BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Reserved on	07.09.2020
Delivered on	10.09.2020

PRESENT

The Hon`ble Mr.Justice V.BHARATHIDASAN

CRL OP(MD). No.8119 of 2020

Thangapandian ...Petitioner/Accused No.2

Vs

State represented by,
The Inspector of Police,
CBCID-South,
Kanyakumari District.
(In Crime No. 04/2020). ... Respondent/Complainant

For Petitioner : M/s.Niranjan S.Kumar, Advocate.
For Respondent : Mr.K. Suyambulinga Bharathi, Government Advocate (Crl.Side)

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :- For Bail in Crime No. 04/2020 on the file of the respondent police

ORDER : The Court made the following order :-

The petitioner is arrayed as A-2 and he was arrested and remanded to Judicial Custody on 30.06.2020 for the offences punishable under sections 420, 406, 465, 467, 471, 384, 506(I), 120B, 109 r/w 34 of IPC and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, in Crime No.4 of 2020 on the file of the respondent police. He seeks bail.

The prosecution case in brief is as follows:

2(i). The defacto complainant in this case one Dravid and the petitioner/A-2 is the father of A-1, A-1 is a money lender, in the month of April 2018, the defacto complainant has borrowed a sum of Rs.1 Lakh from A-1 for interest at the rate of 20%, subsequently repaid the amount. Once again, in the month of June 2018, the defacto complainant has borrowed a sum of Rs.2 Lakhs as loan from A-1 and mortgaged his Harley Davidson Street 750 model bike bearing registration No.TN-74-AW-0009 and also gave blank cheque for security purpose. On 22.08.2018, the defacto complainant has paid entire principle amount along with interest. However, A-1 has refused to return the bike and blank cheque and also demanded more interest.

2(ii). Earlier, the defacto complainant has availed vehicle loan for a sum of Rs.4.5 Lakhs for purchasing his bike and hypothecated the same in Housing Development Finance Corporation Limited (HDFC), subsequently he repaid a sum of Rs.3.4 Lakhs upto 28 dues and remaining amount is due to the HDFC.

2 (iii). In the meantime, A-2 has approached the HDFC for clearing the loan amount and negotiating with HDFC and he has paid a sum of Rs.1.05 Lakhs to the HDFC to clear the loan and also filed an application for issuance of 'No Objection Certificate' in his name, however, the HDFC has issued 'No Objection Certificate' in the name of the defacto complainant without his knowledge. Later A-1 & A-2 have forged the signature of the defacto complainant and filed a petition along with a fake Registration Certificate for cancellation of hypothecation with the help of A-3 who is a broker of Regional Transport Office. A-3 has created a forged authentication letter with a forged signature of the defacto complainant and received a Smart Registration Certificate after cancelling hypothecation. Thereafter, A-1 & A-2 have submitted fake documents with the forged signature of the defacto complainant and obtained name transfer in the name of A-1.

2(iv). After knowing the facts about the same, the defacto complainant has preferred a complaint before the Vadasery Police Station in Crime No.316 of 2020 for the offences under Sections 420, 406 of IPC and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 @ 420, 406, 465, 467, 471, 384, 506 (I), 120B, 109 r/w 34 of IPC and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. Thereafter, the case was transferred to the respondent police/CBCID South, Kanyakumari, wherein, the crime was registered in Crime No.4 of 2020 for the offences under Sections 420, 406 of IPC and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 @ 420, 406, 120B & 201 of IPC and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and the petitioner/A-2 was arrested and remanded into judicial custody on 30.06.2020. Subsequently, after completing investigation, final report has been filed on 02.01.2020 which was taken cognizance by the learned Judicial Magistrate No.I, Nagercoil and after framing of charges the trial has commenced and five witnesses have been examined till 28.06.2020.

2(v). Now the instant Criminal Original Petition is filed seeking bail.

3. Mr.Niranjan S. Kumar, learned counsel appearing for the petitioner would submit that the petitioner is arrayed as A-2. The

allegation against the petitioner is that he has obtained 'No Objection' Certificate' from the HDFC for cancellation of hypothecation and thereafter, A-3 said to have filed a petition before the Regional Transport Officer for transferring the Registration Certificate in the name of A-1. Apart from that, he has no other role. He would further submit that A-2 was arrested on 30.06.2020 more than two months he is in judicial custody and he has no bad antecedents. He would also submit that the respondent police has filed charge sheet before the learned Judicial Magistrate No.I, Nagercoil and the same has been taken cognizance in C.C. No.316 of 2020 and trial has also commenced and he has to effectively depend his case in the trial Court. He would further submit that the petitioner/A-2's son has involved in some other case and he is now in judicial custody from 28.05.2020. He would further submit that due to money dispute between the parties, the petitioner has been falsely implicated in this case and the petitioner is suffering by various ailments. Hence, he seeks bail. He further submitted in the event of releasing him on bail will not tamper with the witnesses and will not flee from the Court. He will fully co-operate for trial.

