

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2020

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Crl.O.P.No. 18204 of 2020

Varatharajan

... Petitioner/2nd Accused

Vs.

The State represented by,
The Inspector of Police,
CCIW-CID, Coimbatore.

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 439 Cr.P.C. to enlarge the petitioner on bail in Crime No.1 of 2020, on the file of the respondent police.

For Petitioner : Mr.H.Rajasekar

For Respondent : Mr.T.Shunmugarejeswaran
Government Advocate (Crl. 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 15.10.2020 for the offences punishable under Sections 120-B, 406, 408, 420, 460, 467, 471, 477-A, 109 of IPC, in Crime No. 1 of 2020, on the file of the respondent police, seeks bail.

2.The case of the prosecution as per the defacto complainant viz., J.Franklin Thomas, is that the petitioner is the president of the Urban Cooperative Credit Society and during the period between 01.04.2013 to 18.02.2019, the petitioner along with other accused had committed misappropriation of funds to the tune of Rs.7,02,28,201/- in the said Society and total amount of misappropriation including the interest is Rs.13,29,68,809/. Hence, the complaint. As per the Tamil Nadu Cooperative Societies Act, Section 81 enquiry conducted, liability fixed and attachment for recovery made.

3.The learned counsel appearing for the petitioner would submit that the petitioner is innocent and he has been falsely implicated in this case. He would submit that the petitioner being the President of co-operative society, was an authorised signatory. The responsible for maintaining the account books vest with the Society its Officer/bearers, such as Secretary, Vice President others. The

maintenance of cash was the responsibility of the Cashier and other than overall supervision, the petitioner is not connected with the said offence as alleged by the prosecution. He would further submit that the Enquiry Officer in his report has categorically given his finding in page Nos.30 to 39 about the role played by office bearers of the society, in which, as regards the petitioner, apart from signing the cheques of the society, the petitioner had lacked supervision in bringing the same in the books of accounts. The petitioner has not discharged his duty keeping proper supervision of the societies funds. Further to 81 enquiry, recovery proceedings were initiated as regards the petitioner, around four crores has been fixed as his liability. In furtherance to the same, the properties of the petitioner and his sons were attached, which is reflected in the encumbrance certificate produced. Further, Mr.Rahmath Ali, the learned counsel for the petitioner on instruction would submit that the attached properties are valued several cores more than his liability, further for the attached properties the petitioner would not oppose, agitate take any steps to lift the attachment till the disposal of the case. The petitioner shall undertake and file an affidavit to this effect while executing sureties. He would submit that the petitioner was arrested on 15.10.2020 and that he is suffering incarceration for more than 40 days. Hence, he prays to grant bail to the petitioner.

4.The learned Government Advocate (Crl.Side) appearing for the respondent would submit that the petitioner along with other accused have committed misappropriation of funds in the Urban Cooperative Credit Society, which is more than Rs.13 Crores and that the petitioner is the president of the said Society at the time of occurrence. He would submit that the co-accused in this case viz., A1, A3, A5, A7 & A8 have been arrested and other accused viz., A4, A6 & A10 have been absconding. The interest of the society to be safeguarded and the petitioner as per undertaking is to file affidavit not to alienate and dispose the properties, which are attached on the orders of the Deputy Registrar of Cooperative Societies. Hence, he opposed to grant bail to the petitioner.

5.Taking into consideration of the facts and circumstances of the case and the submissions made by the learned counsel and also considering the fact that the petitioner is suffering incarceration from 15.10.2020, 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 condition to execute a 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 learned Judicial Magistrate No.IV, Coimbatore and on further conditions that:

(b) the petitioner to file an undertaking affidavit giving details of the properties attached along with the Encumbrance Certificate and undertake that the attached properties by the Deputy Registrar of Cooperative Societies shall not be alienated and disposed or create any liability and encumbrance.

(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 respondent police everyday at 10.30 a.m., for a period of two weeks and thereafter, 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 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];

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

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

-sd/-
24/11/2020

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.IV, COIMBATORE.

2 THE CHIEF JUDICIAL MAGISTRATE
COIMBATORE [FOR INFORMATION]

3 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
CCIW - CID COIMBATORE.

+1 CC to M/S. H.RAJASEKAR Advocate on payment of necessary charges
SR.No.7793

CRL OP.18204/2020

Date :24/11/2020

cs 27/11/2020