



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

Date : 21/04/2021

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PRESENT

THE HON`BLE MR.JUSTICE G.R.SWAMINATHAN

CRL OP (MD) . Nos.18408 & 18540 of 2019

CRL.O.P.(MD)No.18408 of 2019:

P.R.Kumar ... Petitioner/Sole Accused

Vs

State Rep. by
The Inspector of Police,
CCB, Madurai.
(Crime No.Not Knwon).

... Respondent/Complainant

Pandi ... Petitioner/Defacto Complainant
in CRL MP(MD) No.10958 of 2019
in CRL OP(MD) No.18408 of 2019

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

PRAYER :-

For Anticipatory Bail in Crime No.not known on the file of the
Respondent Police.

CRL.O.P.(MD)No.18540 of 2019:

1. Devalai
2. P.R.Babu
3. P.R.Subramanian
4. P.R.Kesavan

... Petitioners/Accused Nos.2 to 5

Vs.

State through the Inspector of Police,
CCB, Madurai.
(Crime No.54 of 2019)

... Respondent/Complainant

Pandi ... Petitioner/Defacto Complainant
in CRL MP(MD) No.3685 of 2020
in CRL OP(MD) No.18540 of 2019



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

PRAYER :-

For Anticipatory Bail in Crime No.54 of 2019 on the file of the respondent police.

(In both CrI.O.Ps.)

For Petitioners : Mr.I.Abrar Md. Abdullah,
for Mr. Ak. Azagarsami, Advocate.

For Respondent : Mr.A.Robinson,
Government Advocate (CrI.Side).

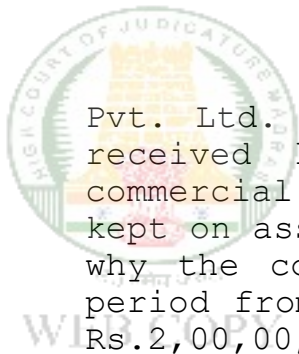
For Intervenor : Mr.K.Govindarajan, Advocate

ORDER : The Court made the following order :-

Heard the learned counsel appearing for the petitioners and the learned Government Advocate(CrI. Side) appearing for the respondent and the learned counsel appearing for the intervenor.

2. The petitioners have moved this Court seeking anticipatory bail as they apprehended arrest at the hands of the respondent for the offences under Sections 406, 420 and 120(B) of I.P.C.

3. Pandi is the defacto complainant in Crime No.54 of 2019 registered on the file of the CCB, Madurai City, for the offences under Sections 406, 420 and 120(B) of I.P.C. The case was registered on 04.12.2019. The case of the complainant is that the first accused Thiru.P.R.Kumar approached him and offered to sell the property located in West Perumal Maistry Street, Madurai Town, known as Thangam Theatre. Sale agreement dated 08.03.2012 was also entered into. As per the terms of the agreement, the property was to be sold at the rate of Rs.7,510/- per sq.ft. The defacto complainant originally paid a sum of Rs.10,00,00,000/- as advance. According to the defacto complainant, the other family members were also fully involved in the transaction and that the advance amount was paid only in their presence. Thereafter, a portion of the property measuring 5578 sq.ft was conveyed vide sale deed dated 29.03.2012 and registered as document No.1303/12. The stand of the complainant is that so far and on various dates, a total sum of Rs.20,50,00,000/- has been received as advance and a sum of Rs.2,00,00,000/- as loan by P.R.Kumar. The property conveyed in favour of the complainant vide document No.1303/12 was later sold to SCM Silks Pvt. Ltd. for a sum of Rs.2,23,12,000/- on 12.03.2014 (Document No.866/2014). Since the transaction did not go through as originally envisaged, the defacto complainant was entitled to refund of the amount paid by him after giving adjustment to the sale of the property. The amount received on account of the sale in favour of SCM Silks



Pvt. Ltd. Of course the complainant would insist that the amount received by him will have to necessarily carry interest at commercial rate. The stand of the complainant is that the accused kept on assuring him that they would clear the liability and that is why the complainant did not take any recovery action. During the period from 13.07.2016 to 10.08.2016, the accused had paid a sum of Rs.2,00,00,000/-. When the complaint was lodged before the Madurai City Police Commissioner, the accused appeared before him and assured that on or before 10.01.2017, the liability will be cleared. Since even after lapse of several months repayment was not made, the aforesaid complaint came to be lodged.

