IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.12.2020

PRONOUNCED ON : 09.12.2020

CORAM

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.18132 of 2020

M.Sampath Kumar ... Petitioner

Vs.

State by:- ... Respondent
The Inspector of Police,
District Crime Branch, Vellore
Vellore District.
(Cr.No.19 of 2018)

Prayer: Criminal Original Petition filed under Section 438 Cr.P.C. to enlarge the petitioner on anticipatory bail in Crime No.19 of 2018, pending on the file of the respondent police.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.M.Mohammed 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 offence punishable under Sections 468, 471, 260 of IPC, in Crime No.19 of 2018, seeks anticipatory bail.

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2.The gist of the case is that on 07.04.2018, the Chief Manager, Andhra Bank, had lodged a complaint to the respondent police. The allegation is that during the year 2016, Aravindan and Aruna, for purchase of house, had obtained a loan of Rs.20 lakhs from the Andhra Bank, for which, they had given their property as collateral security. Initially, some payments were made by the said Aravindan and Aruna to the Bank. Thereafter, the said Aravindan and Aruna did not make any payment to the Bank, due to which, the Manager scrutinised the documents, in which, it was found that the documents submitted by the said Aravindan and Aruna were forged. Hence, the complaint came to be lodged. During investigation, on 07.04.2018, the said Aravindan and Aruna were arrested and had given

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a confession stating that the petitioner/Sampath Kumar had arranged for the forged documents. The petitioner is working as a Legal Advisor to the Andhra Bank, Bagayam Branch and he had given a legal opinion in favour of the said Aravindan and Aruna based on the forged documents. Therefore, the Chief Manager, Andhra Bank, had given a complaint against the petitioner.

3. The contention of the petitioner is that the petitioner is a Senior Advocate in Vellore District and he has been panel lawyer to the Andhra Bank for the past 15 years and he had given a legal opinion to those who approached the bank for pledging the property. Based on the direction of the Chief Manager of the Bank, he gave legal opinion by perusing the documents produced by the applicant. Therefore, the petitioner was not aware about the forgery created in this case. Further, in this case, FIR came to be registered in the year 2018 and the petitioner is not a named accused. Admittedly, the petitioner is roped in this case based on the confession of the co-accused without any corroborative materials. Hence, he prays for grant of anticipatory bail to the petitioner.

4. The learned Additional Public Prosecutor would submit that the petitioner was a Legal Advisor of the Andhra Bank and the petitioner had prepared the forged documents and handed over them to the other accused and the same was submitted before the Andhar Bank. Further, the petitioner had also given opinion, certifying the genuineness of the documents. Based on his opinion, the Bank had given a loan and some payments were made by the said Aravindan and Aruna. Thereafter, the said Aravindan and Aruna did not repay the loan amount. At that time, the Chief Manager had verified the documents and found that the documents were forged. Thereafter, the complaint was lodged and the petitioner was sent 41(A) notice. Without appearing and giving an explanation to the the respondent police, the petitioner had approached this Court. Hence, he opposed for grant of anticipatory bail to the petitioner.

5. Considering the rival submission and on perusal of the materials, it is seen that the petitioner is a Panel Advocate of the Andhra Bank for the past 15 years and the petitioner has given legal opinion for obtaining loan, based on the documents produced by the applicant. On receipt of the loan application and documents, it is for the Bank Manager to scrutinise all the documents, satisfy about the financial capacity, the purpose of the loan and repayment capacity. Considering all these factors, they have to process loan on the basis of the documents produced by the applicant. The petitioner is only a Panel Advocate and he has to peruse the documents produced before him and thereafter, he give legal opinion. The legal opinion is one of the consideration and it is not the only consideration for processing the loan. Since the loan became NPA due to various reasons, the complaint was given in this case by a Senior Officer of the Bank, after scrutinising the documents. In the

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complaint, there is nothing against the petitioner and the respondent police, for obvious reason, have now included the petitioner name in the case, based on the confession of the co-accused. The Apex Court in the case of ***Central Bureau of Investigation, Hyderabad vs. K.Narayana Rao reported in 2012(9) SCC 512***, had held that "*the liability against an opining advocate arises only when the lawyer was an active participant in a plan to defraud the Bank*". In this case, except for the confession of the co-accused, there is no material.

6. Taking note of the above facts and circumstances, and also the submissions made by the learned counsel, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

(a) Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date on which the order copy made ready, before the learned Judicial Magistrate No.I, Vellore, on condition that the petitioner shall 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 respondent police or the police officer who intends to arrest or to the satisfaction of this Court concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[b] the petitioner 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.The petitioner shall execute common surities in other connected cases viz., Crl.OP.No.17525, 17577 and 18550 of 2020.

[c] the petitioner shall report before the respondent police daily at 10.30 a.m., for a period of two weeks and thereafter, every Saturday at 10.30 a.m., until further orders.

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

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[e] the petitioner 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 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].**

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[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

-sd/-
09/12/2020

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.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
NO.I, VELLORE.

2 THE CHIEF JUDICIAL MAGISTRATE
VELLORE. [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH,
VELLORE,
VELLORE DISTRICT.

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

CRL OP.18132/2020

Date :09/12/2020

TA-15/12/2020

सत्यमेव जयते
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