BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Date : 05/02/2021

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD). No.421 of 2021

T.Palmaran ... Petitioner/Accused No.2

Vs

State Rep. by
The Inspector of Police,
C.C.I.W Police Wing,
Ramanathapuram District.
Crime No.1/2021. ... Respondent/Complainant

For Petitioner : Mr.Thirumurugan.T, Advocate.
For Respondent : Mr.K.Suyambulinga Bharathi, Government Advocate (Crl.Side)

PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

PRAYER :-
For Anticipatory Bail in Crime No.1/2021 on the file of the respondent police

ORDER : The Court made the following order :-

The petitioner/A2, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 408, 409, 465, 468, 471, 477(A) r/w.109 of IPC seeks anticipatory bail.

2. The defacto complainant in this case is the Deputy Registrar of Co-Operative Societies, Sivagangai. The case of the prosecution is that the defacto complainant was appointed as enquiry officer to conduct 81 enquiry on the Schwatz Higher Secondary School,Employees Cooperative Thrift and Credit Society. The enquiry period is from 01.04.2015 to 15.05.2017 the payments of the society was verified in which the petitioner along with other accused had not produced the documents were evading enquiry by giving one reason or other and thereafter the documents were collected and found that Rs.68,67,300/- were misappropriated and in some of the jewel loans, loan amount misappropriated and the accounts were not properly maintained. Forged documents were created in the names of members

of society and loans were obtained in their name without knowledge and parallel accounts were maintained by the Secretary in connivance with the co-operative auditor,the Manager and the Assistant Manager of Central Co-operative Bank.

3. On conclusion of 81 enquiry it was found that the petitioner abetted the other accused who is the cause and reason for the misappropriation of fund and in creation of forged documents and in misappropriation of funds, 87 surcharge proceedings were recommended for recovery of sum of Rs.68,67,300/and action was initiated against the accused persons. Based on the 81 enquiry report, First Information Report registered in this case.

4. The learned counsel for the petitioner would submit that the petitioner was not involved in any offence as alleged by the prosecution. He would submit that the petitioner was appointed as a Post Graduate Assistant in the year 1991 with the Schwartz Higher Secondary School and in the year 2009 he was promoted as a Head Master and there was no single allegation against him. During the year 2013- 2018 he was appointed as the President of the said Society and it is only an Honorary post. Ex-officio attached to the Head Master post. Tne entire function of the society was entrusted and done by the Secretary and the petitioner being the Head Master was looking after the school and its administration. The petitioner had seldom visited the society and taken part in the day to day activities and affairs of the society. A1 was the Secretary even before the petitioner became the President and there was no adverse remarks against him. During the above enquiry it was found that A1 being the Secretary used to receive signature from the petitioner for the reason that the signature of the petitioner is very much required, which is a statutory statutory requirement. In fact the petitioner was not aware about the society proceedings. The petitioner is not involved in any affairs of the society. Further the other accused who is the Secretary of the society during the enquiry he admitted his guilt and gave undertaking that he is ready and willing to make payment of the misappropriated amount. It is seen from the 81 enquiry report no role has attributed against the petitioner except for the reason that he acted as the President of the Society. Except this no other allegation has been levelled against him. He would also submit that the petitioner attained superannuation on 09.12.2020 and was permitted to retire and his terminal and pensionary benefits were not disbursed. He would also submit only on conclusion of the above case, any pensionary and terminal benefits will be given to him. The petitioner after retirement on putting several years of service is without any money and he is penniless to make a living he has to work, hence he seeks anticipatory bail.

5. The learned Government Advocate(Crl.Side) would submit that it is the admitted case of the petitioner that the petitioner is the President of the Society from the year 2013 to 2018.

Misappropriation has taken in the society during the petitioner's tenure as President. He would also submit that the misappropriation is not at one instance but it has been regularly done on several occasions. Secretary had committed the offence by creating forged documents and using the forged documents as genuine, he had misappropriated the society funds, term loans and the jewel loans were not properly accounted and maintained. The petitioner being the President ought to have verified the documents and thereafter only affixed his signature. The petitioner's contention out of faith he had signed the same and the Secretary had committed the offence is not acceptable. In the 81 enquiry there is no specific mention about the role played by the petitioner herein.

6. It is seen from the 81 enquiry report and the 87 surcharge proceedings the petitioner was the President during the above said period and the Secretary had committed the offence. In the 81 enquiry report officials had given specific finding with regard to the enquiry specific finding against A1 who is the Secretary of the Society, Mr.Chandrasekar, the Field Manager of the Central Co-operative Bank, Alagurani, Branch Manager, Head Office, Ramanathapuram and Mr.K.Thirupathi, Auditor, cooperative department and there is no specific allegation against the petitioner. It is seen that the Secretary of the society had admitted his guilt and given admission letter and undertaking on 05.05.2017 and he is sole reason and cause for the misappropriation of the funds of the society, who is ready and willing to pay the misappropriated amount and further some of the property of the Secretary/A1 is now under attachment.

7.Taking into consideration the facts and circumstances of the case and also taking note of the fact that no specific allegations has been levelled against the petitioner and also the fact that the petitioner lacked proper supervision, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

8. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate No.I, Ramanathapuram on condition that the petitioner shall execute a 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 to the Police Officer, who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

(a)the petitioner and 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;

(b)the petitioner shall report before the respondent police daily at 10.30 am., for a period of four weeks and thereafter as and when required for interrogation.

(c) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(d) the petitioner shall not abscond either during investigation or trial;

(e) on breach of any of the aforesaid conditions, the learned Magistrate/ Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner 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;

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

sd/-
05/02/2021

/ TRUE COPY /

/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1 THE JUDICIAL MAGISTRATE NO.I,
  RAMANATHAPURAM.
2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
  RAMANATHAPURAM DISTRICT.
3 THE INSPECTOR OF POLICE,
  C.C.I.W POLICE WING,
  RAMANATHAPURAM DISTRICT.
4 THE ADDITIONAL PUBLIC PROSECUTOR,
  MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.THIRUMURUGAN.T Advocate SR.No.3629

ORDER
IN
CRL OP(MD) No.421 of 2021
Date :05/02/2021

aav
JM/VR/SAR I/09.02.2021/4P/6C