

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.09.2020

CORAM :

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.14159 of 2020

& CRL.MP.NO.5660 OF 2020

1.Moitheen @ Moitheen Abdul Khader

2.Siraj @ Sayed Sirajudeen

.. Petitioners

/versus/

State represented by
The Inspector of Police,
District Crime Branch Police Station,
Thiruvallur,
Thiruvallur District.
(Crime No.15 of 2020)

.. Respondent

SOURABH TOSHNIWAL

[PETITIONER / 3RD PARTY

DEFACTO COMPLAINANT]

[Ordered as per order of this Court dated 29/09/2020 made in
CRL.MP.NO.5660 OF 2020 IN CRL.OP.NO.14159 OF 2020]

Prayer: Criminal Original Petition is filed under Section 438 of
Criminal Procedure Code to enlarge the petitioners on bail in
the event of his arrest in Crime No.15 of 2020 on the file of
Respondent Police.

For Petitioner : M/s R.Sasikumar

For Respondent : Mr.M.Mohamed Riyaz

Addl Public Prosecutor

For Intervenor : Mr.K.G.Senthil Kumar.

O R D E R

(The 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 406, 420 and 506(ii) of IPC in Crime No.15 of 2020 on
the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution as per the defacto complainant is that he was running a fabricate/apparel manufacturing at Tiruvallur. Whiles, the petitioner induced the defacto complainant under the guise of running textile business and purchased fabricates from the garments of the defacto complainant for an amount of Rs.70,78,000/- and later without knowledge of the defacto complainant sold the textiles purchased from the defacto complainant and misappropriated the amount and thereby cheated the defacto complainant.

3. The learned counsel would submit that the petitioners are innocent and that a case of business transaction has been falsely projected as a case of cheating. He would submit that the petitioners and the defacto complainant were running business and that the petitioners have made payment in respect of several invoices and the defacto complainant is claiming an amount on wrong calculation and there is a dispute between the petitioners and the defacto complainant with regard to the same. With the help of the police, a false complaint has been registered.

4. The learned counsel for the petitioner would further submit that steps are taken for reconciliating the accounts and that the petitioners without prejudice to their contention and defence do admit that an amount of Rs.15lakhs remains to be paid and the petitioner is prepared to settle the amount of Rs.15lakhs by way of three equal installments of Rs.5lakhs each per month.

5. The learned Additional Public Prosecutor would submit that the petitioners have induced the defacto complainant, based on which the defacto complainant has supplied goods to the tune of Rs.70,78,000/-. The petitioners have sold the goods to the 3rd parties and have failed to pay an amount to the defaco complainant.

6. The learned counsel for the intervenor would submit that based on the inducement, the petitioners have supplied the goods to the tune of Rs.70,78,000/-, the petitioners have sold it and failed to repay the amount. The complainant are even prepared to take back the goods.

7. At this juncture, the learned counsel for the petitioner would submit that the petitioners without prejudice to the claim of the defacto complainant and to show their bonafides are prepared to pay the sum of Rs.15lakhs by way of three installments and they have also filed an affidavit of undertaking agreeing to pay an amount of Rs.5lakhs on or before 01.11.2020, another sum of Rs.5,00,000/- on or before 01.12.2020 and balance amount of Rs.5,00,000/- on or before 02.01.2021 to the defacto complainant.

8. Heard the counsels and perused the materials available on record and the affidavit of undertaking filed by the petitioners.

9. Taking into consideration the facts and circumstances of the case and also considering the undertaking affidavit filed by the petitioners agreeing to pay an amount of Rs.5,00,000/- on or before 01.11.2020, another sum of Rs.5,00,000/- on or before 01.12.2020 and balance amount of Rs.5,00,000/- on or before 02.01.2021 to the defacto complainant, this Court is inclined to grant anticipatory bail to the petitioners subject to the following conditions:

10. 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 from the date on which the copy of the order is made ready, before the learned Judicial Magistrate No.I, Tiruvallur, on condition that the petitioners shall execute a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) each with two sureties 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 shall report before the respondent police every day at 10.30 a.m. for a period of one week and thereafter on the 1st Monday of every month, until further orders.

[c] if the petitioners fails to keep the undertaking, the defacto complainant is entitled to move the petition for cancellation of bail.

[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.

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

12. The affidavit of undertaking filed by the petitioners shall form part of Court records.

-sd/-

29/09/2020

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. I,
TIRUVALLUR.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH POLICE STATION,
THIRUVALLUR, THIRUVALLUR DISTRICT.

+1CC to M/S. R.SASIKUMAR Advocate on payment of necessary charges SR NO.6530

CRL.OP.NO.14159/2020
& CRL.MP.NO.5660/2020

Date :29/09/2020

MK:14/10/2020