IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2020

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.OP.Nos.9908 and 10667 of 2020

and Crl.MP.4543 of 2020

R.N.Subramanian ... Petitioner in Crl.O.P.No.9908 of 2020

1.Sumathi Mai
2.R.S.Karthick ... Petitioner in Crl.O.P.No.10667 of 2020

Vs.

The State Represented by
Inspector of Police,
Peramanallur Police Station,
Tiruppur District. ... Respondent in both Crl.O.Ps

Common Prayer: Criminal Original Petition filed under Section 438 Cr.P.C., praying to enlarge the petitioner on anticipatory bail in the event of their arrest in Crime No.1359 of 2020 on the file of the respondent police

For Petitioner : Mr.S.Veeraraghavan
(In Crl.O.P.No.9908 of 2020)

For Petitioners : Mr.A.Thiyagarajan
(In Crl.O.P.No.10667 of 2020)

For Respondent : Mr.M.Mohamed Riyaz,
(In Both Crl.O.Ps) Additional Public Prosecutor

For Intervenor : Mr.D.Gopal
in Crl.OP.No.10667.

COMMON ORDER

(This case has been heard through video conference)

The petitioners, who apprehend arrest at the hands of the respondent police for the alleged offences punishable under Sections 120B, 420, 409, 467, 468 and 471 of IPC in Crime No.1359 of 2020, on the file of the respondent police, seek anticipatory bail.

2. The case of the prosecution as per the defacto complainant Rajmal is that he is a business developer / Accountant and Special Power of Attorney in K.K.Granite Marketing Company engaged in the business of sale tiles and granites. The accused were running a firm in the name of Sri Ganga Ceramics and on the inducement and assurance that they would make payments once in 15 days, the defacto

complainant's firm was made to supply ceramic tiles worth Rs.53,92,818/- during the period from 26.07.2017 to 12.01.2018. Till 06.01.2018, the accused have repaid only a sum of Rs.14,08,090/- by way of cheque. The defacto complainant had taken return of tiles worth Rs.12,67,479/- and also paid Rs.50,000/- for transportation charges. Thereafter, the accused have not made the balance payment and as on date, a sum of Rs.28,22,249/- was remaining due. When the defacto complainant had asked for return of money, the accused had informed him that they will sell their house and repay the amount. Later, without the knowledge of the defacto complainant, they have sold the house and without paying amount to him, handed over the business to one Kathirvel and thereby, the accused had cheated the defacto complainant to the tune of Rs.28,22,249/-. Hence the complainant.

3. The learned counsel appearing for the petitioner in Crl.O.P.No.9908 of 2020 would submit that the petitioner is a senior citizen and he is the father of the second accused and father-in-law of the first accused. Excepting the above relationship, the petitioner has nothing to do with the tiles business run by his daughter-in-law and his son and he was not at all connected with the business. Earlier, based on a complaint given by the defacto complainant, enquiry was conducted by the R.S.Puram Police and on finding that the dispute is civil in nature, they had closed the complaint, whereas, strangely, the present complaint has been registered by Peramanallur Police Station. Hence, he seeks for grant of anticipatory bail to the petitioner.

4. The learned counsel appearing for the petitioners in Crl.O.P.No.10667 Of 2020 would submit that the petitioners are innocent persons and a case of commercial transaction has been attempted to be converted as a criminal case and the efacto complainant is making illegal attempt to recover the amount by police action and threat of arrest. He would submit that the petitioners were running a firm in the name of Sri Ganga Tiles and the defacto complainant had supplied tiles to them and that it was a running business and the petitioners have been regularly making payment. Thereafter, due to slump in the business, the petitioners were unable to repay the amount in time. Subsequently, the defacto complainant along with his men, came to the shop of the petitioners and had taken back tiles worth Rs.12,67,479/- and for the balance amount, the petitioners have issued cheques to the defacto complaint. The defacto complainant without presenting the cheques for collection and without taking steps in accordance with law, given a false complaint as if, the petitioners have cheated him and the police under the threat of arrest is trying to settle the civil dispute. The learned Counsel further submitted that earlier a complaint was given before the R.S. Puram Police Station and enquiry was conducted them and on finding that the case is civil in nature, they have deferred the case. Whereas, now a complaint has been made before the present respondent. He further submitted that the petitioners are bonafide business people who have suffered loss and absolutely there was no intention to cheat the defacto complainant. They are having permanent residence and they are prepared to offer adequate sureties that they

are prepared to appear before the respondent for enquiry. Hence, he seeks for grant of anticipatory bail to the petitioners.

5. The learned Additional Public Prosecutor appearing for the respondent submitted that the defacto complainant had supplied ceramic tiles worth Rs.53,92,818/- during the period from 26.07.2017 to 12.01.2018 and an amount of Rs.28,22,249/- remaining to be repaid by the accused to the defacto complainant. While so, without the knowledge of the defacto complainant, they have sold the business to a third party and cheated the complainant without paying the dues. Hence, he opposed for grant of anticipatory bail to the petitioners.

6.The learned counsel for the intervenor submitted that the first and second accused are husband and wife and the third accused is the father of the second accused. They were running a business in the name of Sri Ganga Ceramics. They induced the defacto complainant to supply tiles and based on the inducement, the defacto complainant has supplied ceramic tiles worth Rs.53,92,818/- to the petitioners during the period from 26.07.2017 to 12.01.2018. Till 06.01.2018, the accused have repaid a sum of Rs.14,08,090/- by way of cheque and since, the accused were not proper in their payment, the defacto complainant had taken back tiles worth Rs.12,67,479/- and they have also paid an amount of Rs.55,000/- to settle the housing loan. The accused had assured that they will sell their house and repay the amount and for the balance amount had also issued post dated cheques towards security. When the cheques were presented for collection, they have been returned due to insufficient funds. Further, without the knowledge of the defacto complainant, they have sold their business to one Kathirvel. Hence, he vehemently opposed for the grant of anticipatory bail to the petitioners.

7. Perused the FIR and the documents filed along with the petition.

8. Taking into consideration the facts and submissions of the learned counsel, this Court is inclined to grant anticipatory bail to the petitioners subject to the following conditions;

9. Accordingly, the petitioners are directed to be released on bail in the event of their arrest or on their appearance, within a period of two weeks after lifting of lockdown or the commencement of the Court’s normal functioning whichever is earlier, before the learned Judicial Magistrate, Avinashi, on condition that the petitioners shall execute a separate 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 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 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] The petitioner in Crl.O.P.No.9908 of 2020 is directed to report before the respondent police as on when required for interrogation and the petitioners in Crl.O.P.No. 10667 of 2020 are directed to report before the respondent police daily at 10.30 a.m. for a period of two weeks and thereafter, as and when required for interrogation.

[c] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioners shall not abscond either during investigation or trial.

[e] 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 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].

[f] 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. Consequently, the connected miscellaneous petition is also ordered.

-sd/-
27/07/2020

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,
AVINASHI

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 INSPECTOR OF POLICE,
PERAMANALLUR POLICE STATION,
TIRUPPUR DISTRICT.

CC to M/S S.VEERARAGHAVAN Advocate on payment of necessary charges Sr.5783

CC to M/S D.GOPAL Advocate on payment of necessary charges SR.5789

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Date :27/07/2020

RVR 14/09/2020