IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25..02..2021

CORAM :-

THE HON'BLE MR. JUSTICE V. BHARATHIDASAN

Crl.O.P.Nos.2530 and 3139 of 2021

1.S.Raghu ... Petitioners in Crl.O.P.No.2530 of 2021
2.P.I.Peter
3.Shree Khalaivani
4.Ashraf Ali

R.Giridharan ... Petitioner in Crl.O.P.No.3139 of 2021

-Versus-

The Inspector of Police, ... Respondent in both Crl. Original Petitions
E-8, Kelambakkam Police Station,
Kancheepuram District.
[Crime No.27 of 2021]

PRAYER: Criminal Original Petitions are filed under Section 438 of Criminal Procedure Code to enlarge the petitioners on bail in the event of their arrest in Crime No.27 of 2021 pending investigation on the file of the respondent police.

For Petitioners	:	*Mr.R.Saravanakumar for petitioners in Crl.O.P.No.2530 of 2021*
		Mr.AR.L.Sundaresan, Senior Counsel for Mr.D.Ravichander for petitioner in Crl.O.P.No.3139 of 2021
For Respondent	:	*Mr.S.Karthikeyan, Addl. Public Prosecutor in both Criminal Original Petitions*
For Intervenor/De facto Complainant	:	*Mr.Imthiaz Ahmed*

COMMON ORDER

(The case has been heard through video conference)

The petitioner(s) in both petitions, who apprehend arrest at the hands of the respondent police in connection with the case in Crime No.27 of 2021 for the alleged offence u/s 120-B, 465, 468, 469 and 470 IPC, seek anticipatory bail.

2. I have heard the learned counsel for the petitioners, the learned Additional Public Prosecutor and the learned counsel for the intervenor and also perused the records carefully.

3. The de facto complainant is stated to be a Share Holder and Director of one M/s.Herb Nutra Lab Private Limited, Vandalur, Chennai 600 0048. A1 is also one of the directors of the company. The allegation is that A1 and the other accused had removed the de facto complainant behind his back from the post of director of the said company and inducted the new director by means of a forged document. A9, a Chartered Accountant, is stated to have certified the removal of the petitioner from the post of director and appointment of a new directors.

4. The learned counsel for the petitioners in Crl.O.P.No.2530 of 2021 would submit that the removal of the petitioner from the post of Director of the company and induction of a new directors to the company was done as per the law and the petitioners never forged any document as alleged. According to the learned counsel, When Form DIR-12 was filed before the Registrar of Companies to notify the appointment of new Director, the Registrar of Companies after conducting a detailed inquiry and hearing the parties by order dated 30.04.2020 concluded that appointment was not done in accordance with the provision under Section 169 of The Companies Act and thereby declared the appointment as illegally and also referred the matter to the Directorate as per provisions of the Companies Act and relevant Rules and the matter is still pending before the Directorate. Absolutely, there is no forgery as alleged by the de facto complainant.

5. The learned counsel for the petitioners would further submit that the dispute is purely civil in nature and a criminal colour is sought to be given for the same. By raising the very same allegations, a private complaint under Section 200 of Cr.P.C. was filed by the petitioner before the learned Judicial Magistrate-I, Chengalpattu and the same has been taken cognisance by the learned Magistrate and it is also pending.

6. The learned senior counsel appearing for the petitioner in Crl.O.P.No.3139 of 2021 would submit that the petitioner has been arrayed as A9 in the case. The petitioner is a Chartered Accountant by profession and he has nothing to do with the alleged offence. The only allegation against him is that he had certified the proceedings in respect of removal of an existing Director and induction of a new Director.

7. The learned counsel for the intervenor would on the other hand submit that the petitioner is the Founder Director of the company along with A1. While so, A1 had cheated him by forging a document and removing him from the Directorship of the company behind his back and also appointed a new Director to the company without his knowledge. When the appointment of a new director was sought to be notified, the Registrar of Companies by his proceedings dated 30.04.2020 concluded that the appointment is illegal and the same has not been done in accordance with provisions of the Act and every director should be appointed in general meeting and not in a board meeting. This would show that the petitioners have committed forgery .

8. The learned counsel for the intervenor would further submit that after filing of the present complainant, A1 in this case has filed a frivolous complainant against him in which investigation is pending.

9. The learned Additional Public Prosecutor would however submit that dispute relates to removal of the de facto complainant from the post of Director of the company and appointment of one Arunachalam Andimuppanar and others as directors of the company and investigation is pending.

10. I have considered the rival submissions carefully.

11. The dispute is in respect of removal and appointment of director to the company. Admittedly, when the company filed an application before the Registrar of Companies to notify the appointment of a new director in the place of the petitioner, the Registrar of Companies by his order dated 30.04.2020 refused to do so. According to him, the appointment of a new directors was illegal as it was not done in accordance with the provisions of the Act. Thereafter, it appears, that the matter has been referred to the Directorate and the same is pending. That apart, it is also stated that thereafter, the de facto complainant filed a private complainant under Section 200 of Cr.P.C. before the learned Judicial Magistrate-I, Chengalpattu, which has been taken cognizance and the same is pending. Even in the order of the Registrar of Companies, there is no finding to the effect that the petitioners committed forgery. The order of the Registrar of Companies has been referred to the Directorate and the same is pending. Considering all these aspects of the matter, this court is of the prima facie view that it is predominantly a civil dispute between the directors of the company. That apart, a private complainant was already filed by the de facto complainant raising the similar allegations and the same is also pending. So far as A9 is concerned, he is only a chartered account, who had certified the appointment of new directors and removal of the de facto complainant from the post of director. Thus, this court is inclined to grant anticipatory bail to the petitioners subject to the following conditions :-

a) Accordingly, the petitioners are ordered to be released on bail, in the event of arrest or on their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before **the learned Judicial Magistrate-I, Chengalpattu**, on each of them executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that: -

[b] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[c] the petitioners shall report before the respondent police as and when required by the police for interrogation.

[d] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[e] the petitioners shall not abscond either during investigation or trial.

[f] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned Magistrate himself /Trial Court as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].**

[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

With the above directions, the Criminal Original Petitions are ordered.

-sd/-
25/02/2021

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 JUDICIAL MAGISTRATE,
NO.I, CHENGALPATTU, KANCHEEPURAM DISTRICT.

2 THE CHIEF JUDICIAL MAGISTRATE
CHENGALPATTU. [FOR INFORMATION]

3 THE INSPECTOR OF POLICE,
E-8, KELAMBAKKAM POLICE STATION,
KANCHEEPURAM DISTRICT.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

CC to M/S.R.SARAVANAKUMAR Advocate on payment of necessary charges

+1 CC to M/S.IMTHIAZ AHMED, Advocate on payment of necessary charges SR.NO.2375

+1 CC to M/S.E.VEDA BAGATH SINGH, Advocate on payment of necessary charges SR.NO.2352

+1 CC to M/S.D.RAVICHANDER, Advocate on payment of necessary charges SR.NO.2354

CRL OP.2530/2021

Date :25/02/2021

TA-03/03/2021