



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2021

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

CRL.O.P.No.24053 of 2021

K.Swaminathan

... Petitioner

Versus

1.M/s.Kotak Mahindra Bank Ltd.,
27BKC, C2, G-Block,
Bandra Kurla Complex, Bandra (E),
Mumbai - 400 051.

2.The Inspector of Police,
E-2, Teynampet Police Station,
Chennai - 600 018.

... Respondents

Prayer:- Criminal Original Petition filed under Section 438 of the Code of Criminal Procedure, to enlarge the petitioner in Interim Bail in the event of their arrest in Complaint Case No.17879 of 2019 on the file of the Chief Metropolitan Magistrate, Patiala House, New Delhi.

For Petitioner : Mr.R.Premanandhan

For Respondent : Mr.A.Gokulakrishnan,
Additional Public Prosecutor

ORDER

The petitioner who apprehends arrest at the hands of the respondent police for the alleged offences under Section 138 & 142 of Negotiable Instrument Act in Complaint Case No.17879 of 2019 on the file of the Chief Metropolitan Magistrate, Patiala House, New Delhi, seeks anticipatory bail.

2. The petitioner filed this petition under Section 438 Cr.P.C., who has been accused of non-bailable offences committed beyond the territorial jurisdiction limit of the State of Tamil Nadu, has approached this Court for interstate Anticipatory Bail, so as to enable him to approach the appropriate Court.



3. The case of the prosecution is that the petitioner borrowed a sum of Rs.11,10,00,000/- from the first respondent. The master fund based facility agreement was executed between the complainant and the borrower on 20.02.2018. The deed of guarantee dated 20.02.2018 was executed by the accused along with S.Visalakshi, K.Swaminathan and V.Krishnamurthy, in favour of the complainant for repayment of the credit facilities for interest. The petitioner committed default in repayment of the credit facilities and the borrower, guarantors including the petitioner to discharge their dues and neglected to repay the outstanding liabilities. The defacto complainant issued notice dated 21.10.2019 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI ACT) to the borrower and the Guarantors including the accused for demand of Rs.8,19,21,359.06/- as on 23.09.2019 within 60 days from the date of the said notice. Therefore, the accused issued a cheque for a sum of Rs.2,00,00,000/- in favour of the complainant, and thereafter, the cheque was returned with an endorsement "Funds Insufficient" on 29.10.2019. On 04.11.2019, the complainant issued a statutory legal notice to the accused and the same was received by the accused on 06.11.2019. Hence, the complaint.

4. The learned counsel for the petitioner would submit that the petitioner apprehends for the offences under Sections 138 & 142 of Negotiable Instrument Act, on the file of the Chief Metropolitan Magistrate, Patiala House, New Delhi, for which, the Delhi Police Issued Non-Bailable Warrant against the petitioner on 18.10.2021. Hence, he is under the apprehension of arrest and he prays for interstate anticipatory bail.

5. Heard the learned Additional Public Prosecutor appearing for the State (R2).

6. The issue as to whether, in respect of the persons, who have been accused of a non-bailable offence committed beyond the territorial jurisdiction of the State of Tamil Nadu, if his arrest is sought within the jurisdiction of this Court, irrespective of the fact that he is a resident of the place over which this Court can grant anticipatory bail under Section 438 Cr.P.C, which came up for consideration before the Division Bench of this Court in the case of S.P.Shanthi Swaroop v. State of Tamil Nadu , rep. By Asst. Commissioner of Police, Central Crime Branch, Madras reported in 1992 L.W.(Cr1).475. After elaborate discussions, decisions and considering the ratio laid down by the Patna High Court in Syed Safrul Hassan v. State has passed the following order:-



"For the foregoing reasons, we hold that the High Court or the Court of Session has got power under Section 438 Cr.P.C. To grant anticipatory bail irrespective of the locale of the Commission of the offence. In other words, in respect of persons who have been accused of a non-bailable offence committed beyond the territorial jurisdiction of the State of Tamil Nadu, if their arrest is sought within the jurisdiction of this Court, irrespective of the fact that they are residents of the place over which this Court can grant anticipatory bail. However, we wish to observe that while granting anticipatory bail, this Court has to restrict the relief for a limited period and to direct the concerned persons to move the Court which is having jurisdiction over the matter in the meantime and also impose such condition so as to make the petitioners available for interrogation by the concerned police in the meantime. The reference is answered accordingly."

7. Thereafter, a learned Single Judge of this Court in the case of P.Thangavelu and others v. State, rep. By the Inspector of Police and other reported in 2017 (2) MWN (Cr.) 633 has passed the following orders,

"9. Thus, it is seen that though in the State of Uttar Pradesh, the provisions of Section 438, Cr.P.C., enabling grant of Anticipatory bail has been deleted, still the Courts have power to grant Inter-State Anticipatory Bail, more particularly taking into account the provisions under Article 21 of the Constitution of India. In the light of the above Judgments and discussions, this Court is of the view that Inter-State Anticipatory Bail can be granted to the petitioners for a limited period to enable them seek appropriate Bail Orders from the concerned Court.

10. Accordingly, Interim Anticipatory Bail is granted to the Petitioners herein till 01.08.2016. The Petitioners are directed to be enlarged on Bail in the event of their arrest or on their appearance before the Judicial Magistrate concerned, subject to the following conditions:

(i) Each of the Petitioner shall execute a Personal Bond for a sum of Rs.10,000- (Rupees ten thousand only) with two sureties, to the satisfaction of the Respondent-Police or the Police Officer, who intends to arrest or to the satisfaction of the Magistrate concerned;



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(ii) within the said period, ie., before 01.08.2016, the petitioners shall appear before the concerned Court of Jurisdiction and move for Anticipatory Bail before the said Court.

11. This Court makes it very clear that Interim Anticipatory Bail pertaining to Inter-State disputes cannot be sought as a matter of right and it is purely the discretion of the Court in granting the same, considering the facts, circumstances and also the nature of offences. It is also made clear that this order, on being produced, shall be punctually observed and executed by all concerned."

8. In view of the decisions cited supra, I am inclined to grant interim anticipatory bail to the petitioner till 22.01.2022. Accordingly, interim anticipatory bail is granted to the petitioner till 22.01.2022. The petitioner is directed to be enlarged on bail in the event of arrest or on his appearance before the second respondent police and on further condition that:

(i) the Petitioner shall execute Personal Bond for a sum of Rs.10,000/- (Rupees Ten Thousand only), with two sureties, to the satisfaction of the Respondent-Police or the Police Officer, who intends to arrest or to the satisfaction of the Magistrate concerned;

(ii) on 22.01.2022 the petitioner shall appear before the concerned Court of Jurisdiction and file an appropriate application for regular bail before the said Court.

-sd/-
13/12/2021

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 CHIEF METROPOLITAN MAGISTRATE,
PATIALA HOUSE, NEW DELHI.

2 THE INSPECTOR OF POLICE,
E-2, TEYNAMPET POLICE STATION,
CHENNAI-600 018

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 CC to MR.R.PREMANANDHAN, Advocate on payment of necessary
charges SR.NO.14589

CRL OP.24053/2021

Date :13/12/2021

JPA 16/12/2021