IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.05.2020

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THE HONOURABLE MR. JUSTICE **M. NIRMAL KUMAR**

Crl.O.P.No.7657 of 2020

A.Karthik ... Petitioner

Vs.

State rep. by
The Inspector of Police,
CCB I, EDF -II,
O/o, The Commissioner of Police,
Vepery, Chennai – 600 007.
(Crime.No.45/2020) ... Respondent

Prayer: Criminal Original Petition filed under Section 439 Cr.P.C. to enlarge the Petitioner on bail in the Crime No.45 of 2020 on the file of the Respondent police.

For Petitioner : M/s.T.Muthukrishnan
For Respondent : Mr.S.Karthikeyan,
Additional Public Prosecutor

O R D E R

The petitioner, who was arrested and remanded to judicial custody on 02.03.2020 for the offence punishable under Sections 468, 471, 409, 420 of IPC read with 34 of IPC in Crime No.45 of 2020 on the file of the respondent police, seeks bail.

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2. The case of the prosecution is that, the petitioner is an employee of the defacto complainant viz., one Amar Rahman. Initially, the petitioner joined as a temporary Assistant Clerk under the defacto complainant on 01.11.2006. Due to his efficiency, the petitioner was made permanent. Subsequently, he was given promotion as Senior Financial Officer in Reach Logistics Private Limited. Thereafter, the petitioner was appointed as a Director of the said Company. The petitioner was given power to sign in the cheques and vouchers of the Company from 21.07.2017. Further, based on the oral statement given by the Auditor of the defacto complainant viz., P.M. & Co, Proprietor, Mr.Chandramouli that, the petitioner fabricated Cash Memos totally amounting to Rs.5,85,20,000/-. Hence, a case has been lodged against the petitioner.

3. The learned counsel for the petitioner submitted that the petitioner joined in Reach Logistics Private Limited as a temporary Assistant Clerk during the year 2006 and thereafter, due to his hard work, he reached to the level of Senior Financial Officer and was thereafter, appointed as Director of the Company. The Managing Director of the Company was mostly staying in Dubai. One Parthasarathy, Cashier and one Muthuvel, Assistant Manager, who

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were working in A.S.Cargo used to verify Vouchers and Cash Memos. According to the learned counsel, the petitioner is not an employee in A.S.Cargo and without verifying the accounts properly, the petitioner has been made as an accused. The petitioner is not an authority to prepare Vouchers and Cash Memos. He went on to state that, the petitioner had signed only one voucher. That is why, the petitioner has explained all the details to the respondent. Due to false investigation, the petitioner was arrested. Further, the petitioner was taken into the police custody for three days from 04.03.2020 to 06.03.2020 and during police custody, photo copies of documents of the property worth Rs.30.00 lakhs and a Bolero car worth Rs.10.00 lakhs and three mobile phones worth about Rs.1.00 lakh, were seized by the respondent. Further, the offences alleged in this case are documentary based offences and all the documents are in the custody of the Police and the defacto complainant.

4. The learned counsel for the petitioner further produced additional typed set of papers, wherein it is seen that, there has been constant communication between the petitioner and the defacto complainant's wife, who is also a Director of the company and the petitioner had been constantly directed to make payments to various persons and Banks. From the messages, it is seen that the petitioner has carried out the instructions of the Director.

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Further, he has also produced email communications between the petitioner and the defacto complainant's wife, viz., Shahana Rahman but the same were marked to the defacto complainant. From the communication, it is seen that there is some dispute between the husband and wife, who are Directors of the company. Further, the petitioner had also offered to resign from the Company and later, he had resigned. This complaint is made only after his resignation.

5. The learned Additional Public Prosecutor submitted that the petitioner had joined the Company of the defacto complainant as a temporary staff and thereafter, due to his efficiency, the petitioner was made permanent. Subsequently, he was given promotion as Senior Financial Officer in Reach Logistics Private Limited. Thereafter, the petitioner was appointed as a Director of the said Company. Till date the defacto complainant with his family is staying in Dubai. The petitioner has been made as Director for the purpose of signing the company's documents. By gaining confidence of the defacto complainant, the petitioner spent huge amounts and with help of other accused, he created fabricated documents, Cash Memos and thereby, misappropriated the company's fund. The appropriated money is yet to be recovered. Hence, he opposed for grant of bail to the petitioner.

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6. Considering the submissions made on either side and on a perusal of the materials produced, it is admitted that the petitioner initially, joined as a temporary staff and thereafter, reached the level of the Director of the Company. The petitioner was authorised to sign in the Vouchers and Cash Memos. The auditor has only given oral report and no audit report is filed so far. Further, the police custody has been taken and no company' documents or any other incriminating materials, other than the xerox copies of the property documents, and Bolero car, and mobile phones were seized. Further, from the email communication between the petitioner and the defacto complainant's wife, the other Director of the company, it is seen that there is some misunderstanding between the husband and wife, who are Directors of the company and the petitioner had marked the copies of the same to the Managing Director of the Company.

7. In view of the same and taking note of the fact that the period of incarceration by the petitioner and police custody has been completed, the offence are document based offence and the documents are available with the defacto complainant, the petitioner has no access to the same, this Court is inclined to grant bail to the petitioner, subject to the following conditions :

(a) the petitioner shall execute his own bond for a sum of Rs.10,000/- (Rupees Ten thousand only) before the Superintendent of the concerned prison;

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(b) thereafter, the petitioner shall execute two sureties for a sum of Rs.10,000/- (Rupees ten thousand only) each, before the concerned Magistrate on or before 01.07.2020, failing which the bail granted by this Court shall stand dismissed.

(c) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

(d) the petitioner shall report before the respondent police as and when required for interrogation.

(e) the petitioner shall not abscond either during investigation or trial.

(f) the petitioner shall not tamper with evidence or witness either during investigation or trial.

(g) 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].**

(h) If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

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To

1. The Inspector of Police,
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   O/o, The Commissioner of Police,
   Vepery, Chennai – 600 007.

2. The Public Prosecutor,
   High Court, Madras.

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M.NIRMAL KUMAR, J.

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