

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

Tuesday, the Thirtieth day of April Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice M.DHANDAPANI

CRL.O.P.(MD) Nos.13462, 13463 & 15925 of 2018

KOWSALYA	... PETITIONER / ACCUSED NO.1 IN CRL OP (MD) No.13462/2018
RAJA	... PETITIONER/ ACCUSED 3 IN CRL OP (MD) No.13463/2018
CHINNAKANNU	... PETITIONER/ ACCUSED NO.1 IN CRL OP (MD) No.15925/2018
Vs	
STATE REP.BY THE INSPECTOR OF POLICE DISTRICT CRIME BRANCH, KARUR DISTRICT. IN CRIME NO.1 OF 2018	... RESPONDENT / COMPLAINANT IN ALL THE PETITIONS
RAJA	... PETITIONER/ DEFACTO COMPLAINANT/ INTERVENER IN CRL MP (MD) No.6255 of 2018 IN CRL OP (MD) No.13462 of 2018
THE KARUR VYSYA BANK, CHINNA SALEM BRANCH, SALEM, REP.BY ITS SENIOR MANAER, V.RAJESH	... PETITIONER/ INTERVENER IN CRL MP (MD) NO.10705 OF 2018 IN CRL OP (MD) NO.13463 OF 2018
RAJA	... PETITIONER/ DEFACTO COMPLAINANT IN CRL MP (MD) NO.6256 OF 2018 IN CRL OP (MD) NO.13463 OF 2018
RAJA	... PETITIONER/ DEFACTO COMPLAINANT/ INTERVENER IN CRL MP (MD) NO.10617 OF 2018 IN CRL OP (MD) NO.15925 OF 2018

For Petitioner : Mr.S.BALAJI, Advocate
IN CRL OP (MD) No.13462/2018

: Mr.N.MARIAPPAN, Advocate
IN CRL OP (MD) No.13463/2018

: Mr.A.V.RAJA, Advocate
IN CRL OP (MD) No.15925/2018

For Respondent : Mr.K.SUYAMBULINGA BHARATHI,
Government Advocate (Crl.Side)
in all the petitions

For Intervenors : Mr.RM.SIVAKUMAR, Advocate
IN CRL MP (MD) Nos.6255, 6256 & 10617 of 2018
IN CRL OP (MD) Nos.13462, 13463 & 15925 of 2018

: Mr.PALA RAMASAMY, Advocate,
IN CRL MP (MD) NO.10705 OF 2018
IN CRL OP (MD) NO.13463 OF 2018

: Mr.V.MEENAKSHI SUNDARAM, Advocate for
Mr.G.KANDHAVADIVELAN, Advocate for
IN CRL MP (MD) Nos.6255, 6256 & 10617 of 2018
IN CRL OP (MD) Nos.13462, 13463 & 15925 of 2018

: Mr.N.ANANDAKUMAR Advocate
in ALL CRL OP (MD) No.13462 of 2018

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

ORDER : The Court Made the following order :-

The petitioners in these petitions, who apprehend arrest at the hands of the respondent police for the alleged offence under Sections 406 and 420 of IPC in Crime No.1 of 2018 on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution is that petitioners purchased 28,000 bags of paddy worth about Rs.3.5 crores from the farmers as well as the defacto complainant. They paid only Rs.75 lakhs and the balance amount was not paid by them. Hence, the defacto complainant filed a complaint on behalf of himself and on behalf of other farmers before the Law Enforcing Agency.

3.On an earlier occasion, this Court considering the fact that if the paddy bags remain in the godown, it may be prone to be natural calamity for which, with the consent of the defacto complainant petitioner and other interested parties passed an order to sell the property in the open market. On 11.03.2019, the petitioners had found out one purchaser namely Mr.Jeyaraj, who has appeared before this Court and he has agreed to purchase the paddy

bags at the rate of Rs.22 per Kg, which are in the custody of the learned Judicial Magistrate No.II, Kulithalai. One paddy bag weighs 75 Kgs. Therefore, the total value of one paddy bag is Rs.1650/- and further directed the purchaser to deposit the value of the paddy bags in the separate account to the credit of the Crime No.1 of 2018 in the Karur Vysya Bank and after depositing the money, the paddy bags may be delivered to the purchaser Mr.Jeyaraj. Accordingly, the entire paddy bags were sold out in the open market.

