

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2020

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Cr1.O.P.No. 13114 of 2020

M.Dhandapani

... Petitioner/Accused

Vs.

The State represented by,
The Inspector of Police,
B-1, Bazaar Police Station,
Coimbatore District.

(Crime No. 786 of 2020)

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 439 Cr.P.C. to enlarge the petitioner on bail in Crime No.786 of 2020, on the file of the respondent police.

For Petitioner : Mr.I.Abrar Mohamed Abdullah

For Respondent : Mr.T.Shunmugarajeswaran

Government Advocate (Cr1. Side)

O R D E R

(The case has been heard through video conference)

The petitioner who was arrested and remanded to judicial custody on 24.07.2020 for the offences punishable under Sections 406 & 420 of IPC in Crime No. 786 of 2020 on the file of the respondent police, seeks bail.

2 The case of the prosecution is that the defacto complainant is running a jewellery shop and he is also a whole sale dealer and that he used to make gold jewels and sell to retail shops. The accused is a goldsmith and he is manufacturing gold jewels in his work shop. The accused and the defacto complainant are having business contact for the past 20 years while so on 19.03.2020 the deacto complainant had handed over 708.830 grams of 24 carrot pure gold to make gold chain to the accused on promise to make a gold chain and return during the first week of April but the accused had not given gold chain as promised by him. Hence, the complaint.

3 The learned counsel appearing for the petitioner would submit that the petitioner is a gold smith and it is true that the petitioner has received gold from the defacto complainant to make gold chain. He would submit that during the Covid period, a theft has occurred in his house and the petitioner has also given a complaint before the same police station and the case is under investigation. He would submit that when the petitioner was called for enquiry, he did appear and accepted that he has received the gold from the defacto complainant and in fact he had also agreed to give a security by giving two of his properties pertaining to Document No. 1682/2013 and Document No. 2809/2013, which is stand in the name of the petitioner and his wife to the defacto complainant. However, the defacto complainant has refused to accept the security and on the pressure given by the defacto complainant, the petitioner was arrested on 24.07.2020. He would submit that a case of breach of contract has been presented as a case of breach of trust and cheating and the petitioner has been arrested. He would further submit that from the document, the value of the property would cover more than Rs.35,00,000/- and he would be also undertake that he will not encumber the property. Hence, he prays to grant bail to the petitioner.

4 The learned Government Advocate (Crl.Side) appearing for the respondent would submit that on the complaint given by the defacto complainant, the petitioner was called for enquiry and the petitioner has appeared before the respondent for enquiry and he has also admitted that he has received the gold from the defacto complainant, however, he had stated that the gold was stolen from his house. He would submit that the investigation is going on and excepting the finger prints of the petitioner's wife and daughter, no other finger print is lifted from his house. He would submit that further investigation is also going on and that during the enquiry before arrest the petitioner has offered to give his property documents as security, but the defacto complainant has refused to accept the same and thereby the petitioner was arrested and remanded to judicial custody.

5 The learned counsel for the intervener would vehemently oppose by stating that the defacto complainant has handed over 708.830 grams of 24 carrot pure gold, which is worth about Rs.35,00,000/- for making jewellery and the accused has willfully cheated the defacto complainant.

6 Heard the counsels and perused the materials placed on record and this Court does not want to go any further into discussing the facts of the case that would effect either party.

7 Taking into consideration of the facts and submissions made by the learned counsels and considering the fact that the petitioner is in jail from 24.07.2020 and that the petitioner has voluntarily offered to give his two property documents as security, this Court is inclined to grant bail to the petitioner subject to the following conditions:-

(a) Accordingly, the Petitioner is ordered to be released on bail on executing his own bond for a sum of Rs.10,000/- (Rupees ten thousand only), before the Superintendent of the concerned prison, in which the Petitioner has been confined and thereafter on his release;

(b) the petitioner shall deposit the title deed of document Nos.1682/2013 and 2809/2013, to the credit of Crime No.786/2020 and execute two sureties, each for a sum of Rs.50,000/- (Rupees Fifty Thousand only), before the learned Judicial Magistrate No.V,Coimbatore, within 15 days from the date of lifting of the lock down or the commencement of the Court's normal functioning or which ever is earlier, failing which the bail granted by this Court shall stand dismissed automatically; and

(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 everyday at 10.30 a.m. for a period of two weeks and thereafter on every Monday at 10.30 a.m., until further orders.

(e) the petitioner shall not commit any offences of similar nature;

(f) the petitioner shall not abscond either during investigation or trial;

(g) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(h) on breach of any of the aforesaid conditions, the learned Judicial 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 WEB 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];

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

6 With the above directions, this Criminal Original Petition is ordered.

-sd/-
03/09/2020

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 NO.V,
COIMBATORE.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
B1, BAZAAR POLICE STATION,
COIMBATORE DISTRICT.

CC to M/S.I.ABRAR MOHAMED ABDULLAH Advocate on payment of
necessary charges

CRL OP.13114/2020

Date : 03/09/2020

MK:08/09/2020

WEB COPY