



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

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Reserved on	Pronounced on
09.07.2021	13.07.2021

PRESENT

The Hon`ble Mr.Justice G.CHANDRASEKHARAN

CRL OP (MD) . No.1402 of 2021
and
Crl.O.P. (MD)No.2529 of 2021

Crl.O.P. (MD)No.1402 of 2021:

Sivakumar ... Petitioner/Accused No.1

Vs

State through
The Inspector of Police,
B-5, South Gate Police Station,
Madurai District.
(In Crime No.27/2021).

... Respondent/Complainant

Manivasagam

...Petitioner/Intervenor/
Defacto Complainant
in CRL MP(MD) 1036 OF 2021

For Petitioner : Mr.N.Anantha Padmanabhan
for M/s.APN Law Associates,
Advocate.

For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

For Intervenor : Mr.N.Satheeskumar
Advocate

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

PRAYER :-

For Anticipatory Bail in Crime No.27/2021 on the file of the
Respondent police.

Crl.O.P. (MD)No.2529 of 2021:



Vs

State through
The Inspector of Police,
B5 South Gate Police Station,
Madurai District
Crime No. 27/2021.

... Respondent/Complainant

For Petitioner : Mr.N.Anantha Padmanabhan
M/s.APN Law Associates,
Advocate.

For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

For Intervenor : Mr.N.Satheeskumar
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PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

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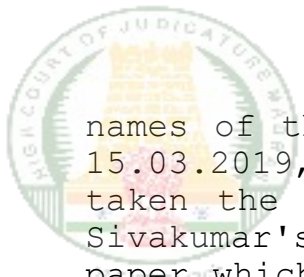
For Anticipatory Bail in Crime No.27 of 2021 on the file of the Respondent police.

COMMON ORDER : The Court made the following order :-

The petitioner in CrI.O.P.(MD)No.1402 of 2021/A.1, apprehending arrest at the hands of the respondent police for the alleged offence punishable under sections 363, 342, 406, 420, 294(b) and 506(i) I.P.C., in Cr.No.27 of 2020 on the file of the respondent police, seeks anticipatory bail.

2. The petitioner in CrI.O.P.(MD)No.2529 of 2021/accused apprehending arrest at the hands of the respondent police for the alleged offence punishable under sections 363, 342, 406, 420, 294(b) and 506(i) I.P.C., in Cr.No.27 of 2020 on the file of the respondent police, seeks anticipatory bail.

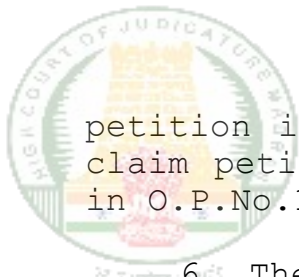
3. The case of the prosecution is that the defacto complainant is running PM jewelry in Kallalagar complex, South Avani Moola Street, Madurai. The petitioner/accused Sivakumar is running Krishna Jewel Creators. Two years back, petitioner Sivakumar made a proposal to the defacto complainant that if he sells the jewels through Krishna Jewel Creators, he would get good commission. He also promised to give commission, after it got accumulated. During March 2019, the defacto complainant required money to meet the expenses of his children's education and other expenses. He demanded the petitioner Sivakumar to give his commission. He replied that he purchased gold in his name and in the name of his father, mother and wife instead of commission and told that after selling the gold and taking the profit, he would return the amount to the defacto complainant. He handed over tax invoices in the



names of the defacto complainant, his father, mother and wife. On 15.03.2019, at about 11.00a.m., two identified persons had forcibly taken the defacto complainant from his shop to the first accused-Sivakumar's shop and made him to sign in a Hundred Rupees stamp paper which was already written. Then, based on this document, the first accused Sivakumar claimed that the defacto complainant agreed to give 5kg of gold and he told that he would do whatever he likes, using this document. He also made criminal intimidation. Therefore, this case came to be registered.

4. The learned Counsel for the petitioners submitted that the petitioners are innocent and they have been falsely implicated in this case. In fact, the defacto complainant and the petitioner/accused Sivakumar had been conducting jewelry business on an understanding that the petitioner Sivakumar would invest in gold and create new design jewelry and the defacto complainant has to introduce the new jewels in the market and procure orders. In the course of this transaction, the defacto complainant had to give 4.255kg of gold. There were misunderstanding between the parties and therefore, their business was dissolved on 10.06.2018. Other than this gold, huge arrears of payments remain outstanding from the purchasers, who had purchased jewelry from the petitioner through the defacto complainant. In this regard, the petitioner Sivakumar gave a complaint on 01.01.2019 in CSR No.333 of 2019. The petitioner Sivakumar has also initiated proceedings under the Micro Small and Medium Enterprises Development Act 2006. There was also an agreement entered into between the defacto complainant and the petitioner Sivakumar on 15.03.2019. Earlier the defacto complainant preferred a complaint before the police. The police has not registered the case. Now the complaint is given under Section 156 (3) Cr.P.C., and the case came to be registered. In support of his case, the learned Counsel for the petitioners produced a copy of deed of assurance dated 15.03.2019, CSR copy dated 01.11.2019, legal notice dated 23.12.2019. Therefore he seeks anticipatory bail to the petitioners.