4.Initially, the matter was listed before this Court on 26.03.2019 and subsequently, adjourned to 26.04.2019. In the mean while, the entire paddy was sold through open market and an amount of Rs.3,29,24,320/- is lying to the credit of the Crime No.1 of 2018 in Karur Vysya Bank. Thereafter, a compromise has been arrived between the petitioners and the defacto complainant that though initially the petitioners agreed to pay Rs.1200/- per bag, however, after compromise they reduced to Rs.1000/- per bag. Accordingly, the total value of the property is Rs.2,92,49,000/-. The accused had paid only Rs.76,54,926/- and the balance amount comes to Rs.2,15,94,074/-. Apart from the above, already the defacto complainant has taken 36,835 bags from the petitioner and total amount for the said bags come around Rs.6,26,020/-. Hence, the balance amount to be paid by the petitioners is Rs.2,15,94,074/- after deducting Rs.6,26,020/-.

5.Apart from the above, after deducting the amount of Rs.2,15,94,074/- from the amount of Rs.3,29,24,320/-lying to the credit of the Crime No.1 of 2018 in Karur Vysya Bank, the balance amount would come to 1,13,30,246/-. However, the petitioners/accused have to pay a sum of Rs.42,00,000/- to KVB without interest. After deducting the said amount from the available amount of Rs.1,13,30,246/-, the petitioners have to pay the balance amount of Rs.71,30,246/- to NCML. The petitioners have also availed loan amount from NCML to the tune of Rs.1,37,09,633/- the balance amount without interest is Rs.65,79,387/-. Though initially NCML agreed to forego the interest. Since, the petitioners have not prepared to pay the godown charges of Rs.27,00,000/- and on instructions NCML has not inclined to forego the interest. Therefore, the NCML is claiming interest as well as the godown charges, considering the fact that no papers are being placed before this Court in respect of of godown charges. Apart from the above, the learned counsel appearing for the KVB would submit that the KVB is ready and willing to forego the interest amount and agree to accept the principal amount. In order to resolve the dispute between the parties, the entire issue has been resolved between the parties except NCML. Therefore, as an interim measure, I am inclined to direct the learned Magistrate to disburse the balance amount of Rs.71,30,246/- in favour of NCML. Apart from that amount, the petitioners have to pay a sum of Rs.65,79,387/-.

6.The learned counsel for the petitioner on instructions would submit that the petitioners are ready to deposit the balance amount

of Rs.65,79,387/- along with nominal amount of Rs.9,20,613/- without prejudice to their rights.

7.It is an admitted fact that though the entire amount was appropriated by selling the paddy in the open market. Since the petitioners themselves agreed to pay the balance loan amount as well as nominal amount of godown charges in favour of the NCML, within a period of four weeks, this Court is inclined to grant anticipatory bail to the petitioners on condition that the petitioners shall pay a sum of Rs.65,79,387/- along with Rs.9,20,613/- as godown charges totally Rs.75,00,000/- in favour of NCML as an interim arrangement.

8. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate No.II, Kulithalai, 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 the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

(a)the petitioners and the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(b)In view of the agreement between the parties except NCML, this Court is inclined to pass the following orders:

(i)Considering the agony faced by the farmers, this Court directs the learned Magistrate to disburse the amount of Rs.2,15,94,074/- in favour of the 96 farmers, (list of the farmers annexed along with the order copy) and identify the parties and disburse the amount including the amount of Rs.6,26,020/- which has to be deducted from the account of Prakash, Balasubramanian, Raja and Ravichandran.

(ii)The learned Magistrate is directed to disburse the amount of Rs.42,00,000/- out of Rs.1,13,30,246/- in favour of KVB with no interest.

(iii)After deducting the said amount of Rs.42,00,000/- from the balance amount of Rs.1,13,30,246/- is Rs.71,30,246/-. The learned Magistrate is directed to disburse the amount of Rs.71,30,246/- in favour of NCML. Further, the petitioners are directed to pay a sum of Rs.65,79,387/- as balance amount and further the amount of Rs.9,20,613

towards godown charges totalling a sum of Rs.75,00,000/- to NCML directly within a period of four weeks from the date of receipt of a copy of this order failing which the bail granted by this Court automatically cancelled and further liberty granted to NCML to recover the interest as well as the godown charges in the manner known to law.

