



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.5624 of 2020

1. Kishore Kumar ...Petitioners
2. Caroline Kishore

Vs.

State rep. By ... Respondent
The Inspector of Police,
Central Crime Branch - I
EDF - III, Greater Chennai Police,
Veperi, Chennai.
Crime No.112 of 2019

PRAYER: Criminal Original Petition has been filed under Section 438 of Cr.P.C, prayed to enlarge the petitioners on bail in the event of their arrest in Crime No.112 of 2019 pending investigation on the file of the respondent police.

For Petitioners : Mr.R.C.Paul Kanagaraj
For Respondent : Mr.C.E.Pratap
Government Advocate (Crl side)
For Intervenor : Mr.ARL.Sundaresan
For M/s.ALGanthimathi

ORDER

The petitioners, who apprehend arrest at the hands of the respondent police for the alleged offence under Sections 406 and 420 of IPC, in Crime No.112 of 2019, on the file of the respondent police, seek anticipatory bail.

2. The case of the prosecution is that the 1st petitioner is the Managing Trustee of St.John's Raja Kumar Education and Research Trust and the second petitioner is the wife of the 1st petitioner and Trustee of St.Johns Raja Kumar Education & Research Trust was running a schools in and out of Chennai. Further, the defacto complainant was introduced to the petitioners by one Jayakrishnan for the purpose of construction in the year 2014. The further case of the prosecution is that the construction of Auditorium at St.Johns Public School, Lake Bund Road, Jalladianpet, Chennai, was assigned to the defacto complainant. Thereafter, renovation work at St.Johns



International Residential School, at Poonamallee was assigned and during the completion of the above project, another construction of work at Siruseri was assigned to the defacto complainant by entering a Memorandum of Agreement dated 07.12.2016 in which, the entire cost of construction was approximately fixed as Rs.45,00,00,000/- and on the date of agreement an advance amount of Rs.50,00,000/- has been paid. Thereafter, the construction work completed and the petitioners have not paid the amount to the defact complainant. Hence, the complaint was registered.

3.The learned counsel appearing for the petitioners would submit that the petitioners have not committed any offence as alleged by the prosecution and they have been falsely implicated in this case. Hence, he prays for grant of anticipatory bail to the petitioners.

4.Heard the learned Government Advocate (Crl.Side) appearing for the respondent.

5. This Court heard the learned Senior counsel for the intervenor/defacto complainant who submit that the petitioners have cheated the defacto complainant. However, he further submits that the petitioners and the defacto complainant have entered into a Memorandum of compromise and submits that the same may be recorded.

6.Considering the facts and circumstances of the case, earlier, this Court had granted interim bail to the petitioners on 18.03.2021 with a direction to the petitioners to pay a sum of Rs.3,00,00,000/- (Rupees Three Crores only) to the defacto complainant on or before 24.04.2020. Now, a memorandum of compromise has been entered into between the petitioners and the defacto complainant which is extracted here under:-

'1 Defacto complainant states that the dispute arose out of a construction agreement dated 07.12.2016 entered into with the petitioners when the petitioners failed to pay amounts of Rs.11,39,98,813/- & Rs.58,00,000/- due and payable by them and when two cheques bearing nos.001073 & 000129 dated 14.12.2018 drawn on HDFC Bank, Velachery Branch for a sum of Rs/.11,39,98,813/- & Rs.58.00,000/- issued by the petitioners in favour of the Defacto complainant were returned with endorsements ''Account Blocked situation covered in 212'' and ''Funds Insufficient''. respectively.

2. Defacto complainant thus lodged a complaint with the Respondent police and the above Crime No.112 of 2019 came to be registered for offence under Sections 406 & 420 of IPC and also filed complaints under Section 138 of the NI Act against the petitioners in C.C.No.664 of 2019 and C.C.No.1769 of 2019 on 09.01.2019 before the Learned Fast Track Court-III, Saidapet.



3. Defacto complainant states that he had filed petition for cancellation of bail in Crl.O.P.No.10071 of 2020 for non-compliance of condition imposed by this Hon'ble Court in its order dated 18.03.2020.

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4. Defacto complainant states that upon reconciliation of the accounts and payments received from the petitioners, the sum still payable by the petitioners as on date is Rs.2,98,91,880/- (Rupees Two Crores Ninety Eight Lakhs Ninety One Thousand Eight Hundred and Eighty only).

5. Petitioners stated that in order to amicably settle the above dispute, they undertake to pay a sum of Rs.2,47,00,000/- (Rupees Two Crores Forty Seven Lakhs only) to the defacto complaint's Company, M/s.RCRC Associates, in the form of Demand Draft(s)/RTGS within a period of 3 months from the date of this Memorandum of Compromise, i,e on or before 12.10.2021.

6. Defacto complainant hereby undertake to withdraw the complaints under Section 138 of the NI Act against the petitioners mentioned in CI.2 herein above and also agrees for compromise quash the Crime No.112 of 2019 by recording the present Memorandum of Compromise, upon receipt of the entire sum of Rs.2,47,00,000/- (Rupees Two Crores Forty Seven Lakhs only)

7. Defacto complaint prays that the above Criminal Original Petition may be kept pending for reporting compliance and on full compliance of CI.5 herein above, suitable orders may be passed in the above Criminal Original Petition and Crl.O.P.No.10071 of 2020.''

7. In view of the above memorandum of compromise, this Court is inclined to grant anticipatory bail to the petitioners.

8. 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 Special Magistrate for CCB & CBCID cases, Chennai, on condition that the petitioners shall execute a separate bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only), 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 and on further condition that:

(a) if the petitioners fail to surrender before the concerned Magistrate within a period of 15 days from the date of receipt of a copy of this order, this order shall stand automatically cancelled;



(b) the petitioners and the sureties shall affix their photographs and left thumb impression in the surety bond and the Court concerned may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

WEB COPY (c) the petitioners shall report before the respondent police daily at 10.30 a.m. until further orders.

(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/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]**; and;

(g) if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

-sd/-
15/07/2021

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

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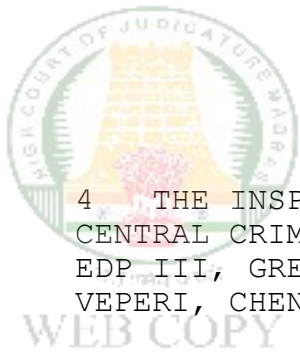
Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SPECIAL MAGISTRATE FOR
CCB & CBCID CASES, CHENNAI.

2 THE FAST TRACK COURT,
NO.III, SAIDAPET.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.



4 THE INSPECTOR OF POLICE
CENTRAL CRIME BRANCH 1,
EDP III, GREATER CHENNAI POLICE,
VEPERI, CHENNAI.

+1 CC to M/S.R.C.PAUL KANAKARAJ Advocate on payment of
necessary charges SR.NO.7555

+1 CC to M/S.ALGANTHIMATHI, Advocate on payment of necessary
charges SR.NO.7456

CRL OP.5624/2020

Date :15/07/2021

TA-02/08/2021