

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.O.P.Nos.14783 & 14219 of 2020

and

Crl.M.P.No.6618 of 2020

P.Senthilkumar (A3) .. Petitioner in Crl.O.P.No.14783/2020

V.Sriram (A2) .. Petitioner in Crl.O.P.No.14219/2020

Vs.

State represented by
Inspector of Police,
District Crime Branch, Salem.
(Crime No.11 of 2020)

.. Respondent in both Crl.O.Ps

Prayer: Criminal Original Petitions filed under Section 438 of Criminal Procedure Code praying to enlarge the petitioners on bail in the event of their arrest in Crime No.11 of 2020 pending investigation on the file of the Respondent.

For Petitioner : Mr.B.Vijay
in Crl.O.P.No.14783/20 for Mr.S.Santosh

For Petitioner : Mr.B.Vijay
in Crl.O.P.No.14783/20 for Mr.Eswar Kumar

For Intervenor : Mr.D.Ravichandran
in both Crl.O.P.

For Respondent : Mr.S.Karthikeyan
in both Crl.O.Ps Addl. Public Prosecutor

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C O M M O N O R D E R

(The case has been heard through video conference)

The petitioners are A2 and A3. Apprehending arrest at the hands of the respondent police for the alleged offence under Sections 120B, 419, 420, 464, 468, 471 and 474 of IPC, in Crime No.11 of 2020 on the file of the respondent police, the petitioners seek anticipatory bail.

2. The case of the prosecution is that A1 and A2 were directors in M/s.Attur Thuluva Vellalar Sangam Chit Funds Pvt. Ltd., and the defacto complainant is a Chit subscriber and having 3 chits to the tune of Rs.30,00,000/- and was paying the chit amount regularly. Despite the same A1 and A2 invoked arbitration proceedings and forged the signature of the Advocate of defacto complainant and filed vakalat and thereafter got an exparte award against the defacto complainant with the help of A3 and registered the said arbitration proceedings in the Encumbrance Certificates. The allegation against A3 is that he presided over the arbitration proceedings as arbitrator and passed the said award, and A3 has no jurisdiction and he is not empowered to conduct Arbitration proceedings, hence the respondent police registered a case against the petitioners.

3. Mr.B.Vijay, learned counsel appearing for the petitioners submitted that the defacto complainant has subscribed three chits to the tune of Rs.30,00,000/- and as there was some default, A1 and A2 invoked arbitration proceedings and the defacto complainant entered appearance and filed vaklat. Thereafter, as there was no representation for the defacto complainant he was set exparte and award was passed by A3, who is the competent authority. Thereafter, the defacto complainant filed a petition to cancel the arbitration award before the District Registrar (Administration) Salem and a notice was also issued to the petitioners. Challenging the same, the Chit Fund company filed a writ petition before this Court and obtained stay. Thereafter, the present complaint has been filed stating that fake arbitration was conducted. The petitioners have not indulged in any offence. Hence, the learned counsel for the petitioners pray to grant anticipatory bail to the petitioners.

4. Mr.D.Ravichandran, learned counsel appearing for the intervenor/defacto complainant submitted that the petitioners have initiated a fake arbitration proceedings and the person who has no jurisdiction to conduct arbitration has passed the award. That apart, the petitioners have also forged the signature of the advocate and obtained the ex parte award.

5. Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the respondent opposed these petitions and submitted that the investigation is pending.

6. Considering the facts and circumstances of the case, there are many civil proceedings between the parties and admittedly the arbitration proceedings have been initiated against the defacto complainant and an award has also been passed. Aggrieved over the same, the defacto complainant has also filed O.P. to set aside the award and the same is pending. If the defacto complainant has any grievance, it is always open for him to raise the same in the O.P. filed by him. Now, he is trying to give a criminal colour to the civil proceedings. Hence, 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 VI, Salem, on condition that the petitioners shall execute a separate bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, 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 petitions 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 appear before the respondent police as and when required 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/Trial Court himself 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.

7. With the above directions, this Criminal Original Petition is ordered.

-sd/-

16/02/2021

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.VI,
SALEM.

2 THE CHIEF JUDICIAL MAGISTRATE
SALEM [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
SALEM.

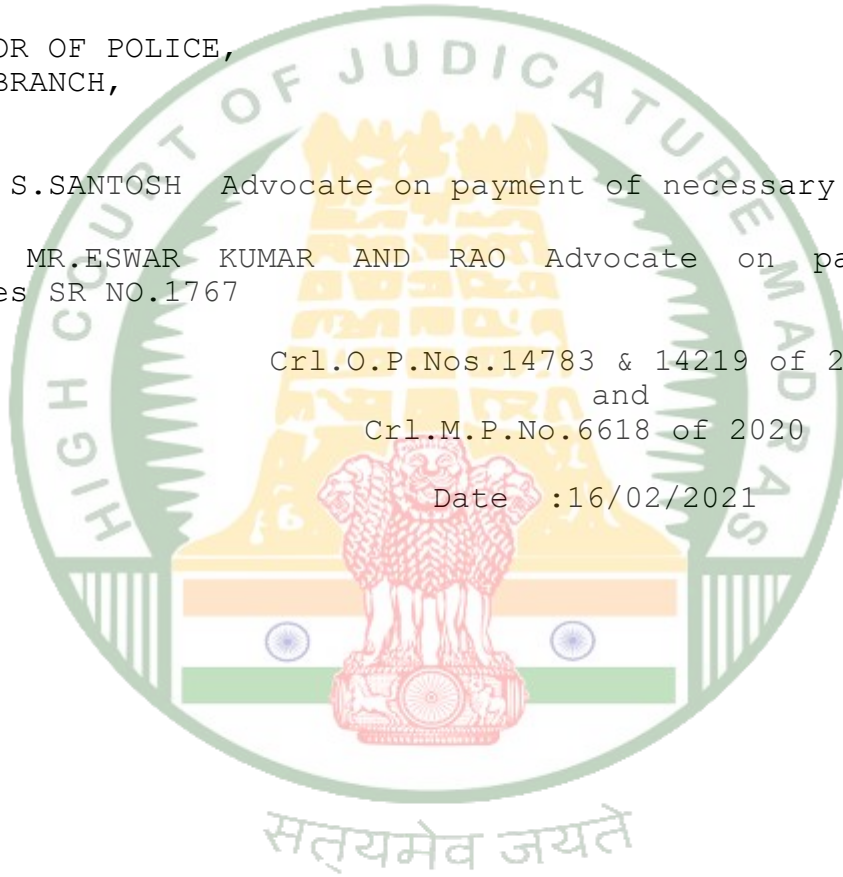
CC to M/S. S.SANTOSH Advocate on payment of necessary charges

+1CC to MR.ESWAR KUMAR AND RAO Advocate on payment of
necessary charges SR NO.1767

Crl.O.P.Nos.14783 & 14219 of 2020
and
Crl.M.P.No.6618 of 2020

Date :16/02/2021

MK:19/02/2021



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