BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 23/01/2020

PRESENT

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

CRL OP(MD). No.19030 of 2019

D.SELVARAJ ... PETITIONER/SOLE ACCUSED

VS

STATE REP. BY
THE SUB INSPECTOR OF POLICE,
CENTRAL CRIME BRANCH,
MADURAI CITY, MADURAI.
(CRIME NO.58 OF 2019). ... RESPONDENT/COMPLAINANT

For Petitioner : M/s. D. Sadiq Raja,
Advocate.

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

For Intervener : Mr.P.T.Ramesh Raja, Advocate

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

PRAYER :-

for Anticipatory Bail in Crime No.58 of 2019 on the file of the respondent police

ORDER : The Court made the following order :-

Heard the learned counsel appearing for the petitioner and the learned Government Advocate(Crl. Side) appearing for the respondent.

2. The petitioner apprehending arrest at the hands of the respondent police for the offences punishable under sections 408, 420 and 477 A of I.P.C., in Crime No. 58 of 2019 on the file of the respondent police, seeks anticipatory bail.

3. The defacto complainant is running business in the name and style as 'Kumars Electronics' in Madurai. The defacto complainant is the main dealer and he is selling EC recharge for various DTH

networks. The petitioner was the employee of the defacto complainant for more than six years. The allegations of the employer is that the petitioner who was acting as his collection agent had swindled the collection amount and caused wrongful loss to him.

4.This allegation is rebutted and denied by the petitioner. According to the petitioner, the employer developed a baseless suspicion on his integrity and made a false allegation that the petitioner had misappropriated to the tune of Rs.2,77,000/-. The petitioner would also allege that the employer through his other employee forcibly took away a sum of Rs.1,60,000/- in cash and also jewellery belonging to his wife. In this regard, the petitioner filed a criminal case against the defacto complainant before Tirupparankundram Police Station and an enquiry was also conducted. Since, the police did not take any further action, the petitioner has filed O.S.No.237 of 2019 on the file of the District Munsif Court, Tirumangalam, for restraining his employer from acting in illegal manner. The petitioner wants his employer to take recourse to legal process in the matter of enforcement of his claim against him. The said suit is still pending.

5.The learned counsel for the petitioner submitted that every day, he would handover the collection amount to his employer who would receive the same and also counter sign. Therefore, according to the petitioner there is absolutely no scope for commission of any misappropriation.

6.When the case was taken up originally, this Court wanted the respondent police to file a status report. The parties were directed to cooperate with the enquiry. The respondent police have filed a status report in which it has been stated as follows:

"*6.It is respectfully submitted that the investigation was continued and the Proprietors of Jayam Electronics, Ekandaseva DTH, Vinayaga Mobiles, VG Mobiles, Leka Mobiles, Tirupathi Mobiles, Ganga Mobiles, Ponnupandi Store, Eswara Vilas, Sathiyapriya Mobile and other agencies who were the customers of the Electronic shop run by the defacto complainant were summoned and enquired on 14.01.2020. One T.R.Gangadharan, owner of Jayam Electronic Company was examined on 18.01.2020. He has stated that he is used to recharge TATA SKY set top box and for this purpsoe he used to hand over amount ranging from Rs.1,000/- to Rs.3,000/- every week to the accused Selvaraj. Other dealers have also stated that they used to give Selvaraj the amount of Rs.3,000/- once in two days.*

7.It is submitted that the investigation was continued and the account extracts in the computer installed in the shop was verified. Even from a cursory glance it is seen that the accused Selvaraj has misappropriated around Rs.20,00,000/- for three years from

01.01.2017. The tax returns were verified and it is seen that for the assessment year 2018-19, the defacto complainant has paid a sum of Rs.1,32,081/- and that in his profit and loss account revealed that he had total transaction to the tune of Rs.82,83,923.54/- and infact he received a sum of Rs.24,07,387.02/- as commission from Sun Direct TV. Hence the preliminary investigation disclose that the accused is likely to have swindled at least Rs.30,00,000/-. Hence, the investigation is intensified and the defacto complainant was directed to adduce proof as to the amount embezzled by the accused to enable the Investigation Officer to complete the investigation and file final report."

7.After hearing the counsel on either side, I am of the view that this is not a case for grant of anticipatory bail. The counsel appearing for the employer would point out that the petitioner was entrusted with the task of collecting the dues from various sub-dealers. A notebook used to be maintained and the collection from each of the dealers used to be noted in the said notebook. The figures would be totalled and the employer used to counter sign the same. The employer had total trust in the petitioner and therefore he would simply accept the collection amount as reflected in the final figure. But on a particular date that is on 18.09.2019, when the employer individually totalled the figures it was noted that there was a discrepancy of about Rs.12,000/-. The employee instead of handing over a sum of Rs.60,000/-, has only handed over only Rs.48,000/-. That aroused the suspicion of the employer and when the entries for the particular month was verified, it was seen that there was a shortfall of Rs.2,77,000/-.

8.According to the employer, the petitioner and his wife came to the shop on 20.09.2019 and they wanted to amicably settle the issue. The employer also did not want to take the matter to the police and he wanted to get his money back. The learned counsel for the intervener would state that the presence of the petitioner along with his wife in his shop has been captured in the CCTV footage and that therefore, the allegations made by the petitioner that there was a trespass into his house and forcible taking away of a sum of Rs.1,60,000/- along with his jewellery, is totally false.

9.The status report filed by the respondent police also confirms the stand taken by the employer. According to the employer, the amount misappropriated by the petitioner would come to Rs.60,00,000/-. On the other hand, the learned Government Advocate submitted that the investigation conducted so far indicates that the misappropriation would be anywhere between Rs.20,00,000/- to Rs.30,00,000/-. Whatever be the exact figure, an act of misappropriation by an employee cannot be lightly viewed. Therefore, I am of the view that the case on hand calls for a custodial interrogation. I do not find it to be a fit case for grant of anticipatory bail.

10.Accordingly, this Criminal Original Petition is dismissed.

sd/-
23/01/2020

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

TO

1 THE SUB INSPECTOR OF POLICE,
CENTRAL CRIME BRANCH,
MADURAI CITY, MADURAI.

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

+1 CC to M/s.P.T.RAMESH RAJA, Advocate (SR-1310[I] dated 23/01/2020)
+1 CC to M/s.D.SADIQ RAJA, Advocate (SR-1456[I] dated 24/01/2020)

ORDER
IN
CRL OP(MD) No.19030 of 2019
Date :23/01/2020

pnn
JM/PN/SAR 4/31.01.2020/4P/5C