IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.03.2020

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THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.5045 of 2020

ST Niyaz Rahman ... Petitioner/1st accused

Vs.

1.The State of Tamilnadu,
Represented by its Inspector of Police,
Central Crime Branch, (EDF-1 Team)
Egmore, Chennai - 104.
Cr.No.351 of 2014. ...Respondents/Complainant

2.D.Mohammed Ishaq
(as per order of this Court
in Crl.MP.No.3096 of 2020 in
Crl.op. 5045 of 2020 at 09/03/2020 ....Interverer

PRAYER: Criminal Original Petition filed under Section 439 of the Code of Criminal Procedure, to enlarge the petitioner on bail in Crime No.351 of 2014 on the file of the respondent police.

For Petitioner :Mr.R.Ganeshkumar

For Respondent :Mr.T.Shunmugarajeswaran,
GA (Crl.Side) For R1
: Mr.A.Ilaya Perumal for R2



O R D E R

This Criminal Original Petition has been filed by the accused No.1 seeking bail for alleged offence under Sections 406, 409, 420, 468, 471 r/w 120-B of IPC.

2. The case of the prosecution is that when the petitioner was working as Accounts Manager in the defacto complainant's company, he has started two shops under the name of Sangam and Sara Traders and diverted the cheques which were received by the defacto complainant's company to the credit of his shops and also misused the defacto complainant's cheques and misappropriated to the tune of Rs.3,11,92,243/- and purchased several properties in the name of his wife and also his brother and father.

3. The learned counsel for the petitioner has submitted that on earlier occasion, the defacto complainant has lodged a complaint before the Inspector of Police, Central Crime Branch, Vepery, Chennai and on coming to know about the same, the petitioner herein moved Anticipatory Bail application before this Court in Crl.OP.No.13013 of 2014 and when the said petition came up for hearing before this Court, it was submitted on behalf of the prosecution that on point of jurisdiction the complaint has been forwarded to Superintendent of Police, Nagapattinam and recording the same, the said petition was disposed of with liberty to file fresh petition for Anticipatory Bail impleading the said Police. He further submitted that thereafter the petitioner herein and his wife (A2) have filed Crl.OP.No.15474 of 2014 seeking anticipatory bail by impleading the Inspector of Police, (Crime Branch), Nagapattinam District and when the said petition came up for hearing before this Court, the learned Government Advocate (Crl.Side) has submitted that the complaint preferred by the defacto complainant was closed and after recording the same, the said petition was also disposed of on 26.06.2014. He further submitted that thereafter, the defacto complainant has lodged a complaint before the respondent herein and based on the same an FIR was registered in Crime No.351 of 2014 under Sections 406, 409, 420, 468, 471 r/w 120-B IPC against the petitioner herein and his family members. He further submitted that even though the respondent has registered a case in the year 2014, the said fact was not informed to the petitioner. He further submitted that the petitioner has been doing business in Chennai and other towns and he is not absconding. He further submitted that the respondent, after five years has arrested the petitioner on 06.12.2019 and remanded to judicial custody. He further submitted that the petitioner is in custody for more than 94 days, the petitioner has moved the bail before the Trial Court and the same was dismissed and subsequently he filed bail application in Crl.MP.No.4420 of 2020 on the file of the Principal Sessions Judge, Chennai and the same was also dismissed by the order dated 28.02.2020, by observing that the petitioner was absconding for the past five years. He further submitted that the petitioner is not absconding and since the

registration of the FIR against the petitioner is not known to the petitioner, he has not moved any anticipatory bail application. He further submitted that if really the petitioner got knowledge about the registration of the FIR, he would have filed anticipatory bail application as done by him in the previous occasions. Therefore, the findings of the learned Principal Sessions Judge, that the petitioner has been absconding for the past five years is not correct. He further submitted that the petitioner has not committed any offence and on instructions of the defacto complainant, some of the cheques were presented through the accounts of the petitioner, but the petitioner has not committed any offence. Therefore, he prayed to grant bail to the petitioner.

