

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 18/07/2019

PRESENT

The Hon'ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD) . No.9136 of 2019

1. T. Saleena
2. T. Rajan
3. T. Stalin Babu ... Petitioners/Accused No.1 to 3

Vs

State rep. by
The Inspector of Police,
Kulasekaram Police Station,
Kanyakumari District,
Cr.No.135 of 2019. ... Respondent/Complainant

For Petitioner : M/s.C.K.M.Appaji,
Advocate.

For Respondent : Mr.V.Neelakandan,
Additional Public Prosecutor

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

PRAYER :-

For anticipatory bail in cr.no.135 of 2019 on the file of the respondent police.

ORDER : The Court Made the following order :-

The petitioners, who apprehend arrest at the hands of the respondent Police for the offences punishable under Sections 406, 420, 470, 471 and 506(i) of IPC in Crime No.135 of 2019, seek anticipatory bail.

2.Heard both sides.

3.The learned counsel appearing for the petitioners has submitted that the defacto complainant has sent a lawyer's notice, dated 02.05.2019 stating that the second petitioner had issued a

cheque to discharge a debt. After a receipt of the said notice, the second petitioner has sent a reply notice dated 09.05.2019 stating that he has not borrowed any amount from the defacto complainant as alleged in the said notice. On the contrary he has introduced the defacto complainant to one K.S.Travels and the defacto complainant has paid an amount of Rs.4,00,000/- to the said travels only and since the second petitioner has introduced the defacto complainant to the said travels, he issued a blank cheque in favour of the defacto complainant and subsequently, the defacto complainant has filled up the said cheque and issued notice as if the petitioner has borrowed the amount of Rs.4,00,000/- from him and only to discharge the said debt, he has issued the said cheque. He further submitted that after receipt of the said reply notice, the defacto complainant has filed a complaint under Section 138 of Negotiable Instruments Act, before the learned Judicial Magistrate No.1, Kulithurai and based on the said complaint the case was taken on file in S.T.C.No.779 of 2019 and summons has been issued to the second petitioner. He further submitted that subsequently, the defacto complainant has filed another private complaint before the learned Judicial Magistrate No.II, Padhmanabhapuram stating that the petitioners herein gave a false promise that they will arrange for a job in Dubai and received a sum of Rs.4,00,000/- and the second petitioner has issued a cheque for Rs.4,00,000/-. He further submitted that the learned Judicial Magistrate No.II, Padhmanabhapuram has forwarded the said complaint under Section 156 (3) Cr.P.C., to the respondent Police and based on the same, the respondent police has registered the present case in Crime No.135 of 2019 under Sections 407, 420, 470, 471 and 506(i) of IPC. He further submitted that since already the defacto complainant has filed a private complaint before the learned Judicial Magistrate No.1, Kulithurai under Section 138 of NI Act, in respect of the same cheque, the defacto complainant is not entitled to file another private complaint before the learned Judicial Magistrate No.II. Padhmanabhapuram. He further submitted that the petitioners have not committed any offence and only with a view to harass the petitioners, the defcto complainant has filed a complaint after complaint before different forums and therefore, he prayed for grant of anticipatory bail to the petitioners.

4.Per contra, the learned Additional Public Prosecutor appearing for the State has submitted that the defacto complainant has filed a private complaint before the learned Judicial Magistrate No.II, Padhmanabhapuram and the same was forwarded to the respondent police under section 156(3) of Cr.P.C., and hence the respondent has registered the case against the petitioners herein. However, he opposed for grant bail to the petitioners on the ground that investigation is still pending.

5.Taking into consideration the fact that in respect of the cheque in question already a private complaint was filed under Section 138 of NI Act before the learned Judicial Magistrate No.1, Kulithurai and the same was taken on file as S.T.C.No.779 of 2019

and in respect of the same cheque the defacto complainant has filed present private complaint before the learned Judicial Magistrate No.II, Padhmanabhapuram stating that the petitioners herein have committed offence under Sections 406, 420, 470, 471 and 506(i) of IPC alleging some different transaction, this Court is inclined to grant anticipatory bail to the petitioners,

6. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate II, Padmanabhapuram, Kanyakumari District, on condition that the petitioners shall execute 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 respondent Police or to the Police Officer, who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

[a] if the petitioners fail to surrender before the concerned Magistrate within a period of 15 days, this order shall stand automatically cancelled.

[b] the petitioners shall report before the respondent Police, daily at 10.30 a.m for a period of three weeks and thereafter, as and when required for the 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 absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-
18/07/2019

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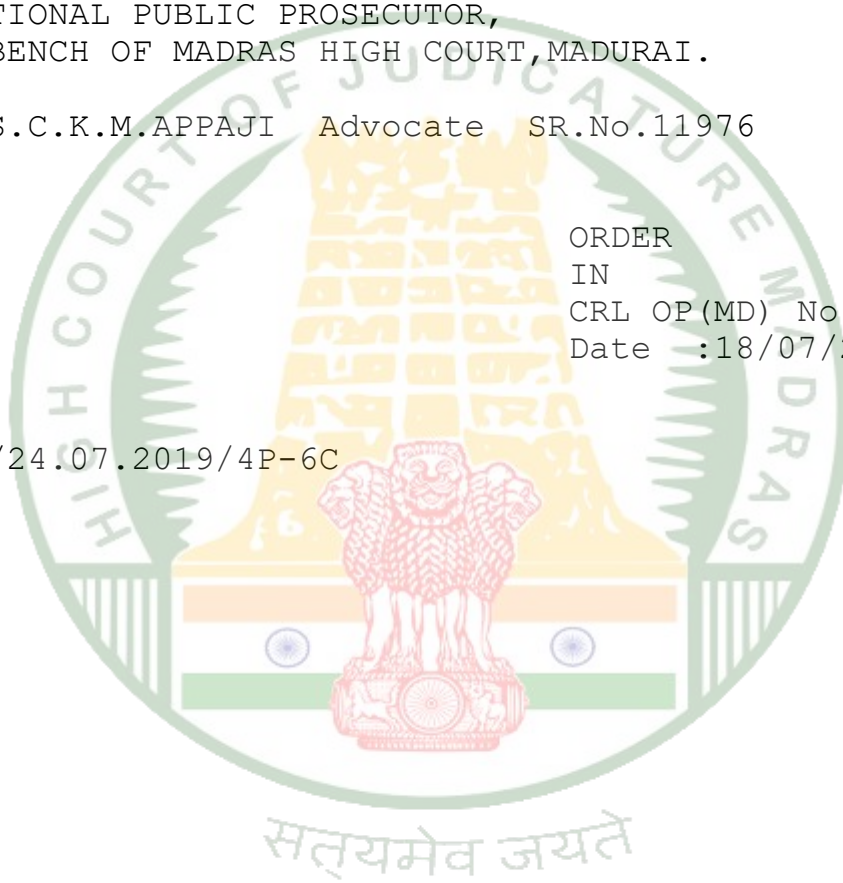
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE JUDICIAL MAGISTRATE NO.II, PADMANABHAPURAM,
KANYAKUMARI DISTRICT
 - 2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, KANYAKUMARI DISTRICT
AT NAGERCOIL
 - 3 THE INSPECTOR OF POLICE, KULASEKARAM POLICE STATION,
KANYAKUMARI DISTRICT.
 - 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. CC to M/S.C.K.M.APPAJI Advocate SR.No.11976

ORDER
IN
CRL OP(MD) No.9136 of 2019
Date :18/07/2019

vsg
JMN/JC/SAR-2/24.07.2019/4P-6C



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