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

Wednesday, the Thirtieth day of January Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) Nos.1247 & 1248 of 2019

DHEEBA SOURKKANAYAHI ... PETITIONER / ACCUSED RANK NOT KWOWN IN CRL IP(MD)NO.1247/2019

RAMANARAYANAN ...PETITIONER/ACCUSED RANK NOT KNOWN IN CRL IP(MD)NO.1248/2019

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE,
THENKARAI POLICE STATION, PERIYAKULAM,
THENI DISTRICT.
(CRIME NO.309/2018) ... RESPONDENT / COMPLAINANT IN BOTH PETITIONS

For Petitioner : Mr.MV.E.OM PRAKASH,Senior Counsel for Mr.S.SUKUMAR Advocate(IN BOTH PETITIONS)

For Respondent : Mr.S.CHANDRASEKAR,Additional Public Prosecutor (IN BOTH PETITIONS)

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

ORDER : The Court Made the following order :-

The petitioners, who apprehend arrest at the hands of the respondent police for the alleged offences punishable under Sections 406, 465, 468, 471, 420, 294(b) and 506(i) of IPC., in Crime No.309 of 2018, on the file of the respondent Police, seek anticipatory abil.

2. The case of the prosecution is that the defacto complainant/A.Veyil Muthu lodged a complaint alleging that while he was working as a load man in the 'Dhal Mill' owned by one Velmurugan (A2), along with five other persons were brought to Periyakulam by Senbagan(A1), Velmurugan (A2) and Indhumathi (A3) to take insurance policy for them. They were taken to the State Bank of India, Periyakulam Branch where the Manager of the State Bank of India, Periyakulam obtained signatures from them in various documents and they were signed believing that the signatures obtained only for insurance policy. After a period of one year, the defacto complainant received a notice from the State Bank of India,

Periyakulam Branch calling upon him to pay a sum of Rs.40,14,865/- as he borrowed a loan to the tune of Rs.37,46,000/-. Immediately, after the receipt of the notice, the defacto complainant enquired with the Bank and he was informed that he borrowed a loan on the basis of the pledging of grains stocked in the ware-house. Thereafter, it was informed to A1 to A3 by the defacto complainant, in which, he was threatened with dire consequences by A1 to A3. Further, they were also threatened that if he chose to divulge any information to any higher authority or police personnel, he will be finished off. The other persons i.e., Kaliappan, Kalidoss, Ganesan, Mariappan and Thangamari who were also taken by A1 to A3 for getting insurance policy in their favour and in their names also various loans were obtained and the State Bank of India demanded them to pay the loan amount with interest.

3.After receipt of the complaint, the respondent police registered a case in Crime No.309 of 2018 for the offence under Sections 406, 465, 468, 471, 420, 294(b) and 506(i) I.P.C. But the defacto complainant never borrowed such a huge sum of loan and he never deposited any agricultural produces in the ware-house since he did not possess any land to cultivate. Hence, the complaint.

4.The learned Senior Counsel appearing for the petitioners would submit that the petitioner in Crl.O.P.(MD)No.1247 of 2018 was working as a Deputy Manager of the State Bank of India, Periyakulam Branch. The said Branch has loan facility to the farmers and trade people for pledging their commodity with the Tamil Nadu State Warehousing Corporation. The Bank will sanction Produce Marketing Loan up to 70 % from the value of the commodity which would pledge by the borrowers. As per PML scheme, the framers can avail loan upto Rs.50,00,000/- by pledge or hypothecation of their farm products of commodity. The produce marketing loan is an instant loan which would be sanctioned to the borrower for a period of one year. Likewise, the defacto complainant and others approached the petitioner's branch to avail produce marketing loan and pledged their commodity of Black Gram and coffee seed with the Tamil Nadu State Warehousing Corporation and availed loan from the Bank to the tune of Rs.37,46,000/-. Therefore, on verification of all the requisite documents and after marking black gram, they disbursed the loan to the tune of Rs.37,46,000/- to the defacto complainant. As he did not repay the said loan amount, they issued demand notice to the defacto complainant to repay the loan amount as agreed by him. Therefore, he is nothing to do with the case as alleged by the prosecution.

