IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.07.2021

PRONOUNCED ON : 16.07.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL.O.P.No.1965 of 2021

1.Ramala Mahesh Babu
2.Ramala Anusha ...Petitioners

Versus

State Rep. by
the Inspector of Police,
Central Crime Branch II,
Vepery, Chennai 600 007.
...Respondent

Manuel Lawrence ...Intervener

PRAYER: Criminal Original Petition filed under Section 438 of the Code of Criminal Procedure, to enlarge the petitioners on bail in the event of arrest by the respondent Police in Crime No.98 of 2020 on the file of the respondent Police.

For Petitioners : Ms.Thenmozhi Sivaperumal

For Respondent : Mr.C.E.Pratap
Government Advocate (Crl. Side)

For Intervener : Mr.R.C.Paul Kanagaraj

O R D E R

The petitioners, who apprehends arrest for the alleged offence under Section 406, 420, 506(i) IPC, in Crime No.98 of 2020, on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution is that the defacto complainant/intervener is a retired Pilot and the 1st petitioner is doing share trading business as a sub-broker of M/s.Sharekhan Limited and he is also a business consultant to many private companies. The 1st petitioner and the defacto complainant came to know each other friendly and thereby, 1st petitioner along with his wife/2nd petitioner induced the defacto complainant by stating that he was expert in doing online transactions and if money was deposited, they would get double the amount within three months of time. Believing the sweet words of the petitioners, the defacto complainant initially made deposit to the tune of Rs.30,00,000/- on 03.11.2017 to the 1st petitioner account and thereafter, the 1st petitioner sent whatsapp message as if they got 20% of profit and believing the fake messages as true, the defacto complainant started investing huge money to the tune of Rs.5,06,34,000/- from 03.11.2017 to 15.07.2020 and thereafter, the 1st petitioner sent another whatsapp message showing investment amount of Rs.5,06,34,000/- along with 20% of profit by setting up as if totally Rs.8,14,60,503/- was available in their account. After some time, the defacto complainant, in order to meet his financial needs, made request to the 1st petitioner to return back his money, however, the petitioners made the defacto complainant to wait for several months inspite of his repeated request. When it was questioned by the defacto complainant, the 1st petitioner denied to return the amount and further threatened and abused the defacto complainant in filthy language. Aggrieved over the same, the defacto complainant has lodged a complaint before the respondent Police and it was registered in Cr.No.98 of 2020. The petitioners apprehending arrest at the hands of the respondent Police have come forward to file this petition for anticipatory bail.

3. Ms.Thenmozhi Sivaperumal, learned counsel appearing for the petitioners submitted that as far as the 1st transaction is concerned, as alleged in the complaint dated 03.11.2017, the defacto complainant himself has deposited Rs.30 lakhs directly to Share Khan YES Bank account. Likewise, from 03.11.2017 to 08.04.2019 the defacto complainant had transferred amounts to the tune of Rs. 1,83,00,000/- directly to the Share Khan account. All these funds were transferred to Shar Khan account for buying and selling shares - “'Shares'” (for short 'Shares'), wherein due to the prevailing market fluctuations, there was no profit and further the defacto complainant himself is having access to transact in online trading for buying and selling 'Shares' and thereby the defacto complainant is having every access to know about the transaction and the petitioner has never given any false representation or false promise of high profit. Though the defacto complainant knowing all the risk factors in the share business particularly in 'Shares', had invested huge amount to achieve the object of huge profit.

4. The learned counsel appearing for the petitioners further submitted that for any online trading there will be loss and profit. Infact the agreement between the petitioner and Share Khan is a broker and sub-broker relationship, wherein the 1st petitioner was getting a marginal commission amount of 0.3% which has also been shared to the defacto complainant. While being so, it was the petitioner who suffered huge loss by losing his commission amount inspite of spending more hours in a day to predict the online trading. Further it is not the case of the defacto complainant that he has diverted the funds or misappropriated the funds, whereby it is clear that all the amounts transferred by the defacto complainant has been transferred to Share Khan account and if once the amount has

been transferred to any company account, no one has right to divert the fund for their personal gain or personal use. Hence, the learned counsel submitted that the petitioners have been falsely implicated in this case and prays for anticipatory bail to the petitioners.

6. Mr.R.C.Paul Kanagaraj, learned counsel appearing for intervener / defacto complainant submitted that initially the 1st petitioner induced the defacto complainant by stating that investing funds in 'Shares' traded by Sharekhan Company will fetch lot of profit to the tune of 25% returns annually and even if loss occurs, the actual invested capital by the intervener will be safe and further if there is market loss, the same will be borne by the 1st petitioner and the same was guaranteed in writing on a Rs.20 Stamp paper agreement on 07.09.2017. Believing all the words, the intervener had deposited his hard earned money, his provident funds and his entire savings in it. Initially, the defacto complainant had transferred the amounts directly to the Sharekhan Company account till 06.04.2019 and thereafter, the 1st petitioner requested the intervener to give him authority to take out all funds from Sharekhan and to invest the funds yielding good profits. Henceforth, the intervener was advised to send all future investment funds directly to his personal account and the intervener also transferred another sum of Rs.3,32,67,000/- till June 2020 to his personal bank account and the 1st petitioner also used to update profits in investment on Sharekhan company letterhead, and every week through whatsapp. Such being the case, during June 2020, when the intervener asked him to return back his money to meet his financial needs, the petitioner undertook to return the money within a month time and after a month, when it was asked, he induced the intervener to keep funds with him at least for another year by showing a document from Sharekhan company that the intervener's balance amount in the intervener's account was Rs.8,32,75,000/-, however, actually it was only Rs.917/-, which was in the account. Inspite of repeated requests, he dragged on the issue without paying the defacto complainant and the intervener suspecting his intentions when tried to give police complaint, suddenly it was stated by the petitioners that the entire money has been lost due to market crash, which was totally false, as he had not put any invested amount in the intervener's account after 08.05.2019. From 08.05.2019, he was only sending forged documents of Sharekhan company with false balances.