4.Mr.K.Suyambulinga Bharathi, learned Government Advocate (criminal side) appearing for the respondent police has filed a detailed counter affidavit narrates the facts which leads to registering the crime. It is stated in the counter affidavit that there are two previous cases are pending against the petitioner/A-2 and one case in CBCID, Nagercoil in Crime No.2 of 2020 for the offences punishable under Sections 354(A), 354(C), 354(D), 420, 385, 506(i) of IPC and Section 4 of TNPHW Act and Section 66(E), 67, 67 (A) of IT Act, 2000 and he was remanded into judicial custody from 19.09.2020. There are five previous cases are pending against A-1 and those crimes are sensational nature in the State of Tamil Nadu. Now, in all the cases investigation is in premature stage. It is further stated that investigation reveals that 120 innocent women have been affected by the accused persons. It is further stated that before commencing the trial, some of the associates of A-1 & A-2 said to have threatened the defacto complainant/P.W.1 and criminally intimidated him and directing him to withdraw the case. Based on a complaint given by the defacto complainant an another First Information Report was registered in Crime NO.882 of 2020 by the Kottar Police Station for the offences punishable under Sections 341, 506(i), 195(A) of IPC. Now, trial has also commenced and number of witnesses were examined and at this stage, if A-2 is released on bail there is a high possibility that the petitioner will tamper the witnesses and hamper the trial.

5. The learned Government Advocate (criminal side) appearing for the respondent police reiterate the averments made in the counter affidavit and submitted that the petitioner/A-2 and his son/A-1 have involved in various heinous offence and cheated 120 innocent women and the First Information Report has also registered and investigation is in premature stage. In one of the cases, A-2 is

an accused for destroying various videos and hard disks which are main evidence in those criminal cases. In sofar as this case is concerned his associates threatened and criminally intimidated the defacto complainant and also directed to withdraw the case and if A-2 released on bail he will tamper the witnesses. Hence, he strongly opposed to grant bail to the petitioner/A-2.

6. Considering the rival submissions and perused the material documents available on record.

7. It is well settled law, while granting bail, this Court is to keep in mind in nature of accusation and seriousness of the offence and character of the evidence and also reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, if the accused is released on bail there is a chance of fleeing from justice. However, a vague allegation that the accused may tamper with the evidence may not be a ground to reject the bail.

8. In, ***2005 (8) SCC 21, CBI Vs. Amaramani Tripathi,*** the Hon'ble Supreme Court has held as follows:

"It is well settled that the matters to be considered in an application for bail are,

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the charge;

(iii) severity of the punishment in the event of conviction;

(iv) danger of accused absconding or fleeing if released on bail;

(v) character, behavior, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) danger, of course, of justice being thwarted by grant of bail(Prahlad Singh Bhati Vs. NCT, Delhi 2001 (4) SCC, 280 and Gurucharan Singh Vs. State (Delhi Administration) AIR 1978 SC 179). While a vague allegation that accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused".

9. In, **2001 (4) SCC 280, Prahlad Singh Bhati Vs. NCT, Delhi,** the Hon'ble Supreme Court has also held as follows:

" The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behavior, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with,the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not excepted , at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

10. The instant case, the allegation against the petitioner/A-2 is that while the defacto complainant borrowed money from A-1 he has mortgaged his costly motor bike to him. Despite, the amount has been repaid A-1 has failed to hand over the bike. The defacto complainant hypothecated the motor cycle with the HDFC and this petitioner only approached the HDFC for settling the dues of the defacto complainant and he himself signed a petition for getting 'No Objection Certificate' from the HDFC. Thereafter, all the accused persons have forged the signatures of the defacto complainant and filed a petition before the Regional Transport Office for cancellation of hypothecation, after cancelling the hypothecation, they have also filed a another petition with forged signature of the defacto complainant and transferred the RC book in the name of A-1. Hence, the petitioner has played a major role in the fraudulent transfer of RC Book in the name of A-1.

11. There are huge materials are placed and voluming documents have been filed by the investigating agency to show that the petitioner has played a major role in the crime, forged signature of the defacto complainant for getting RC book transferred in the name of A-1. Mr.Niranjan S.Kumar, learned counsel appearing for the petitioner would contend that A-2 has no bad antecedents. However, the contention has been disputed by the learned Government Advocate (criminal side) stating that the petitioner's son A-1 has involved in five criminal cases relating to cheating of women in one of the case, the petitioner/A-1 is an accused in Crime No.2 of 2020 of CBCID, Nagercoil for the offences under Sections 354(A), 354(C), 354 (D), 420, 385, 506(i) of IPC and Section 4 of TNPHW Act and Sections 66(E), 67, 67(A) of I.T. Act, 2000 and hence, it is very sensational case and the investigation is in premature stage.

12. It is also submitted by the learned Government Advocate (criminal side) that before the commencement of trial the associates of A-1 & A-2 have threatened the defacto complainant to withdraw the complaint and also criminally intimidated him and based on a complaint given by the defacto complainant, the crime has been registered in Crime No.882 of 2020 on the file of the Kottar P.S. For the offences under Sections 341, 506(i), 195(A) of IPC for

threatening the witnesses and the investigation of the case is pending. It is clearly established that, while the petitioner/A-2 is in judicial custody the associates of A-1 & A-2 tampering the witnesses. If the petitioner is released on bail, there is high possibility that the petitioner will also indulging in tampering the witnesses.

13. Considering the facts that the petitioner is released on bail, there is a high possibility that the petitioner will tamper with the witnesses, especially now the trial is in progress. That apart, the materials available on record *prima facie* shows that the petitioner has committed an offence and considering the gravity of the offence and other circumstances, this Court is not inclined to grant bail to the petitioner/A-2.

14. Accordingly, the Criminal Original Petition stands dismissed.

sd/-
10/09/2020

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/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1.THE OFFICER INCHARGE, DISTRICT PRISON,
KANYAKUMARI.

2.THE INSPECTOR OF POLICE, CBCID-SOUTH,
KANYAKUMARI.

3.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER IN
CRL OP(MD) No.8119 of 2020
Date :10/09/2020

KSA
PK/PN/SAR-3/10.09.2020 : 6P/4C