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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2020

CORAM:

THE HONOURABLE Mrs. JUSTICE G.K.ILANTHIRAIYAN

Crl.M.P(MD)No.5028 of 2020

in

Crl.O.P(MD)No.8114 of 2020

Ram Prasath

... Petitioner/Intervener

Vs.

1.State Rep. By
The Inspector of Police,
District Crime Branch,
Tirunelveli.
(Cr.No.7 of 2020)

... Respondent/Respondent

2.Mani

... 2nd Respondent/2nd Petitioner

PRAYER: Criminal Miscellaneous Petitions filed under Section 439(2) of Cr.P.C. praying to cancel the order of Anticipatory Bail granted in favour of the 2nd respondent in Crl.O.P(MD)No.8114 of 2020 vide it's order dated 07.09.2020.

For Petitioner : Mr.Swarnam J.Rajagopal, Advocate

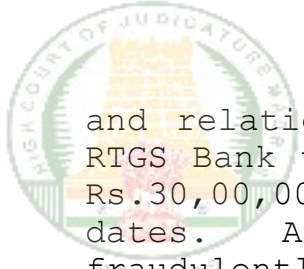
For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.side)

For R2 : Mr.S.Ravi, Advocate

ORDER : The Court made the following order:-

This petition has been filed by the defacto complainant to cancel the order of Anticipatory Bail granted to the second respondent herein in Crl.O.P(MD)No.8114 of 2020, dated 07.09.2020.

2.The learned Senior Counsel appearing for the petitioner/defacto complainant submitted that the petitioner lend a sum of Rs.2 crores, as a loan, for investing in their contract works. Believing the words of the accused for the reasons that the petitioner and the accused persons having long standing friendship



and relationship of neighbour, the petitioner lend a loan through RTGS Bank to the tune of Rs.1 Crore and 70 lakhs and also a sum of Rs.30,00,000/- was paid as cash by two installments on various dates. After receipt of the entire amount, the first accused fraudulently transferred a part amount to the second respondent, who is the father and other relatives none other than the mother and wife on various dates. When the petitioner approached the accused persons to return the said amount, he only paid a sum of Rs.10,50,000/- (Rupees Ten lakhs and Fifty thousand only) on various dates through bank transaction. Thereafter, the second respondent and other accused did not repay any amount. While being so, the accused 1 and 2 has approached this Court for anticipatory bail. This Court has dismissed the anticipatory bail petition for the first accused and insofar as the second accused namely the second respondent herein was considered for anticipatory bail for the reason that there is no substantial material available on record to show that some amount transferred from the account of the first accused to the account of the second accused herein. He further submitted that this Court has imposed the condition that the the second petitioner shall report before the respondent police as and when required for interrogation. The first respondent called the second respondent for interrogation and also affixed the summons on the door. Even then the second respondent has failed to appear before the first respondent for interrogation. He further submitted that the petitioner trace out the statements of the bank account of the first accused and revealed that on various dates more than Rs.20 lakhs have been transferred to the account of the second accused. Therefore, the petitioner sought for cancellation of anticipatory bail granted to the second respondent.

3.The learned Government Advocate (Crl.side) appearing for the respondent police submitted that there is a money transaction between the defacto complainant and the accused persons and a sum of Rs.2 Crores received as a loan by the first accused. Subsequently, he has failed to return the said amount and an enquiry was conducted. On the enquiry, the defacto complainant restricted his claim from the tune of Rs.2 Crores and 40 lakhs to the extent and also there was agreement entered between them. Even accordingly, the first accused has failed to repay the said amount, as agreed by to the defacto complainant. Hence, the complaint was registered in Crime No.7 of 2020 for the offence under Sections 406, 417 and 420 IPC.

4.Insofar as the second respondent is concerned, he is arrayed as second accused and happens to be the father of the first accused. This Court granted anticipatory bail to the second respondent on condition that the petitioner shall report before the respondent police as and when required for interrogation. He further submitted that on two occasions the summons were served and due to his age, the Investigating Officer himself went to the place of the house of the second respondent and proceed with the investigation and the investigation is still pending.



5. Heard Mr. Swarnam J. Rajagopal, learned counsel appearing for the petitioner and Mr. K. Suyambulinga Bharathi, learned Government Advocate (Crl. side) appearing for the first respondent and Mr. S. Ravi, learned counsel appearing for the second respondent.

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6. There are totally two accused, in which the second respondent is arrayed as second accused, who is none other than the father of the first accused. According to the petitioner, the defacto complainant lent a money to the tune of Rs. 2 Crores as a loan to the first accused to invest in their contract works. After receipt of the same, the first accused did not invest the same in any business and also did not return the said amount. However further alleged that a part of the amount transferred from the account of the first accused to the account of the second accused who is none other than the father of the first accused and other family members. Now the petitioner come forward with this petition to cancel anticipatory bail granted to the second respondent only on the ground that at the time of hearing of the anticipatory bail by this Court, the petitioner has failed to produce the materials to show that the substantial amount has been transferred from the account of the first accused to the account of the second accused. Now the petitioner is able to obtain the bank statement of the first accused and had revealed that more than Rs. 20 lakhs has been transferred from the account of the first accused to the account of the second accused. Further the second accused has also failed to appear before the Investigating Officer for investigation purpose.

7. It is seen that the alleged allegation is that the accused person has failed to repay a sum of Rs. 2 Crores, which was borrowed by the first accused on enquiry. The defacto complainant restricted his claim from the tune of Rs. 2 Crores and 40 lakhs to the extent and also there was an agreement entered into between them. Even then the first accused has failed to pay a sum of Rs. 40,00,000/- (Rupees Forty lakhs only) to the defacto complainant. Hence, the first respondent has registered the case.

8. This Court while considering the anticipatory bail for the second respondent that there is no material to show that the amount has been transferred from the first accused account to the second accused account. Now the petitioner has produced the statement of Bank account, which revealed that nearly more than Rs. 20 lakhs have been transferred to the account of A2.

9. Considering the age of the second respondent and also he happens to be the father of the first accused, this Court is not inclined to cancel the anticipatory bail granted to the second respondent.

10. Hence, this Criminal Miscellaneous Petition stands dismissed. However, the second respondent is directed to deposit the original title deed not less than a value of Rs. 20,00,000/- to



the credit of Crime No.7 of 2020 within a period of four weeks from the date of receipt of a copy of this order, failing which, the anticipatory bail granted to the second respondent shall stand automatically cancelled.

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27/11/2020

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

TO

1. THE JUDICIAL MAGISTRATE No.I, TIRUNELVELI.
2. DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.
3. THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
TIRUNELVELI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL MP (MD) No.5028 of 2020
IN
CRL OP (MD) No.8114 of 2020
Date :27/11/2020

VSD
TE/SMA/SAR-IV : 09/12/2020 : 4P/5C