IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2020

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.4995 of 2020

& Crl.MP.No.4587 of 2020

Muthukumar ... Petitioner

Vs.

The State Represented by,
Assistant Commissioner of Police,
EDF-III, C.C.B-II,
Chennai.
(Crime No.197 of 2019) ... Respondent

G.THULASIMANI [PETITIONER / INTERVENER / DE-FACTO COMPLAINANT]

[ORDERED AS PER ORDER OF THIS COURT
DATED 23/09/2020 MADE IN
CRL.MP.NO.4587/2020 IN CRL.OP.NO.4995/2020]

Prayer: Criminal Original Petition filed under Section 438 Cr.P.C. to grant Anticipatory bail to the petitioner in the event of his arrest in Crime No.197 of 2019 on the file of the Assistant Commissioner of Police, EDF-III, CCB-II, Chennai pending diposal of the case.

For Petitioner : Mr.Vijayaragavan

For Respondent : Mr. M. Mohamed Riyaz,
Additional Public Prosecutor

For intervenor : Mr.K.R.Ananda Gomathy

O R D E R
(The case has been heard through video conference)

The petitioner who apprehends arrest at the hands of the respondent police for the offences publishable under Sections 406, 420 and 120-B of IPC in Crime No. 197 of 2019, on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution is that the defacto complainant is a Senior Citizen who worked in Indian Air force and thereafter joined and retired from IOCL. His wife is also a retired government servant and his son & daughter-in-law are doctors. The further

allegation is that first accused had induced the defacto complainant that he was running several business and requested him to lend money and the defacto complainant lent money and the first accused had executed a pronote. Thereafter, the first accused had approached the defacto complainant and told that he was in possession of a precious stone, worth several millions and believing his words the defacto complainant gave money on several occasion and the first accused had issued two blank cheques drawn on ICIC Bank, T-Nagar and also executed blank stamp paper on 19.04.2014 in favour of the defacto complainant. During the year 2015, the first accused took the defacto complainant and his wife to Veppampattu and introduced them to the second accused, namely Vivekananda Reddy and also informed that the second accused is engaged in Granite business. Both the accused had produced the original documents of the properties belonging to them and demanded a sum of Rs.25,00,000/- from the defacto complainant stating that they were in urgent need of money. Believing the words of the accused that the sale deed would be executed in two months and also as the original tittle deeds were handed over to him, the defacto complainant had paid a sum of Rs.20,27,000/- out of his retirement benefits. Thereafter, the first and second accused received lot of jewels from the defacto complainant by inducing him that they were going to conduct a large scale granite business in the land belonging to the second accused at Theni. Again during the year 2017 the first and the second accused approached the defacto complainant stating that they were in need of funds to finalize the business and they promised him to give 5% in the profit. During the year between 2016 to 2018, the defacto complainant had paid a sum of Rs.20,00,000/- on several occasions. During the year 2018 the first accused and the defacto complainant met the third accused, the petitioner herein, at his office and stated that if the defacto complainant gives his property document as security for a year and arrange for a loan he would be able to return the same after a year along with top up of one crore. Thereafter, the fourth accused, namely Thiyagarajan, and his wife, namely Indira, visited the defacto complainant's house and stated that they were going to run the business and informed that they will return the document of the defacto complainant with the top up of one crore. Later, all the accused colluded with the manager of Vijaya Bank, Venkateshvararao, Assistant General Manager, Egmore branch and obtained a loan of Rs.2.10 Crores by mortgaging his properties. Thereby, the petitioner along with the other accused cheated the defacto complainant on the false promise of the property generating more income at the age of 65. Hence, the complaint.

