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

Monday, the Seventh day of January Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) No.22492 of 2018

P. GANESAN @ YABETH ... PETITIONER / ACCUSED No.1

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
THENI.
Crime No.49 of 2018 ... RESPONDENT / COMPLAINANT

For Petitioner : Mr.T.THIRUMURUGAN Advocate

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

For Intervener : Mr.T.K.GOPALAN, Advocate

PETITION FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner / A1, who was arrested by the respondent police on 16.11.2018, for the offences punishable under Sections 406, 420 and 120(b) of IPC., in Crime No.49 of 2018, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the defadcto complainant is an Ex-Army Man was approached by this petitioner and his friends stating that they are running a Foundation and through that Foundation, the defacto complainant and his friends, who are interested can participate in doing various social services by helping the poor and others. In the Foundation, one Thangavel, Jebarani, Palanichami, Jeyakodi, Karuppasamy and one Foreigner were introduced. The said Foreigner transfer funds from Foreign Countries running to several Crores. On receipt of the funds by the Trust, the Trust money would be transferred to the defacto complainant and he can use the same for his use work and for which they had to incur some expenditures. Therefore, the defacto complainant has paid a sum of Rs.50,00,000/-, through cash and bank account of one Thangavel / A2, in presence of other accused. Despite several months, no sign of any functioning of the Trust.

Hence, the defacto complainant has approached this petitioner and asked for return on money. The petitioner said to have given a cheque of Indian Overseas Bank for Rs,25,00,000/-. When the cheque was presented before the Bank, it was dishonoured. Thereafter, the petitioner was not to be found and despite the defacto complainant's several visit to his residence, the petitioner's wife was giving evasive reply about the petitioner. On seeing, this neighbours of the petitioner enquired the defacto complainant. The defacto complainant informed about the happenings. The neighbours of the petitioner stated that the petitioner had cheated several persons. Hence, the defacto complainant lodged the complaint.

3. The learned counsel appearing for the petitioner would submit that the petitioner never promised or demanded the defacto complainant to make investment in any Trust. The petitioner was having a business dealing with the defacto complainant for which, as a security, he has given a cheque, which was now misused by the defacto complainant. Even according to the defacto complainant, he has paid money only in the account of one Thangavel / A2 and nowhere it is stated that this petitioner received the money. Therefore, the learned counsel prayed for bail in favour of the petitioner.

4. The learned Government Advocate (crl.side) appearing for the respondent, on instructions, would submit that a group of persons, all belonging to the same village, had cheated the defacto complainant and received the money in the name of Trust and not repaid the same. Further, no such Trust was in existence. Further, the other accused are to be apprehended and the investigation is pending.

5. The learned counsel appearing for the intervener would submit that the defacto complainant's hard earned money and the money collected from his friends and relatives to the tune of Rs.50,00,000/- have been entrusted to the accused, on the promise that the defacto complainant would be made as a member in the Trust and thereby, he could do some social work to the people. This accused had issued a cheque and the cheque was presented several times and each time, the cheque was got dishonoured, which shows that the petitioner has no intention to repay the amount and cheated the defacto complainant. Further, he has also produced the Bank Statement and the messages from the mobile phone, in support of his contentions.

6. I have heard the learned counsels appearing on either side and perused the materials available on record.

7. On perusal of the materials would show that only a sum of Rs. Rs.2.85 Lakhs have been paid during February 2017, by way of Bank to the account of one Thangavel, by the defacto complainant. A sum of Rs.2.41 Lakhs has been paid to an yet another person / Rajkumar. Other than this amount, the balance amount is said to have been paid by cash. On perusal of the materiels it is found

that nowhere the petitioner has received any amount either through bank or cash.

8. Considering the above facts and circumstances of the case and also considering the fact that the petitioner is in incarceration from 16.11.2018, this Court is inclined to grant bail to the petitioner, with certain conditions. Accordingly, the petitioner is ordered to be released on bail on his executing 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 Judicial Magistrate, Theni and on further condition that:

[a] the petitioner shall appear before the respondent Police daily at at 10.30 a.m., until further orders.

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

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

[d] 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].

[e] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-
07/01/2019

/ TRUE COPY /

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

TO

1.THE JUDICIAL MAGISTRATE,
THENI.

2.THE CHIEF JUDICIAL MAGISTRATE
THENI DISTRICT.

3.THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
THENI.

4.THE OFFICER INCHARGE,
SUB JAIL, PERIYAKULAM.

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

+1. CC to Mr.T.THIRUMURUGAN Advocate SR.No.271

ORDER
IN
CRL OP(MD) No.22492 of 2018
Date :07/01/2019

TK/VR/SAR-4/07.01.2019/4P/7C