7. The learned counsel appearing for intervener further submitted that the petitioners also assured the intervener that they will repay the entire amount within a month, by selling all the land and house properties and thereby issued 6 post dated cheques to the tune of Rs.5.5 crores. When it was presented to the Bank, all the cheques were returned and thereafter, the petitioners also avoided to give any reply to the intervener. Thereby, the petitioners had lured him by giving forged documents of Sharekhan Company and receipts, and weekly whatsapp messages as if the principle and interest earned was

growing every week and hence, strongly opposed this petition for grant of anticipatory bail to the petitioners.

8. The learned Government Advocate (Crl.Side) submitted that the 1st petitioner did not deny the money transactions from the defacto complainant. Admittedly believing the words of the petitioners, huge amount of Rs.3 Crore and odd, from 03.11.2017 to 15.06.2020 had been transferred in favour of the petitioner as well as Company named M/s.Sharekhan Limited, as instructed by the 1st petitioner. However, the said amount was not returned to the defacto complainant and further the investigation is in crucial stage to examine some witnesses and to collect some more documents from the Sharekhan Limited and banks. If the petitioners are enlarged on bail, definitely there will be every possibility of tampering with witnesses and hampering the investigation, which would create hardship to proceed further with the investigation. Now the petitioners have filed this petition before this Court only to escape from the clutches of law and drag on the investigation proceedings. and hence vehemently opposed to grant anticipatory bail to the petitioners.

9. This Court has carefully considered the rival submissions and also perused the materials placed on record.

10. It is the admitted case of the petitioners that initially the defacto complainant had invested Rs.30,00,000/- to the account of the 1st petitioner and thereafter had transferred several amounts to the account of the Company as well as the petitioner. The claim of the petitioners is that major portion of the amount was transferred directly to Sharekhan limited and the 1st petitioner is the sub-broker of the said Company, where he received only marginal commission and further the petitioners claimed that the entire amount was only invested in the Sharekhan limited and he did not have any monetary benefits and he further claimed that the defacto complainant himself was interested to invest his money in trading, particularly in 'Shares' for high profits, though knowing very well about the market risks.

11. A perusal of the materials available on record reveal that an agreement has been entered into between the 1st petitioner and the defacto complainant, in the form of undertaking, in and by which the 1st petitioner has undertaken to make good the loss, if loss is sustained by the defacto complainant. Further, the undertaking also reveals the amounts received by the 1st petitioner from the defacto complainant.

12. It further transpires from the materials that a statement of account/ledger report maintained by Sharekhan relating to the trading account of the defacto complainant is found annexed which reveals

that the balance in the trading account of the defacto complainant is only to the tune of Rs.917/-. However, when this ledger balance is looked at along with the whatsapp message alleged to have been sent by the 1st petitioner, it reveals a stark scenario in which the 1st petitioner has put in black and white as to the profits that the defacto complainant is said to have earned on his investments in the trading account. Though in actuality, the defacto complainant has lost all the money in his investments, however, the whatsapp message of the 1st petitioner to the defacto complainant paints a different picture. It can only be inferred by this Court, prima facie, that all is not well with the act of the 1st petitioner in handling the amounts provided by the defacto complainant. This Court is not averse to the submission that in dealing with shares, there is prone to be ascendency as well as descendeny. However, what weighs more in the mind of this Court is the fact that the 1st petitioner has not merely acted as a sub broker soliciting trading business, but has gone one step further in executing certain undertaking, which has certain consequences and which needs to be thoroughly investigated, lest the true facts would not come to light. However, this Court is not giving any opinion on the merits of the contentions and also on the materials placed before it.

13. According to the investigating agency, the matter is still under investigation. In such a backdrop, this Court, keeping in mind the quantum of money involved and the necessity for the investigating agency to examine witnesses relating to the transaction, is of the considered view that enlarging the petitioners on anticipatory bail at this point of time, when investigation is being conducted by the law enforcing agency, would have a detrimental effect not only in the conduct of the investigation, but also in the matter of jeopardizing the rights of the defacto complainant.

15. For the reasons aforesaid, this Court is not inclined to grant anticipatory bail to the petitioners. Accordingly, this Criminal Original Petition is dismissed.

-sd/-
16/07/2021

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

2 THE INSPECTOR OF POLICE,
CENTRAL CRIME BRANCH II,
VEPERY, CHENNAI-600 007.

3 THE ASSISTANT REGISTRAR,
TAMILNADU MEDIATION AND CONCILIATION CENTRE,
HIGH COURT, MADRAS.

CC to M/S.THENMOZHI SIVAPERUMAL Advocate on payment of necessary charges

CRL OP.1965/2021

Date :16/07/2021

RVR 22/07/2021