IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.08.2021

Pronounced on : 19.08.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL.O.P.No.12823 of 2021

V.S.Thamilan ...Petitioner

Versus

State represented by
The Inspector of Police,
District Crime Branch,
Vellore.
(Crime No.5 of 2021) ...Respondent

PRAYER: Criminal Original Petition filed under Section 438 of the Code of Criminal Procedure, to enlarge the petitioner on bail in the event of apprehending arrest in the Crime No.5 of 2021 on the file of the respondent.

For Petitioner : Mr.P.Gunaraj

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

For Intervenor : Mr.P.Govindarajan

O R D E R

The petitioner, who apprehends arrest for the alleged offence under Sections 406, 420, 294(b), 506(i) and 120(b) in Cr.No.5 of 2021, on the file of the respondent police, seeks anticipatory bail.

2. It is the case of the prosecution that the defacto complainant was a Driver in one M/s.Balamurugan Transport, which was owning more than 115 lorries and all the lorries were under hypothecation agreement with M/s.Hinduja Finance Ltd HDB and ICICI Bank. Since the defacto complainant wanted to relinquish his rights in the Partnership Firm, the Area Manager of Hinduja Finance Limited, one Raghu had introduced the petitioner, who is the owner of the Kongu Transport, who had committed to take over all the 115 lorries owned by the defacto complainant Transport and also undertook that after clearing the dues to the financiers, would pay a sum of Rs.12,00,00,000/- to the defacto complainant. Believing the words of

the said Raghu and the petitioner, the defacto complainant had parted with all the original documents pertaining to the lorries to the petitioner. Inspite of the same since no amount was paid by the petitioner to the defacto complainant, the defacto complainant had approached the said Raghu, who had informed him that the petitioner had been duly paying the monthly instalments towards the lorries which were under hypothecation with the Financier and also assured that once the amount is paid, the petitioner would be taking over all the vehicles and the amount, as undertaken, would be paid back to the defacto complainant. Inspite of repeated reminders, the amount was not paid to the defacto complainant and on 20.05.2020 after using the vehicles for more than a year and half, the vehicles were left in front of the office of the defacto complainant and the original documents were also not returned to the defacto complainant. When questioned, the petitioner has also caused threat to the defacto complainant. Therefore, the present complaint has been filed by the defacto complainant which was registered by the respondent.

3. The learned counsel appearing for the petitioner submitted that the defacto complainant and one Sampath Kumar were in partnership and were running the Transport business and since the defacto complainant wanted to relinquish his rights in the Partnership Firm, a Memorandum of Understanding was entered into between the said Sampath Kumar, defacto complainant and the petitioner so as to enable the defacto complainant to move out of the partnership business and thereby inducting the petitioner into the partnership business. It is the further submission of the petitioner that though 115 vehicles were owned by the Partnership Firm belonging to the defacto complainant, however only 35 of the vehicles were in running condition and the road tax, insurance premium and other requisite documents were not in live status for which, the petitioner had called upon the defacto complainant and the said Sampath Kumar to pay and settle the amount towards the said documents. The said individual had requested the petitioner to pay the said amount which can be adjusted from the amount to be paid back to the said Sampath Kumar and defacto complainant. Accordingly the petitioner also revived more than 110 documents pertaining to the vehicle from out of his own money and in view of the pandemic, the petitioner did not run his business and therefore, the petitioner had demanded extension of time by six months. It is further submitted by the petitioner that though the sum of Rs.8,00,000/- was released towards freight charges payable to the petitioner who is operating the lorries, the said Sampath Kumar did not transfer the same to the petitioner's account which resulted in straining of the relationship between the said Sampath Kumar and the petitioner. Therefore, the petitioner had parked most of the vehicles before the office of the defacto complainant and Sampathkumar except 40 vehicles which were not in running condition.

4. It is the further submission of the petitioner that the amount of Rs.1,17,50,301/- is due and payable by the said Sampathkumar and the defacto complainant to the petitioner and only with a view to avoid the said payment, as a counter blast, the present complaint has been preferred against the petitioner. It is the further submission that the defacto complainant is none other than the son-in-law of the said Sampathkumar and only with a view to defraud the petitioner, the present action has been initiated. It is the further submission of the learned counsel appearing for the petitioner that even as per the Memorandum of Understanding, the defacto complainant on and from 01.09.2019 had retired and was relieved from the partnership business and his accounts were settled and therefore, the present complaint against the petitioner as if he has cheated the defacto complainant and not returned the original documents, is nothing but an attempt on the part of the said Sampath Kumar and the defacto complainant to evade payment of money due to the petitioner.