3. The learned counsel for the petitioner would submit that the petitioner is an innocent person and he has been falsely implicated in this case and further submitted that the petitioner is a financial consultant and during the year 2018, the first accused and the defacto complainant approached the petitioner and stated that he needs a loan from the bank and the petitioner, as a financial consultant arranged for the loan from Vijaya Bank, and the defacto complainant came in person and had executed a memorandum of depositing of tittle deed in favour of the Vijaya Bank by a Registered document, registered at the office of the Sub-registrar,

Alandur on 20.10.2018. Only thereafter, the loan was sanctioned by the bank authorities. The defacto complainant is a well educated man and it cannot be assumed that he was not aware of his acts on the other hand he is very well aware that the bank has sanctioned the loan amount only after the depositing of tittle deeds. The petitioner, as the facilitator, has received a commission from the other accused and other than that he has nothing to do with the allegations right from the year 2014. He further submitted that the defacto complainant and all the other accused are known to each other for several years. The petitioner has entered only in between the parties as a person, who has arranged for the loan. Thereafter, since the loan was not repaid the bankers has issued a notice to the parties and the defacto complainant who now wants to escape from the action taken by the bank has falsely implicated the petitioner in this case in order to safeguard his properties by hook or crook. He further submitted that the defacto complainant has filed a writ petition in W.P.No.6629 of 2020, and in the affidavit filed in support of the writ petition allegations are made only as against A1 and the Manager of the Bank. The defacto complainant had connection with the other accused from the year 2014 and he has paid money to them out of greed for money. The learned counsel would further submit that the main accused have been arrested and let out on bail. He would thereby seek for anticipatory bail to the petitioner.

4. The learned Additional Public Prosecutor appearing for the respondent would submit that the accused colluded with each other and induced the defacto complainant to part with several amounts running to crores and as far as the allegation against the petitioner is concerned, the petitioner along with the other accused induced the defacto complainant to deposit the tittle deeds as security in the bank for obtaining loans on the assurance that it will be returned with the top up of one crore and thereby petitioner has cheated the defacto complainant.

5. The learned counsel for the intervenor submitted that that though it is true that the memorandum of deposit of tittle deeds has been registered at the office of the Sub-registrar, Alandur on 20.10.2018, the petitioner along with the other accused had forged signature of the defacto complainant in the loan application form of the defacto complainant in collusion with the bank officials. The signature in the loan application is totally different from the signature in the registered memorandum of deposit of tittle deeds. The petitioner is the main person who is responsible for obtaining loans from the bank with the other accused and the petitioner has done the forgery with the knowledge of the bank manager and cheated the defacto complainant.

6. Heard the counsels and perused the materials available on record.

7. At this juncture, the learned counsel for the petitioner submitted that the petitioner's role is very very limited in this case and he further submitted that A4 and A5 are the original borrowers and the defacto complainant, who is a well educated person

and employed in Indian Airforce and later in Indian Oil Corporation, after retirement from Airforce being aware of the consequences of the deposit of the tittle deeds, as security had deposited the same to the bank and only based on the deposit of the tittle deeds the loan was sanctioned.

7. Taking into consideration the facts and circumstances of the case, this Court is inclined to grant bail to the petitioner subject to the following conditions.

8. Accordingly, the petitioner is directed to be released on bail in the event of his arrest or on his appearance, within a period of fifteen days from the date on which the order copy is made ready, before the learned Judicial Magistrate-I, Alandur, Chennai, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties, 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, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[a] the petitioner 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] the petitioner shall report before the respondent police for investigation after furnishing the sureties.

[c] the Petitioner shall furnish the title deeds of property worth about a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only), to the credit of Crime No.197 of 2019, before the learned Judicial Magistrate-I, Alandur, Chennai.

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

[e] the petitioner 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].

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

9. With the above directions, this Criminal Original Petition is ordered.

-sd/-
23/09/2020

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 JUDICIAL MAGISTRATE,
NO.I, ALANDUR, CHENNAI.

2 THE CHIEF JUDICIAL MAGISTRATE
CHENGALPATTU [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE ASSISTANT COMMISSIONER OF POLICE,
EDF-III, CCB-II,
CHENNAI.

+1 CC to M/S.K.R.ANANDA GOMATHY Advocate on payment of necessary charges SR.No.6417

CRL OP.4995/2020
& Crl.MP.4587/2020

Date :23/09/2020

cs 14/10/2020