

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2020

CORAM

THE HONOURABLE MR. JUSTICE A. D. JAGADISH CHANDIRA

Crl.O.P.No.12133 of 2020

and

Crl.M.P.No.5028 of 2020

1. Sumathi
W/o.Sampath Kumar

2.Srinivasan.G

3.Priyadharshini
W/o.Deepak Kumar

4.Deebak Kumar
S/o.Srinivasan

5.Bindhya
W/o.Sathish

6.Sathish
S/o.Duraisamy

7.Selvarasu

... Petitioners

Vs.

State Represented by,
The Inspector of Police,
Palur Police Station,
Chengalpattu District.

Crime No.564 of 2020.

...Respondent

Prayer: Criminal Original Petition filed under Section 438 of Cr.P.C., to enlarge the petitioners on bail in the event of their arrest in Connection with the Crime No.564 of 2020 pending on the file of the respondent police.

For Petitioners : Mr.T.Gowthaman

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

ORDER

(This case has been heard through video conference)

The petitioners, who apprehends arrest at the hands of the respondent police for the alleged offences punishable under Sections 420, 468, 471 and 477 of IPC in Crime No.564 of 2020, on the file of the respondent police, seek anticipatory bail.

2. The case of the prosecution as per the defacto complainant Jaya Pradap Babu, agent and the Power of Attorney of one Subashini is that the said Subashini is the partner of Neo Jayakrishna Brick Industries. The partnership deed was executed on 21.06.1999 between the said Subashini and one D.Sampath Kumar, the husband of the first petitioner. Under the said partnership deed, the said Sampath Kumar was authorised as a Managing Partner and he was looking after the business of the partnership firm. The said Subashini, trusted that the said Sampath Kumar will act on the interest of partnership firm and the partners were to share the profit and loss equally. Thereafter, from the year 2016, various issues cropped up between Subashini and the family of Sampath Kumar regarding management and operation of the group entities and it was found that the said Sampath Kumar influenced the Accountant one Selvam to make up the accounts as per his like and swindled the money of the firm. During the year 2017, when the said Subashini had requested to give the accounts of the firm, she was shocked to know that the said Sampath Kumar by taking undue and unfair advantage of his position as an eldest member of the family, cheated the defacto complainant and had purchased various properties in his own name and in the name of his wife and daughter from the funds of the firm. Thereafter, the said Sampath Kumar died on 18.03.2018. The further allegation is that the petitioners who are the legal heirs and in-laws of Sampath Kumar, had swindled away all the properties purchased without her knowledge from the revenue generated by the partnership firm. The accused had also sold 1200 to 1300 loads of bricks worth of Rs.2 Crores and also misappropriated the funds of the partnership firm, in all total Rs.2.50 Crores. Hence, the complaint.

3. The learned counsel for the petitioners would submit that a dispute with regard to partnership which is civil in nature, has been given a criminal colour and the defacto complainant on ill advice with the influence of police and Advocates and power brokers, is attempting to arm twist the petitioners to go for undue settlement under the threat of arrest. He would submit that the said Subashini and the husband of the first petitioner are siblings and they were running a partnership firm. The Subashini was all along living in the United States of America and the entire business was run by the husband of the first petitioner. He would submit that the first petitioner as well as her children and in-laws have no role to play in the business and the defacto complainant has unnecessarily implicated the petitioners in this case. He would further submit there are also arbitration clause in the partnership agreement and civil litigations are pending between the parties. However, after the death of the husband of the first petitioner, the Subashini on ill

advise, is creating problems. He would submit that on earlier occasion, a complaint was given to the Inspector of Police, Vannur Taluk Police Station and enquiry was also conducted and the Inspector of Police finding that the case was Civil in nature, did not register the complaint and advised the parties to approach the Civil Court. He once again reiterated that the entire family members are hounded and hence, he prays for grant of anticipatory bail to the petitioners.

4. The learned Additional Public Prosecutor would submit that the defacto complainant Jaya Pradap Babu is the agent and Power of Attorney of one Subashini who is the partner of Neo Jayakrishna Brick Industries. The 1st petitioner is the wife of late Sampath Kumar. The said Sampath Kumar and the said Subashini were partners in the partnership firm, engaged in the business of manufacturing Bricks. The Subasini was residing at United States of America and the entire business was looked after by the late Sampath Kumar. While so, taking advantage of the absence of Subashini, the said Sampath Kumar had swindled money and he had purchased properties in his individual name as well as in his family members name. After the demise of the said Sampath Kumar during the year 2018, the petitioners have sold the bricks which were manufactured in the brick kiln and thereby, they have cheated the defacto complainant to the tune of Rs.2.50 Crores. Hence, he vehemently opposed for the grant of anticipatory bail to the petitioners.

5.The learned counsel appearing for the Intervenor would vehemently oppose stating that the defacto complainant Subashini and the husband of the first petitioner were partners in a partnership firm engaged in the business of manufacturing bricks. The defacto complainant was living at the United States of America and she believing the husband of the first petitioner, had entrusted the entire business to him on the belief that he will run the business for the best interest of both the partners. However, the husband of the first petitioner taking undue advantage of the absence of the defacto complainant, by falsification of accounts and fabrication of documents cheated the her with the help of the Accountant and later by fudging accounts had purchased properties in his name and the name of his family members against the interest of the partnership firm. Thereafter, he died during the year 2018 and the first petitioner who is a wife of the said Sampath Kumar and the other petitioners who are the relatives, have sold the manufactured bricks worth Rs.2.50 Crores without the knowledge of the Subashini and thereby, cheated her.

6. At this juncture, the learned counsel for the petitioners would reiterate and submit that in respect of the very same issue civil suits are also pending between the parties.

7.Taking into consideration of the facts and circumstances and also submissions of the learned Counsels and on perusal of the materials on record, this Court is inclined to grant anticipatory bail to the petitioners subject to the following conditions;

8. Accordingly, the petitioners are directed to be released on bail in the event of arrest or on their appearance, within a period of fifteen (15) days after lifting of lockdown or the commencement of the Court's normal functioning whichever is earlier, before the learned Judicial Magistrate No.I, Chengalpattu 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 petitioners/A1, A3 & A5 shall report before the respondent Police daily at 10.30 a.m., for a period of one weeks and thereafter as and when required for interrogation.

[c] the petitioners/A2, A4, A6 & A7 shall report before the respondent Police daily at 10.30 a.m., for a period of one weeks and thereafter on every Monday at 10.30 a.m., for a period of four weeks and thereafter as and when required for interrogation.

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

[e] the petitioners 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. Consequently, connected Miscellaneous Petition is closed.

-sd/-

09/09/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)

<https://hcservices.ecourts.gov.in/hcservices/>

High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
NO.I,CHENGALPATTU

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
PALUR POLICE STATION,CHENGALPATTU
DISTRICT(CRIME NO 564/2020)

4 THE ASSISTANT REGISTRAR,
TAMILNADU MEDIATION AND CONCILIATION CENTRE,
HIGH COURT, MADRAS

CC to M/S T.GOWTHAMAN Advocate on payment of necessary charges

CRL OP.12133/2020

and

CrI.M.P.No.5028 of 2020

Date :09/09/2020

RD 22/09/2020



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