further, he had preferred a complaint to the Police with regard to the same. The dispute between the petitioner and the defacto complainant is in violation of the business contract.

7. Considering the above facts and circumstances of the case and also considering the nature of the dispute between the petitioner and the defacto complainant and claims and counter-claims, which are borne by records and the offenses are document based one, all the documents are available with the concerned and also taking note of the submission of the petitioner that the petitioner is a permanent resident and he will not evade justice and to co-operate with investigation, the custodial interrogation of the petitioner is not necessary. Hence, this Court is inclined to grant anticipatory bail to the petitioner, of course, with certain conditions;

8. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, before the learned Judicial Magistrate No.VI, Trichy, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the learned Magistrate concerned and on further condition that;

[a] if the petitioner failed to surrender before the said Magistrate within a period of fifteen days, this Order shall stand automatically cancelled.

[b] the petitioner shall report before the respondent police, daily at 10.00 a.m., until further orders, for interrogation

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.

[e] On breach of any of the aforesaid conditions, 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].
[f] If the accused thereafter abscond, a fresh FIR can be registered under Section 229-A IPC.

sd/-

16/11/2018

WEB COPY

/ TRUE COPY /

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

TO

- 1.THE JUDICIAL MAGISTRATE VI,
TRICHY.
- 2.DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TRICHY.
- 3.THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH, TRICIHY.
- 4.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

- +1. CC to Mr.N.DILIP KUMAR Advocate SR.No.21750.
+1. CC to Mr.B.JAMEEL ARASU Advocate SR.No.21693.

ORDER

IN

CRL OP(MD) No.19406 of 2018

Date :16/11/2018

RAM/JC/SAR 4/20.11.2018/4P/7C