

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2020

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Cr1.O.P.No.12692 of 2020

Gopi

... Petitioner

Vs.

The State Represented by, ...Respondent
The Sub Inspector of Police,
District Crime Branch Police Station,
Thiruvarur,
Thiruvarur District.
(Crime No.05 of 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 by the respondent police in Crime No.05 of 2020 on the file of the respondent police.

For Petitioner : Mr.E.Somasundaram

For Respondent : Mr. M. Mohamed Riyaz,

Additional Public Prosecutor

ORDER

(The case has been heard through video conference)

The petitioner who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 406, 408, 420 and 477 A of IPC in Crime No.5 of 2020 on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution as per the defacto complainant Devaraj, Executive Officer of Muthupettai Town Panchayat, Tiruvarur District is that audit was conducted in the Town Panchayat for the period between January 2019 to October 2019. During the relevant time, A1/Senthilan was working as Executive Officer, A2/Selvakumar was working as Bill Collector, A3/Gopi/the petitioner herein was working as Electrician and A4/Rajendran was working as Junior Assistant in the Panchayat. The further allegation is that the

accused by misusing their official position, colluded with each other and by fabrication of documents and falsification of accounts under various heads, had misappropriated the Panchayat funds to the tune of Rs.93,21,391/-. Hence, the complaint.

3. The learned Counsel for the petitioner would submit that the petitioner is arrayed as A3 in this case and he is only a lower level staff and working as Electrician in the said Panchayat and he has not committed any offence as alleged by the defacto complainant. He would further submit that the petitioner's duty is only to carry out the electrician work. However, the earlier Executive Officer was transferred and the present Executive Officer directed the petitioner to carry out the jobs other than the one that was assigned to him. Since it was refused by the petitioner there was enmity between the petitioner and the present Executive Officer. He would further submit that collection of taxes is not his job, whereas, the present Executive Officer directed the petitioner to collect the taxes and when it was refused, he had issued memo dated 07.11.2019 in Na.Ka.No.1429/2019/A1 calling upon the petitioner to collect the taxes and had threatened that if the taxes are not collected on or before 31.12.2019, the responsibility will be fixed on the petitioner and that the salary will be deducted if the said work was not carried out. Later, the Executive Officer had also sent a communications dated 23.11.2019 and 10.12.2019 stating that a sum of Rs.10,000/- would be deducted from the salary of the petitioner and against the order passed by the Executive Officer, the petitioner gave a representation to the Assistant Director of Panchayat on 29.01.2020, based on which, the order passed by the Executive Officer for deducting the salary was cancelled. Thereby, the Executive Officer in order to wreck vengeance against the petitioner had preferred the complaint against him, as if the petitioner had also misappropriated the amounts along with the other accused. He would further reiterate that the petitioner is only working in the cadre of Office Assistant and he had obeyed the orders of the previous Executive Officer and he has not committed any offence. Hence, he prays for grant of anticipatory bail to the petitioner.

4. The respondent police has filed a detailed counter before this Court. In the Counter, it has been stated that the accused was working as Electrician during the period between January 2019 to October 2019 and he had colluded with the other officers and by way of misusing their official positions, they have misappropriated the Panchayat funds in the following manner:

"(i) By way of creating forged documents as if by using JCB machines within the said Panchayat and thus misappropriated to the tune of Rs.12,52,621/-

(ii) Committed misappropriation on the head of miscellaneous to the tune of Rs.7,78,539/-

(iii) By way of misappropriating on the head of maintenance of street lights [without gajacycle's street lights] for an amount of Rs.12,62,594/-

(iv) Committed misappropriation on the head of Maintenance of broken Drainage to the tune of Rs.6,71,595/-

(v) By way of committing misappropriation on the head of General Health to the tune of Rs.15,01,045/-

(vi) Committed misappropriation on the head of Maintenance of broken drinking water pipe line to the tune of Rs.31,75,259/-

(vii) By way of creating forged document on the head of purchasing new machines for maintenance of drinking water and thus misappropriated the Town Panchayat fund to the tune of Rs.6,79,738/-

The total misappropriated and cheated amount is Rs.93,21,391/-."

5.The learned Additional Public Prosecutor would vehemently oppose stating that the petitioner who was working as an Electrician, colluded with the other officers and by forging of documents and falsification of accounts and records, have misappropriated the Panchayat funds to the tune of Rs.93,21,391/-. He would further submit that the submissions made by the petitioner as against the subsequent Executive Officer may not be accepted since the complaint is not only against the petitioner but, the complaint has also been filed against the earlier Executive Officer, Bill Collector and the Junior Assistant. Further he submitted that the case is at the preliminary stage of investigation and that the custodial interrogation of the petitioner is very much essential to collect the relevant documents from various authorities and for verification. He would further submit that the public funds to the tune of Rs.92 lakhs have been misappropriated by the accused and he would strongly object for grant of anticipatory bail to the petitioner.

6. Taking into consideration the allegations and the fact that the case is in the initial stage of the investigation and that the custodial interrogation of the petitioner is very much essential, this Court is not inclined to grant anticipatory bail to the petitioner.

7. Accordingly, this Criminal Original Petition is dismissed.

-sd/-

06/10/2020

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 SUB INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH POLICE STATION,
THIRUVARUR,
THIRUVARUR DISTRICT.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

CC to M/S.E.SOMASUNDARAM Advocate on payment of necessary charges

CRL OP.12692/2020

Date :06/10/2020

TA-22/10/2020

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