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

Date : 15/10/2020

PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN

CRL OP(MD). No.9070 of 2020

Muthukumar ... Petitioner/Accused No.1

Vs

State Rep.by
The Inspector of Police,
District Crime Branch,
Sivagangai District.
(Crime No.32 of 2019) ... Respondent/Complainant

Chakkaravarthy ... Petitioner/ Defacto Complainant

For Petitioner : M/s.Henri Tiphagne, Advocate.
For Respondent : Mr.K.Suyambulinga Bharathi, Government Advocate (Crl.Side)
For Intervener : Mr.R.Vijayakumar, Advocate

PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

PRAYER :- For Anticipatory Bail in Crime No. 32 of 2019 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A-1 apprehending arrest at the hands of the respondent police for the offences punishable under sections 406, 409, 467, 468, 471, 420 and 120B of IPC, in Crime No.32 of 2019 on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution is that totally there are 3 accused persons. The petitioner has approached the defacto complainant to avail loan. Inturn, the defacto complainant instructed his sister Dharani to hand over her property in favour of the petitioner for availing loan. Believing the said words, the sister of the defacto complainant gave her property and also executed a power of attorney in favour of the petitioner and on the strength of the power of attorney, he mortgaged the property with Axis Bank, Karaikudi branch and availed loan and he also assured that the property document will be returned immediately, but, he failed to keep up his words and as such there was a quarrel between

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the Dharani and her husband. When the said Dharani insisted to return the documents, the defacto complainant as well as Dharani's father come forwarded to hand over another document in respect of the property to exchange the mortgaged property. The first accused also mortgaged the another property and the petitioner also availed another loan with the Indian Bank, Karaikudi Branch. Hence, cheated the defacto complainant and his entire family members.

3. Heard the learned Counsel appearing for the petitioner and the learned Government Advocate (criminal side).

4. The learned counsel appearing for the petitioner would submit that the petitioner was already directed to appear before the respondent police for enquiry under Section 41(A) of Cr.P.C., and he is ready and willing to settle the amount and he sought for time. He would further submit that in fact, the banker have also initiated proceedings under the SARFAESI Act against the petitioner and therefore, he filed a petition for anticipatory bail in Crl.O.P(MD) No.10656 of 2019 and the same was disposed on 03.09.2019, directed the petitioner to appear before the respondent police for investigation.

5. The learned Government Advocate (criminal side)appearing for the respondent police has submitted that the defacto complainant as well as the petitioner are close friends and the petitioner has approached the defacto complainant for availing loan and the defacto complainant instructed his sister Dharani to hand over her property in favour of the petitioner for availing loan and the said Dharani executed a power of attorney in favour of the petitioner and on the strength of the power of attorney, he mortgaged the property with Axis Bank, Karaikudi branch and availed loan and he also assured that the property document will be returned immediately, but, he failed to keep up his words and as such there was a quarrel between the Dharani and her husband. When the said Dharani insisted to return the documents, the defacto complainant as well as Dharani's father also handed over another document in respect of the property to exchange the mortgaged property. The petitioner also mortgaged the another property and availed another loan with the Indian Bank, Karaikudi Branch. Hence, the petitioner herein cheated the defacto complainant and his entire family members.

6. The learned counsel appearing for the intervener would submit that the defacto complainant's sister g.Dharani returned India only on 09.10.2016 and after a brief period in India she again departed on 06.11.2016 and in the mean time, when she was in abroad, a fraudulent life certificate dated 19.09.2016 was issued by the second accused namely, R.Arivazhagan, Senior Assistant Surgeon in Government HEAD Quarters Hospital, Karaikudi. He would further submit that on the strength of the said life certificate the petitioner herein mortgaged the properties with Indian Bank, Karaikudi Branch in favour of the loan availed by his father one

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M.Murugan. The accused persons have colluded with an intent to defraud his sister who is in abroad, fraudulently created a life certificate and mortgaged petitioner's sister property for Rs.2.5 crores in a existing loan account for Rs.5 crores and the banker have taken steps to recover more than Rs.8 crores and the said mortgage is also contrary to terms of the power deed. He would further submit that the first respondent herein had knowingly issued with the active connivance and support of the second and third accused created fraudulent life certificate and used it to create the mortgage.

7. It is seen from the records that there are totally three accused in which the petitioner is arrayed as A-1. He borrowed a loan by mortgaged the property belongs to sister of the defacto complainant, namely, Dharani, he failed to return the documents and as such there was a quarrel between the Dharani and her husband. Due to which, their father willing to provide another property to exchange the property which was already mortgaged with the banker by the petitioner herein. On receipt of the said document, again the petitioner availed loan with another bank and thereby, cheated the defacto complainant and her sister and father. Further A-2 is none other than brother-in-law of the petitioner herein issued life certificate of the said Dharani. Now the petitioner herein defaulted on his payment of installments to the bankers and as such both the properties were mortgaged by the defato complainant and his family members are under the SURFEASI proceedings before the Debts Recovery Tribunal, Madeira. Therefore, the petitioner has cheated the defacto complainant and his family members and hence, the custodial interrogation of the petitioner is very much required for investigation. Therefore, this Court is not inclined to grant anticipatory bail to the petitioner.

8. Accordingly, the Criminal Original Petition stands dismissed.

sd/-
15/10/2020

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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.

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TO

1 THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
SIVAGANGAI DISTRICT.

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

+1CC TO Mr.R.Vijayakumar, Advocate, SR NO.20362

ORDER
IN
CRL OP(MD) No.9070 of 2020
Date :15/10/2020

MS/VR/SAR-4/28.10.2020/4P.4C

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