5. Insofar as the the petitioner in Crl.O.P.(MD)No.1248 of 2018 is concerned, he was working as Chief Manager of the State Bank of India, Periyakulam Branch. The branch having loan facility to the farmers and trade people for pledging their commodity with the Tamil Nadu State Government Warehousing Corporation and the Bank will sanction Produce Marketing Loan up to 70% from the value of the commodity which would pledge by the borrowers. In this regard, the

defacto complainant approached the petitioner's branch and pledged his commodity of Black Gram and Coffee Seeds with the Tamil Nadu Government Warehousing Corporation and availed loan from the State Bank of India to the tune of Rs.37,46,000/-. Since the produce marketing loan is an one year term loan, the petitioner issued notice to the borrower to repay the loan amount with interest. On receipt of the said notice, instead of repaying the loan amount, the defato complainant lodged the present complaint with false allegations. Further, he would submit that the petitioner is being the Chief Manager, he followed all requirements and on the basis of certificates issued in respect of deposit of commodities possession of land and value of commodity and disbursed the loan. As such, he did not commit any crime. Further, the loan was sanctioned on verification of KYC norms, availability of stocks and Hypothecation Certificate obtained from ware-house. The warehouse receipts, which is a valid document, as per Warehouse Development Act and the documents have been produced. Therefore, he prays for anticipatory bail for the petitioner. Further it is contended that loan has been given only after taking all factors into consideration. Security documents are obtained like Arrangement Letter, Demand Promissory Note, Warehouse Receipts and Letter of Undertaking. Thereby, safeguarding the Bank's interest, the loans were sanctioned. Due to sudden fall in the market price of the pledged stock, the security was not in commensurate to the loan. Thereafter, the bank officials immediately inspected the godown and on inspection of godown, the issuance of notice the produces were auctioned and steps were taken to recover the bank's money. Further, the petitioners submits that their names does not find place in the FIR. It is also submitted that the Bank had conducted a detailed enquiry and no adversity had been found against the petitioners and the petitioners are still continuing in their official position and serving with the bank.

6. The learned counsel would further submit that the defacto complainant in Crime No.309 of 2018, pledged the commodity of 1148 Bags (71,371 Kilograms) of Black Gram with the Tamil Nadu Warehouse Corporation and obtained Produce Marketing Loan (PML) from the State Bank of India, Periyakulam Branch by produce the negotiable warehouse receipt. The PML loan of Rs.37,46,000/- was sanctioned to the defacto complainant only after verifying the commodity pledged with the Tamil Nadu Ware House Corporation and the loan was sanctioned to the defacto complainant on 23.08.2017, which was credited into his bank account and then he transferred the credited amount vide RTGS / NEFT transactions. Since, the PML is a one year term loan, on short fall of the commodity, the bank had issued notice, dated 13.03.2018, 14.03.2018, 07.05.2018 to the defacto complainant and then the commodity pledged by defacto complainant was came into auction vide paper publication dated 20.11.2018 and the auction was conducted on 27.11.2018 for the outstanding dues of Rs.42,29,808/-. Subsequent to the auction, the remaining outstanding dues payable by the defacto complainant to the bank will be recovered by way of Debt Recovery Proceedings.

7.Per contra, the learned Additional Public Prosecutor appearing for the respondent reiterating the similar contention putforth in the earlier orders passed by this Court in Crl.O.P.(MD) Nos.13861, 13862, 15963, 15982 and 16103 of 2018, dated 28.09.2018. He would further submit that the investigation in this case is in progress and since it is a commercial transaction, steps are being taken to transfer the investigation to the Specialized Agency. Hence, he prayed for dismissal of the petitions.

8. On perusal of the records, it is seen that the petitioners are still in service, the Head Office and Regional Office had conducted an internal enquiry and found that there is no irregularity committed by the petitioners. The petitioners have taken all possible steps to safeguard the interest of the bank. Further, stocks were available and auctioned at the instance of the Bank and part amount has been recovered.

9. Considering the above facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioners, subject to certain conditions.

10. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on their appearance, before the learned Judicial Magistrate, Periyakulam, on condition that petitioners shall execute each 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 petitioners failed to surrender before the said Magistrate within a period of fifteen days from the date of receipt of a copy of this order, this Order shall stand automatically cancelled.

[b] the petitioners shall report before the respondent police, as and when required, for interrogation.

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

[d] the petitioners 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 petitioners in accordance with law as if the conditions have been imposed and the petitioners 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/-
30/01/2019

/ TRUE COPY /

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

TO

1 THE JUDICIAL MAGISTRATE,
PERIYAKULAM.

2 THE CHIEF JUDICIAL MAGISTRATE,
THENI,THENI DISTRICT.

3 THE INSPECTOR OF POLICE
THENKARAI POLICE STATION, PERIYAKULAM,
THENI DISTRICT

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

+2. CC to Mr.S.SUKUMAR Advocate SR.No.1247

PS/JC/SAR-3/05.02.2019/5P-7C

ORDER
IN
CRL OP(MD) No.1247 & 1248 of 2019
Date :30/01/2019