4. Thiru.Abrar Md.Abdullah, learned counsel submitted that the petitioners deserve to be granted anticipatory bail for more than reasons than one. He would point out that the cause of action dates back to the year 2012 and therefore, no purpose will be served in declining to grant relief to the petitioners herein. He would point out that the case has purely a civil profile and that therefore, the very registration of criminal case is an abuse of process. His further contention is that since the only demand of the complainant is that the amount payable to him has not been paid, instead of filing a civil suit for recovery, he had chosen to bring coercive pressure on the accused by foisting this criminal case. He would also argue that the parameters for grant of anticipatory bail are fairly well settled and applying those parameters, these criminal original petitions will have to be allowed.

5. In normal circumstances, I would have definitely accepted the aforesaid contentions advanced by the learned counsel appearing for the petitioners. But there are some special features in the case on hand. When the criminal original petitions were listed for admission before me, the learned counsel on either side submitted that with the consent of both the parties, the issue can be settled amicably through mediation. Therefore, I requested, Hon'ble Mr.Justice K.Kannan(Retired) to mediate in the matter. The parties appeared before him along with their respective counsel. The mediation was successful. The parties had agreed to settle the issue in the following terms:-

"MEMORANDUM OF SETTLEMENT ARRIVED AT BY THE PARTIES
BEFORE THE MEDIATOR

...

1. In consideration of several amounts received under the agreement of sale dated 08.03.2012 and of personal borrowings by Mr.P.R.Kumar from Mr.S.Pandi, the former undertakes to pay the latter Rs.9,50,00,000/- Crores(Nine Crores and Fifty Lakhs only) in full quit of all claims of the latter within a period of four months from the date of execution of this Memorandum.

2. The stipulation of four months mentioned above is

of the bargain between the parties.



3. In default of payment in full or in part of the aforesaid amount, Mr.P.R.Kumar will become liable in damages quantified by way of interest at 12% per annum on the amount now determined from the date of execution of this Memorandum till date of payment, besides rendering himself liable for the amount that remains unpaid.

4. If the entire money as aforesaid i.e.Rs.9,50,00,000/- (Rupees Nine Crore and Fifty Lakhs only) is paid within time, Mr.Kumar and others are entitled to move quash petition to quash the First Information Report before the Madurai Bench of Madras High Court and Mr.Pandi also should co-operate and present before the Court to get the quash petition allowed by way of compromise and if the money is not paid within time, Mr.Pandi is entitled to move the Court for cancellation of Anticipatory Bail against the petitioners in Crl.O.P.(MD) No.18408 and 18540 of 2019. Further Mr.S.Pandi is entitled to file appropriate civil suit to enforce this Compromise Deed against Mr.P.R.Kumar and his family members (the petitioners in Crl.O.P.(MD) No.18408 and 18540 of 2019) for recovery of the above mentioned amount and Mr.Kumar is having all his Defence in such suit.

5. Mr.S.Pandi has no claims against Mr.P.R.Kumar or any of the members of his family who were named in the complaint, if the money is paid as stated above.

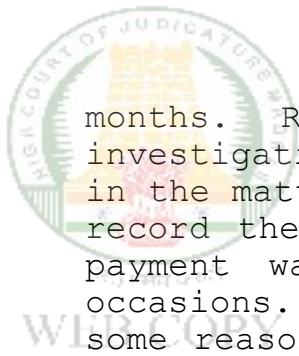
6. All the original documents and more particularly the memo calculation dated 12.07.2016 signed by Mr.P.R.Subramaniam and Mr.D.P.Gokul and unregistered document dated 12.03.2014 executed by Mr.P.R.Kumar shall be returned in original by Mr.S.Pandi to Mr.P.R.Kumar, on payment of the said sum as stated above.

7. Though this memorandum is executed and signed only by Mr.P.R.Kumar and Mr.S.Pandi, it satisfies all the claims of all persons who had been in partnership in the money transactions with Mr.S.Pandi and the payment to the latter shall constitute a full discharge against all his partners.

