

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Criminal Jurisdiction)
Thursday, the Tenth day of October Two Thousand Nineteen
PRESENT

The Hon`ble Mr Justice M. GOVINDARAJ
CRIMINAL ORIGINAL PETITION No.27181 of 2019

1 PONNUSAMY
2 P.NIRMALA

[PETITIONERS / ACCUSED]

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH (DCB),
NAMAKKAL DISTRICT
(CR.NO.35 OF 2019).

[RESPONDENT]

For Petitioner : M/S. R.ANBUKARASU Advocate

For Respondent : MR.M.MOHAMMED MUZAMMIL
Govt. Advocate (CrI. Side)

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

ORDER : The Court Made the following order :-

This is an application for anticipatory bail for the offences punishable under Sections 120-B, 406 and 420 of the Indian Penal Code in Crime No.35 of 2019 on the file of the respondent police.

2. The case of the prosecution is that the petitioners along with the first accused ran a Chit Fund Group, in which, the *defacto* complainant said to have paid a sum of Rs.24,42,487/- through bank account and Rs.57,00,000/- to the first accused directly by way of cash. Thus, Rs.85,00,000/- was paid towards chit by the *defacto* complainant. Since the first accused failed to refund the chit amount, the above complaint came to be registered.

3. The petitioners would contend that they are also subscribers to the Chit Fund Group. They have also paid substantial amounts towards subscription to the first accused. During the chit transaction, the first accused requested the petitioners to advance some money for settling the dues to the subscribers. The petitioners advanced a loan of Rs.60,00,000/- by mortgaging the property of the first accused vide registered document No.2947 of 2019 on the file of the Sub-Registrar, Namakkal, dated 20.08.2019. But, to the shock and surprise, the first accused issued a paper publication that she has filed insolvency petition before the Court below. Immediately, complaints were lodged against the first accused, in which, the

petitioners were also falsely implicated. When they approached all the subscribers, 32 complainants, out of 69, have given no objection for releasing the first accused on bail. It is felt that keeping the first accused in jail will not materialize any money to them and hence, they have given no objection for release of the first accused. The petitioners can be treated only as agents for collecting the subscription, but, not actually running the Chit or cheated anybody.

4. The learned Government Advocate (Criminal side) appearing for the respondent police would submit that it is the second petition for anticipatory bail and opposed the grant of anticipatory bail to the petitioners herein.

5. I have perused the materials.

6. Admittedly, the first accused has been secured and remanded to judicial custody. Majority of the complainants have given no objection for the first accused being released in order to realize the money from her and no purpose will be served by arresting the petitioners, who are Accused Nos.2 and 4.

7. The investigation is also almost over and at this stage, custodial interrogation is not necessary. The petitioners are willing to co-operate with the Investigating Officer.

8. Considering the facts and circumstances of the case, this Court is of the view that it is a fit case where the respondent police can resort to the procedure under Section 41A of the Code of Criminal Procedure and the above findings of this Court can be kept in mind during the course of investigation.

9. Considering the facts and circumstances of this case and also the specific stand taken by the respondent Police to resort to the procedure under Section 41A of the Code of Criminal Procedure, this Court directs the respondent Police to follow the procedure set out in Section 41A of the Code of Criminal Procedure. The respondent Police shall issue an appearance notice to the accused in the form and manner set out in the proceedings of the Director General of Police, Tamil Nadu, viz., the Circular Memorandum in RC.No.000252/Crime 4(2)/2019 dated 30.01.2019, as amended vide Circular Memorandum RC.No.000252/Crime 4(2)/2019 dated 07.02.2019. The petitioners shall comply with the terms of the notice and shall also co-operate with the investigation.

10.If the petitioners comply and continue to comply with the terms of the notice, they shall not be arrested for the offences referred to therein. If, however, arrest is deemed necessary after the appearance of the petitioners, the Investigating Officer shall record reason for such an eventuality as contemplated under Section 41A (3) of the Code of Criminal Procedure, and shall adhere to the directions set out by this Court in **STATE VS. NAKEERAN GOPAL**

11. If the petitioners evade service of appearance notice or fails to comply with the terms of the notice or appear to be unwilling to identify themselves when called upon, it shall be open to the respondent Police to proceed under Section 41A(4) of the Code of Criminal Procedure, to arrest the accused.

12. This Criminal Original Petition is disposed of with the aforesaid directions.

-sd/-
10/10/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

2 THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH (DCB),
NAMAKKAL DISTRICT.

+1CC to M/S. R.ANBUKARASU Advocate on payment of necessary charges SR NO.20950

CRL OP.27181/2019

सत्यमेव जयते
Date :10/10/2019

MK:21/10/2019

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