4. Per contra, the learned counsel who is appearing for the intervener/second respondent has submitted that the petitioner was working with the defacto complainant's company as Accounts Manager during the year 2005-2013 and during the said period, the petitioner has diverted the funds of the defacto complainant's company. He further submitted that the cheques which were issued by the customers of the defacto complainant were presented in the petitioner's company accounts. He further submitted that the petitioner has also misused the defacto complainant's cheques and misappropriated to the tune of Rs.3,11,92,243/-. He further submitted that with the help of the said amount, the petitioner has purchased several immovable properties in the name of his wife, brother and father. He further submitted that after registering the case, the respondent has not taken any steps to secure the accused and hence the defacto complainant has filed Crl.OP.No.3350 of 2019 and sought to transfer the Investigation to the Crime Branch to CBI or CBCID. After taking into consideration the submissions made by the learned Additional Public Prosecutor, this Court has directed the Assistant Commissioner, Investigating Unit for Crime Against Women (IUCAW) Wing, Vepery, Chennai to monitor the investigation and also directed the respondent herein to complete the investigation and file a final report within a period of three months from the date of receipt of a copy of the said order. He further submitted that only thereafter the respondent herein has arrested the petitioner herein on 06.12.2019 and remanded to judicial custody. He further submitted that when the petitioner was working in the defacto complainant's company. He further submitted that the petitioner has purposely absconded and he has not co-operated for investigation and only after five years, the respondent was able to arrest the petitioner and remanded to judicial custody and if the petitioner is released on bail he would not appear before the trial Court. He further submitted that after investigation, a charge sheet has been filed and the case has also been taken on file in CC.No.1411 of 2020 and at this stage, if the

petitioner is released on bail he would not appear before the Trial Court and the Trial would be affected.

5. The learned Government Advocate (Crl.Side) who is appearing for the first respondent has adopted the arguments of the learned counsel for the defacto complainant / intervener. He further submitted that the other accused persons are still absconding and since this Court has directed the first respondent to complete the investigation and file a final report within a period of three months from the date of receipt of copy of the order passed in Crl.OP.No.3350 of 2019, the first respondent has filed charge sheet stating that the petitioners 2 to 4 are absconding. He further submitted that if the petitioner is released on bail, he will not appear before the Trial Court and he also opposed to grant bail to the petitioner.

6. It is an admitted fact that the petitioner herein was working as Accounts Manager with the defacto complainant's company for the period from 2005 to 2013. It is also an admitted fact that when the petitioner was working in the defacto complainant's company, he has started two firms by name M/s.Sangam and Sara Traders. It is also an admitted fact that some of the cheques were presented through the accounts of the petitioner's shops and further already the investigation has been completed and charge sheet has also been filed stating that the petitioner and other accused persons have misappropriated the huge amount of Rs.3,11,92,243/-. The filing of the charge sheet prima facie shows that there are materials against the petitioner.

7. It is also to be pointed out that when the complaint was lodged by the defacto complainant before the Inspector of Police (Central Crime Branch) and also Inspector of Police, District Crime Branch, Nagapattinam District, the petitioner has filed anticipatory bail applications before this Court. At that time, FIR has not been registered. But after registering the case by the respondent, the petitioner herein has not surrendered either before the police or before the Trial Court or filed any application seeking anticipatory bail; Only after five years, the petitioner herein was arrested on 06.02.2019 and remanded to judicial custody. Further investigation has been completed and charge sheet has also been filed and at this stage, this Court is of the view that if the petitioner is released on bail he may not co-operate for trial and therefore this court does not find any merit in this petition.

8. In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
Central Crime Branch, (EDF-1 Team)
Egmore, Chennai - 104.

2.The Public Prosecutor,
High Court, Madras.

3.The Superintendent,Central Prison,
Puzhal,Chennai.

4.The Principal Sessions Judge,
Chennai.

5.The Metropolitan Magistrate
CCB and CBCID Cases,
Chennai.

+1cc to Mr.S.VIJAYAGANESH, Advocate, S.R.No.1941



CRL.O.P.No.5045 of 2020

KKV/23/03/2020