5. Per contra, the learned counsel appearing for the defacto complainant submitted that only on the basis of the words of the said Raghu who had introduced the petitioner, the entire business activities of the defacto complainant Partnership Firm, lorries along with original documents were entrusted with the petitioner. However the petitioner neither paid the dues properly nor had returned the money due and payable to the Partnership Firm of the defacto complainant. Inspite of repeated request the amount was not paid to the Firm of the defacto complainant and all of a sudden, after using the vehicles of the Firm for more than a year and a half, the lorries belonging to the defacto complainant were parked in very many different places along the streets, which was brought to the knowledge of the defacto complainant through his friends and the defacto complainant had retrieved the said lorries through various drivers and spent huge sum of money for rebuilding the said lorries and make it in a workable condition.

6. It is the further submission of the defacto complainant that when he contacted and enquired the petitioner about the original documents pertaining to the lorries which were given to the petitioner, the petitioner replied that he had already handed over the original documents to the said Raghu of M/s.Hinduja Finance Ltd. It is the further submission of the learned counsel appearing for the defacto complainant that when he had asked for the documents from Raghu, he was threatened by the petitioner as well as the said Raghu with dire consequences, which resulted in giving the present complaint against the accused. Hence prays that this Court may not grant anticipatory bail to the petitioner.

7. This Court has carefully considered the rival submission and also perused the materials available on record.

8. It appears that the defacto complainant and R.Sampath kumar were operating the business of lorry transports through Partnership and the vehicles were hypothecated with M/s.Hinduja Finance Limited, wherein, one Raghu was working as a Area Manager. It is further evident from the averments that the said Raghu introduced the petitioner to the defacto complainant and R.Sampath Kumar and induced them to entrust the Partnership Firm to the petitioner by giving a promise to clear all their dues with Hinduja Finance and they have agreed to admit the petitioner herein as the Managing Partner by entering into a fresh partnership deed, whereby the petitioner herein has taken control of the overall operations, management and ownership of the Firm and its business with effect from 01.09.2019 and thereby the petitioner was under obligation to return a sum of Rs.18.5 crores in terms of the MOU entered between them. The petitioner and the said Raghu made the defacto complainant to believe as if the petitioner had paid the monthly dues payable under the hypothecation agreement in the said Finance Company, however no amount was transferred towards the loan account by the petitioner and further the title documents were also with the petitioner. The petitioner neither paid the amount to the defacto complainant nor paid the amount due to the finance company as agreed by him in the MOU. All of a sudden, after using the lorries for more than one and half years, without any prior intimation to the defacto complainant and one Sampath Kumar, with whom he entered MOU for taking over the business, parked many of the lorries in the road side streets and the vehicle had been exposed to rain and shine, which were later retrieved by the defacto complainant by spending huge sum of money. When the defacto complainant asked about the return of original documents, he was dragged from pillar to post by the petitioner and one Raghu, without any proper response. While being so, the defacto complainant has received an E-mail communication from M/s.Hinduja Finance Limited, whereby he was informed about the non payment of dues for the hypothecated vehicle for one and half year. When the defacto complainant asked about the same and also for return of original documents he was threatened by the petitioner and the said Raghu with dire consequences.

9. Though it is the stand of the petitioner that the defacto complainant was in no way connected with the partnership business on and from 1.9.19 on the basis of the MoU entered between them and, therefore, he has no locus to question the transaction between the petitioner and the said Sampath Kumar, however, at this point of time, it is not for this Court to go into the same. This Court, at this point of time, cannot decide on the veracity of the MoU to come to a conclusion as to the complicity of either of the parties in the dispute.

10. Further, it is to be pointed out that it is the categorical case of the defacto complainant that he has suffered huge financial loss due to the act of the petitioner and the said Raghu, who have jointly caused serious damage to the business of the defacto

complainant by not adhering to the conditions contemplated under the MOU. The entitlement of the defacto complainant to the said amount cannot be brushed aside at this point of time, as the amount which the petitioner is alleged due to the defacto complainant is to the tune of more than Rs.10 Crores. The quantum of amount and the gravity of offence is enormous, which definitely warrants a deeper investigation.

11. It is also the case of the defacto complainant that the petitioner and the other accused, viz., Raghu have been threatening him with dire consequences. That being the case, enlarging the petitioner on bail at this point of time would only be detrimental to the investigation but also in view of the quantum of money involved in the present case.

12. In view of the aforesaid facts and also taking into consideration the objections raised above and also the stage of investigation, enlarging the petitioner on anticipatory bail at this point of time would not be justifiable. For the reasons aforesaid, this Court is not inclined to accede to the request of the petitioner for grant of anticipatory bail and, accordingly, this Criminal Original Petition is dismissed.

-sd/-
19/08/2021

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 INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
VELLORE.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

CC to M/S.P.GUNARAJ Advocate on payment of necessary charges

CRL OP.12823/2021

Date :19/08/2021

RVR 26/08/2021