5. The learned Counsel appearing for the defacto complainant strongly opposes this petition on the ground that the petitioners had with an intention to cheat the defacto complainant made him work for him in the jewelry business under the promise of paying good commission. Instead of paying commission, he promised to buy gold in his name and the names of his father, mother and wife. He had also given invoices purchased by him. Subsequently, he failed to honour his words and created the alleged agreement dated 15.03.2019 under force and duress. If the petitioners are granted anticipatory bail, there is no possibility of recovery of his commission. Therefore, he seeks for dismissal of this petition. He has produced the copies of invoices dated 06.03.2019, copy of statement of the petitioner Sivakumar dated 23.11.2019, copy of the claim petition in C.P.No.8 of 2020 on the file of the MSME (Micro and Small Enterprises Facilitation Council, Madurai), copy of the claim



petition in O.P.No.9 of 2020 on the file of the MSMC, copy of the claim petition in O.P.No.10 of 2020 and copy of the claim petition in O.P.No.11 of 2020, on the file of MSME Council.

6. The learned Additional Public Prosecutor appearing for the State opposes this petition on the ground that the investigation in this case is not yet completed.

7. Heard the learned Counsel for the petitioners, the learned Counsel for the intervenor and the learned Additional Public Prosecutor appearing for the State and perused the materials placed on record.

8. Consideration of the First Information Report and the materials filed by the learned Counsel for the petitioners and the learned Counsel for the defacto complainant show that the parties are in agreement with regard to the fact that they had jointly run jewelry business. The case of the defacto complainant is that the petitioner Sivakumar had not paid the commission as promised. On the other hand, the case of the petitioner Sivakumar is that the defacto complainant was paid his commission. It is also his case that the defacto complainant has to pay the money due to the petitioner in the course of business transaction and 4.255kg of gold. It appears that there are proceedings pending under the Micro Small and Medium Enterprises Development Act 2006.

9. The learned Counsel for the petitioner Sivakumar strongly relied on the deed of assurance dated 15.03.2019 in support of his claim that there was an agreement entered into between the parties wherein they agreed to a settlement, like return of 4.255kg of gold to the petitioner Sivakumar and other terms with regard to money due to the defacto complainant. There is one specific term with regard to transfer of car bearing Registration No.TN-64-M9223. The learned Counsel for the defacto complainant claimed that this particular document was executed under duress and coercion and that is the reason, why the complaint has been given. On the other hand, the learned Counsel for the petitioner Sivakumar submitted that this document was executed voluntarily by both parties and in support of his submission, he produced the transfer of ownership regarding the car bearing Registration No.TN-64-M9223 in favour of the defacto complainant's wife, after the execution of deed of assurance, dated 15.03.2019. Coy of R.C. book shows that the transfer of ownership was changed in the name of defato complainant's wife. Therefore, there is a serious doubt in the claim of the defacto complainant that the deed of assurance dated 15.03.2019 was executed under duress and coercion.

10. As things stand now and projected from the materials produced and submissions made, that already proceedings are pending before the Regional Micro and Small Enterprises Facilitation Council, Madurai region. Both parties had made claim against each other. These claims had to be decided only by competent Forum or



Civil Court. This is a petition for anticipatory bail. Primordial question is as to whether the custodial interrogation of the petitioners is necessary and as to whether the anticipatory bail can be granted to the petitioners.

11. One more important aspect in this case is that the petitioner Sivakumar and his men alleged to have forcibly taken the defacto complainant and executed the deed of assurance dated 15.03.2019 under coercion and duress. However, complaint has not been given immediately. The complaint was given only on 22.01.2021, for the incident happened on 15.03.2019. The defacto complainant tries to explain the delay by saying that the police has not taken action on his complaint and he was unwell. This explanation cannot be accepted for the reason that the delay in giving the complaint is huge. Now that this F.I.R has been registered on the basis of the complaint forwarded under Section 156(3) Cr.P.C. If the case of the defacto complainant is true, he would have done this exercise immediately after the occurrence, once the police, according to him, refused to register the F.I.R., on the basis of his complaint. As narrated above, the case of both parties had to be proved by producing relevant documentary and oral evidence before the concerned Forum/Court. The case rests on the basis of the documentary evidence. Therefore, this Court is of the considered view that the custodial interrogation of the petitioners is not necessary and this Court is inclined to grant anticipatory bail to the petitioners with certain conditions. The respondent is directed to complete the investigation in two months from the date of receipt of a copy of this order and file final report before the competent Court.

12. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate No.IV, Madurai, Madurai District, on condition that the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each 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 petitioners 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 petitioners shall report before the respondent police daily at 10.30 a.m., until further orders;

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



(d) the petitioners 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 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;

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

Sd/-
13/07/2021

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

SSL

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.IV, MADURAI,
MADURAI DISTRICT.
2. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.
3. THE INSPECTOR OF POLICE,
B-5, SOUTH GATE POLICE STATION,
MADURAI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) Nos.1402 and 2529 of 2021
Date :13/07/2021