WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 29/04/2021

PRESENT

The Hon`ble Mr.Justice G.CHANDRASEKHARAN

CRL OP(MD).No.2691 of 2021

1.A.Mohamed Idiris
2.M.Femina Begum ... Petitioners/Accused

Vs.

The State Rep. By,
The Inspector of Police,
District Crime Branch,
Pudukottai.
Cr.No.22 of 2020. ... Respondent/Complainant

For Petitioners: Mr.D.Shanmugarajasethupathi, Advocate.
For Respondent : Mr.K.R.Bharathi Kannan, Government Advocate (Crl.Side)

For Intervenor : MR.S.SIVAKUMAR, Advocate

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

PRAYER :-

For Anticipatory bail in Crime No.22 of 2020 on the file of the respondent Police.

ORDER : The Court made the following order :-

The petitioners, who are arrayed as accused, apprehending arrest at the hands of the respondent police for the alleged offences punishable under sections 406, 420 and 506(i) IPC., in Crime No.22 of 2020 on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution is that the first petitioner is running an 'Optical Shop' in Erode and the second petitioner is the wife of the first petitioner. The petitioners and the defacto complainant are close relatives. The first petitioner informed the defacto complainant that if he invested the money in the optical business, he will get good profit. Believing the words of the first petitioner, the defacto complainant invested Rs.10 lakh on 20.02.2018 and executed a document in support of that investment.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

Again both the petitioners invited the defacto complainant and promised him that if he invested another Rs.30 lakhs in a new optical, he would get a sum of Rs.2 Lakhs per month as profit. Believing the words of the petitioners, the defacto complainant paid a total sum of Rs.43 lakhs to the petitioners on various dates. When the defacto complainant was waiting for receiving Rs.2 lakhs per month for investing the amount, the petitioners did not repay any amount to him for several months. When he demanded the payment, the petitioners told some flimsy reasons. When pressurized with demand, the petitioners said to have criminally intimidated him. Hence the complaint.

3. The learned counsel for the petitioners would submit the allegations made in the complaint are absolutely false. In fact, there was a loan transactions of Rs.4 lakh between the first petitioner and the defacto complainant. Out of Rs.4 lakh, already he returned Rs.2 lakh. He has entered into an agreement, dated 09.10.2020. Now, the petitioners filed O.S.No.3163 of 2020 for cancellation of agreement. He would further submit that the petitioners are innocents and they have not involved in any offence as alleged by the prosecution. Further, he submitted that the second petitioner has just now delivered a baby and therefore, he seeks anticipatory bail to the petitioners.

4.The learned counsel for the intervenor submitted that the the petitioners had produced three agreements said to have entered into the petitioners and the defacto complainant on 20.02.2018, 24.10.2018 and 09.10.2020 respectively. With regard to the investments made in the optical business run by the petitioners, the learned counsel has also filed transactions notes made by the first petitioner and also bank transactions. These transactions apparently show that there are money transactions between the defacto complainant and the first petitioner.

5.In reply, the learned counsel for the petitioner further submitted that the documents 1 to 3 are created with the help of unsigned documents secured from the first petitioner at the time of advancing Rs.4 lakh.

6.The learned Government Advocate (criminal side) has strongly opposed to grant anticipatory bail to the petitioners.

7.Even though the learned counsel for the petitioners submitted many reasons to grant anticipatory bail to the petitioners, *prima facie,* there is a case that the defacto complainant has given a sum of Rs.25 lakh through agreements dated 20.02.2018 and 24.10.2018. It is also seen that the document viz., compromise agreement, dated 09.10.2020 is challenged by the first petitioner in the suit. Admittedly, the petitioners have not paid any money to the defacto complainant. There is an element of cheating and criminality involved in this case. It is not just a case of borrowal or a money transaction. Therefore, this Court

https://hcservices.ecourts.gov.in/hcservices/

finds that this is not a fit case for the grant of anticipatory bail to the first petitioner.

8.Taking into consideration the facts and circumstances of the case and also taking note of the fact that the second petitioner has recently delivered a baby as submitted by the learned counsel for the petitioners, this Court is inclined to grant anticipatory bail to the second petitioner alone with certain conditions. Insofar as the first petitioner is concerned, this Criminal Original Petition is dismissed.

9.Accordingly, the second petitioner is ordered to be released on bail in the event of arrest or on her appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate, Pudukottai, 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 the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

[a] the second 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 second petitioner shall report before the respondent police daily at 10.30 a.m. until further orders;

[c]the second petitioner shall not tamper with evidence or witness either during investigation or trial;

[d] the second 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 second petitioner in accordance with law as if the conditions have been imposed and the second 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]**;

[f] If the accused/second petitioner thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-
27.04.2021

/ TRUE COPY /

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

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

vsd

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, PUDUKOTTAI.

2. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
   PUDUKOTTAI DISTRICT.

3.THE INSPECTOR OF POLICE,
  DISTRICT CRIME BRANCH,
  PUDUKOTTAI.

4.THE ADDITIONAL PUBLIC PROSECUTOR,
  MADURAI BENCH OF MADRAS HIGH COURT,
  MADURAI.

+1 CC to M/s.D.SHANMUGARAJASETHUPATHI, Advocate (SR-3541[I] dated 30/04/2021)

ORDER
IN
CRL OP(MD) No.2691 of 2021
Date : 29/04/2021

VB SKN SAR IV(05/05/2021) 4P / 6c

WEB COPY