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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 08/01/2020

PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

CRL OP(MD) . No.18086 of 2019

Mohan Gandhi, ... Petitioner/Accused No.1

Vs.

1. The Inspector of Police,
CCB, Madurai City,
Madurai.(Crime No.40/2019).

2. The Commissioner of Police,
Alagar Kovil Road,
Madurai-02.

... Respdents / Complainants

For Petitioner : Mr.R.S.Jeevarathinam, Senior Counsel
for Mr.P.M.Raja Thiyaneswaran

For Respondents : Mr.A.Robinson,
Government Advocate (Crl.Side)
for R1 and R2

: Mr.V.Karthick, Senior Counsel
for Mr.Baburajendran for intervenor.

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

PRAYER :-For Anticipatory bail in Crime No. 40 of 2019 on the file of the first respondent police.

ORDER : The Court made the following order :-

The petitioner herein is figuring as the first accused in crime No.40 of 2019 registered on the file of the Inspector of Police, Central Crime Branch, Madurai City for the offences under Sections 406, 408, 420, 465, 468 and 471 of IPC. The petitioner had earlier moved the Principal Sessions Judge, Madurai by filing Crl M.P No.5471 of 2019 under section 438 of Cr.PC The learned Principal Sessions Judge, Madurai by order dated 25.11.2019 dismissed the petitioner's petition for anticipatory bail.



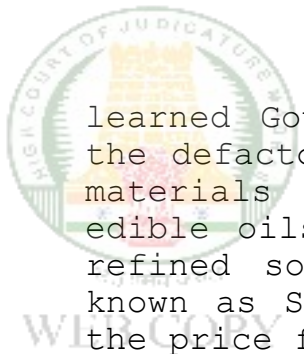
2. Heard the learned Senior Counsel appearing for the petitioner, the learned Senior Counsel appearing for the third respondent/intervenor and the learned Government Advocate (crl.side) appearing for the prosecution.

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3. The learned Senior Counsel appearing for the petitioner submitted that the petitioner had joined Vaighai Agro Products Limited more than two decades ago as Commercial Executive. By dint of his sincere and hard work, he rose to the level of Senior General Manager. He submitted that without any basis, he has been falsely implicated. The gist of the allegation made by the defacto complainant is that the petitioner along with two other employees obtained oral permission from their directive to sell the crude coconut oil for a lesser price than the actual price and pocketed the difference among themselves and that they had caused loss to the tune of more than a crores of rupees. According to the petitioner's Senior Counsel, this allegation is unfounded because the moment the order is placed, through SMS (short messaging text), the same is forwarded to as many as five persons including the defacto complainant and therefore there is no possibility of committing any fraud in the process of raising of invoices. He also pointed out that the entire transaction had taken place online. He would strongly contend that the entire case against the petitioner rests on documentary evidence and that there is absolutely no need for his custodial interrogation. He would further contend that by granting anticipatory bail to the petitioner, the prosecution would not suffer any prejudice and that the petitioner would extend his fullest cooperation with the investigation. He also claimed that the resignation letter was forcibly obtained from him and that in order to avoid paying his settlement dues and to prevent the petitioner from joining any rival company, the case on hand has been registered.

4. The learned Senior Counsel appearing for the intervenor strongly rebutted the contentions made by the petitioner's Senior Counsel. I carefully considered the rival contentions and also perused the entire materials on record.

5. The core allegation made against the petitioner is that he fraudulently obtained approval of the company's Director for a price far less than the actual price. The specific and definite case of the defacto complainant is that the price per kilogram of crude coconut oil will be around Rs.20/- less than that of crude coconut refined oil. The petitioner's Senior Counsel strongly contested the claim made by the learned Senior Counsel for the intervenor. This Court therefore called upon the learned Government Counsel to obtain instructions in the matter and the case was adjourned to enable him to do so. On the adjourned date, the



learned Government Counsel on instructions confirmed the stand of the defacto complainant. The defacto complainant has also enclosed materials indicating that the market rates relating to various edible oils including coconut oil (both refined coconut oil and refined solvent extracted coconut oil) are published in what is known as Star Market Bulletin. As a general business practice, the price for crude solvent extracted coconut oil is fixed between Rs.15-18 per kilo less than the published refined solvent extracted coconut oil rates. This certificate issued by the Editor & Publisher of a market daily is confirmed by the other companies in the field. As already pointed out, the investigation officer after examining some witnesses confirms the said stand.

6.To take a specific example, on 09.08.2019, the market price for solvent refined extracted oil per kilo was Rs.118/-. But then, the petitioner/accused had concluded the transaction with one Suruchi Refinery Pvt. Ltd., Coimbatore at Rs.71/-. According to the defacto complainant, it should have been sold at the rate of Rs.98/-. According to the Senior Counsel appearing for the defacto complainant, what has been unravelled so far is only the tip of the iceberg. It is the specific allegation of the defacto complainant that the petitioner joined their company some 24 years ago and that total trust was reposed in him. It is also seen that the annual turn over of the defacto complainant's company is fairly high and that is why the difference was not actually noticed.

7.The specific allegation of the prosecution is that by selling the product at a price far less than the market rate unlawful gains were made not only by the petitioner but also the eventual buyers and the intermediary brokers. The prosecution alleges that the petitioner was able to do it in collusion with the other employees.

8.I find considerable force in the objections raised by the learned Senior Counsel appearing for the defacto complainant. According to the prosecution, the loss caused by the accused to the defacto complainant's company is more than a crore of rupees. Since the case involves cheating as well as breach of trust, I am of the view that the custodial interrogation of the petitioner is absolutely warranted. Otherwise, the entire truth may not surface or be unearthed. If the hands of the investigation officer are tied by granting the protection of anticipatory bail to the accused, the investigation would certainly suffer. Therefore, I am of the view that a case for anticipatory bail has not been made out. As already pointed out, the Sessions Court or the High Court have concurrent jurisdiction under Section 438 of Cr.PC and the Sessions Court, Madurai denied relief to the petitioner herein. On a careful perusal of the entire materials on record and after a detailed consideration of the rival contentions made by the Senior

<https://hccourts.madurai.nic.in/leservices/> On the other side, I am of the considered opinion that this is



not a case fit for grant of anticipatory bail.
stands dismissed.

This petition

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08/01/2020

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

TO

1. THE INSPECTOR OF POLICE,
CCB, MADURAI CITY,
MADURAI.
2. THE COMMISSIONER OF POLICE,
ALAGAR KOVIL ROAD,
MADURAI-02.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.P.M.RAJATHIYANESWARAN, Advocate (SR-472[I] dated
09/01/2020)

+1 CC to M/s.BABU RAJENDRAN, Advocate (SR-508[I] dated 09/01/2020)

ORDER
IN
CRL OP(MD) No.18086 of 2019
Date :08/01/2020

Skm

AE/VR/SAR-I (21.01.2020) 4P 6C