8. Two of the brothers of Mr.P.R.Kumar have themselves parted with some money on behalf of Mr.P.R.Kumar to Mr.S.Pandi and the overall settlement reckons also the payments made by them to Mr.S.Pandi and his partners.

9. The signatures of the mother and brothers of Mr.P.R.Kumar as witnesses and the signatures of partners of Mr.S.Pandi are a testimony to their affirmation that they are all fully apprised of the terms of the settlement and their undertaking that they have no independent claims of one against the other."

6. Unfortunately, the petitioners did not act in terms of the undertaking given before this Court. When the case was listed on 27.02.2020, the petitioners agreed that they would pay a sum of Rs.9,50,00,000/- to the defacto complainant within a period of four



months. Recording the said submission, I had directed the investigation officer to file final report dropping further action in the matter and the jurisdictional Magistrate was also mandated to record the same. Unfortunately, within a period of four months no payment was made. Thereafter, the case was listed on numerous occasions. On every occasion, P.R.Kumar appeared before me and cited some reason or the other and obtained extension of time. Since the issue has been amicably resolved, I did not want to precipitate the matter. I also took note of the fact that we are passing through pandemic times. Therefore, long rope was given. Unfortunately, even after lapse of ten months, the parties have not acted in terms of the undertaking given before this Court.

7.The conduct of the parties leaves much to be desired. They have clearly acted contrary to the terms of the undertaking given before this court. The specific allegation of the defacto complainant is that he had been defrauded and he had been cheated to the tune of several crores of rupees.

8.The specific allegation of the defacto complainant is that the accused made false representations and induced him to believe the same and part with a substantial sum of money. The manner in which the petitioners have acted in the Court would lend strength to the aforesaid allegations made by the defacto complainant in the complaint. But I must note that even in the First Information Report, the allegations have been primarily made only against P.R.Kumar. The other accused are none other than the mother and brothers of P.R.Kumar. Though it is stated in the First Information Report that the money was handed over in their presence, they do not appear to be played any major role. The question is whether they have to be arrested. I am of the view that arresting the petitioners in Crl.O.P.(MD)No.18540 of 2019 may not serve any purpose. However, custodial interrogation of P.R.Kumar is necessary. Without any intention to honour his commitments, he has been dragging on the matter. The de facto complainant has not taken recovery action earlier because he believed the assurance held out by P.R.Kumar.

9. It is seen that a sum of Rs.1,25,00,000/- was paid to the defacto complainant during the pendency of these proceedings. Pendency of the criminal prosecution will not come in the way of the defacto complainant from moving the civil Court for enforcing the memorandum of understanding.

10. In this view of the matter, Crl.O.P.(MD)No.18408 of 2019 is dismissed. Crl.O.P.(MD)No.18540 of 2019 is allowed.

11. Accordingly, the petitioners in Crl.O.P.(MD)No.18540 of 2019 are ordered to be released on bail in the event of arrest or on their appearance before the learned Judicial Magistrate No.I, Madurai, and on their executing a bond for a sum of Rs.10,000/- (Ten thousand only) with two sureties each for a like sum to



the satisfaction of the learned Magistrate concerned and on further condition that the petitioners shall appear before the respondent police as and when required for interrogation. The petitioners shall comply with the conditions stipulated under Section 438 Cr.P.C scrupulously.

12. The petitioners shall appear before the concerned Magistrate within a period of 45 days from the date on which the order copy made ready, failing which, the petition for anticipatory bail shall stand dismissed.

sd/-
21/04/2021

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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.

TO

1. THE JUDICIAL MAGISTRATE NO I, MADURAI.
2. THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.
3. THE INSPECTOR OF POLICE,
CCB, MADURAI.
4. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.I.AKBAR MD ABDULLAH, Advocate (SR-3302[I] dated 22/04/2021)
+1 CC to M/s.I.AKBAR MD ABDULLAH, Advocate (SR-3303[I] dated 22/04/2021)

ORDER
IN
CRL OP(MD). Nos.18408 & 18540 of 2019
Date :21/04/2021

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JM/VR/SAR III/23.04.2021/6P/7C

<https://hcservices.ecourts.gov.in/hcservices/>