(c)the petitioners shall report before the respondent police daily at 10.30 a.m., until further orders

(d)the petitioners shall not tamper with evidence or witness either during investigation or trial;

(e)the petitioners shall not abscond either during investigation or trial;

(f)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]; and;

(g)if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

9.Though this Court for the purpose of facilitating the disposal of the paddy bags granted interim anticipatory bail to the petitioners on condition that the petitioners are directed to deposit Rs.1,00,00,000/- it appears till date that the said amount was not deposited though he violated a condition. However, in view of the settlement arrived between the parties, I am inclined to grant another four weeks time to deposit a sum of Rs.75,00,000/- in favour of NCML within a period of four weeks from the date of receipt of a copy of this order, failing which, the Law Enforcing agency as well as the NCML grants liberty to work out their remedy in the manner known to law. The learned magistrate is directed to complete the said exercise within a period of six weeks from the date of receipt of a copy of this order.

sd/-
30/04/2019

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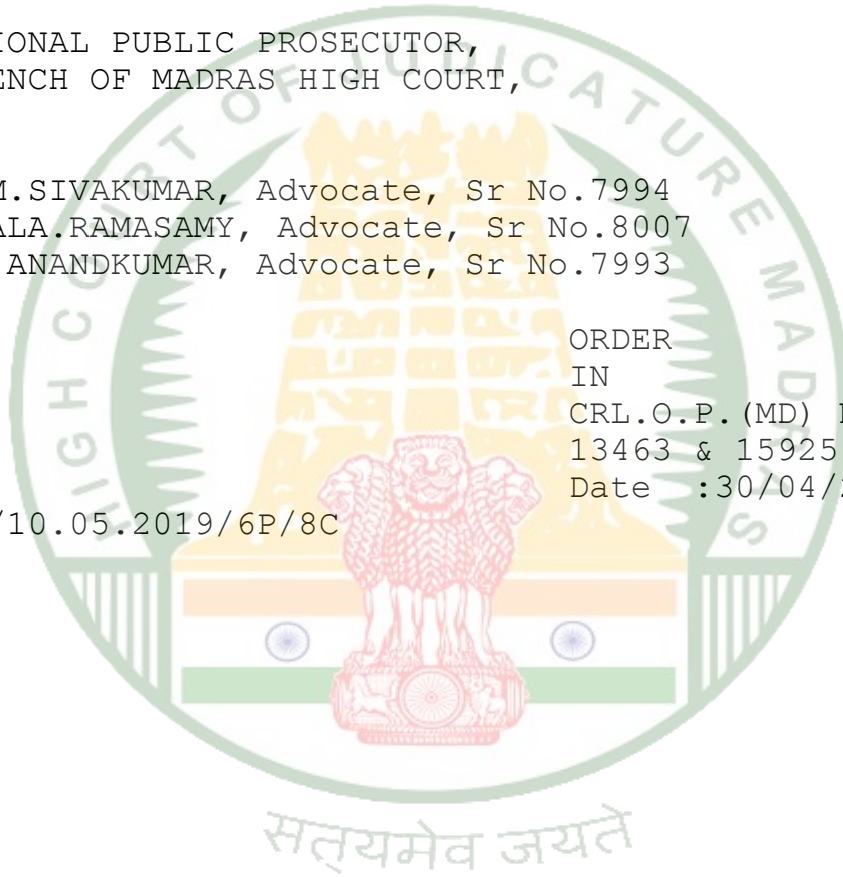
TO

1. THE JUDICIAL MAGISTRATE NO.II, KULITHALAI.
2. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
KARUR DISTRICT.
3. THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH,
KARUR DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1CC TO Mr.RM.SIVAKUMAR, Advocate, Sr No.7994
+1CC TO Mr.PALA.RAMASAMY, Advocate, Sr No.8007
+1CC TO Mr.N.ANANDKUMAR, Advocate, Sr No.7993

ORDER
IN
CRL.O.P.(MD) Nos.13462,
13463 & 15925 of 2018
Date :30/04/2019

TK/MMS/SAR-4/10.05.2019/6P/8C



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