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

Date : 31/03/2021

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD). No.2031 of 2021

1. Narmatha
2. Venkata Mani Muruga ... Petitioners/Accused-1 & 2

Vs

State Rep.by
The Inspector of Police,
District Crime Branch, Madurai.
Crime No.6 of 2020. ... Respondent/Complainant

Muthoot Capital Services Limited,
Rep by its Senior Regional Manager,
S.Swamynathan,
No. 41, Ravi Plaza, Gandhiadigal Salai,
Kumbakonam -612001. ... Petitioner/ Intervener / Defacto Complainant
IN CRL MP(MD)No.1870 of 2021
IN CRL OP(MD)No.2031 of 2021

For Petitioners: Mr.M.Shajahan, Advocate.
For Respondent : Mr.R.Srinivasan, Government Advocate (Crl.Side)
For Intervenor : Mr.P.Pethu Rajesh, Advocate

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

PRAYER :- For Anticipatory Bail in Crime No.6 of 2020 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioners/Accused 1 and 2, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 406, 465, 468, 420, 474 r/w 120-B of IPC in Crime No.6 of 2020, he seek anticipatory bail.

2.The case of the prosecution is that the de-facto complainant finance for various two wheelers to various customers at Sakthi Sivam Motors through Muthoot Finance representative, namely, Kalaiselvi, who was responsible for verification of documents, insurance and other formalities. Later, the de-facto complainant came to know that the customer's names are only fictious names. But the EMI was paid in those names and the said vehicle documents are not genuine. Hence, the complaint.

3.The learned counsel for the petitioners would submit that A1 is the Proprietor of Sakthisivam motors, A2 is the husband of the first petitioner, A3 is the employee of the de-facto complainant. He would further submit that the petitioners and the de-facto complainant were having business relationship, infact the third accused one Kalaiselvi, is the representative of the defacto complainant, who was stationed in the petitioner's show room and she was the person who scrutinized documents for hypothecation, thereafter, the defacto complainant had extended vehicle loan. He would further submit that 36 % interest was exorbitant could not be paid regularly. Thereafter, dispute arose between them and further, payment was stopped for which the complaint has been lodged. He would further submit that there were totally 225 accounts, out of which 101 accounts settled and balance 154 accounts to be settled. In the dispute with regard to 154 loan accounts the amount involved is Rs. 1,76,50,978/-. He further submitted that the interest is exorbitant and the entire dispute is with regard to the same. The dispute is a commercial dispute, which is given a criminal color to coerce the petitioners to extract exorbitant interest and amount. From the documents produced by the de-facto complainant, it is seen that his signature in the invoices vary and all the documents have been verified authenticated and thereafter, only loan has been issued by the representative of the de-facto complainant. According to the petitioners, only a sum of Rs.5,40,000/- is disputed, the other amounts have been paid and it is a hypothecation agreement, where the amount would be paid on the due dates.

4.The learned counsel for the intervenor filed typed set of papers and submitted that in the complaint there are three accused. One kalaiselvi, is the representative of the de-facto complainant. The company's representative in conspiracy with the petitioners had created forged documents and using the forged documents had cheated the de-facto complainant. The de-facto complainant suffered a wrongful loss by granting loan to the persons. Further, during enquiry he came to know that the persons who had availed loans and they have not paid any amount. The petitioners also created forged documents as well as invoices and other related documents and also presented the same before the RTO and made necessary endorsement. It is not a case of mere cheating, it is a clear case of forgery. He further submitted that the petitioners cannot now claim 36 % interest as exorbitant. The petitioners agreeing and understanding the same, accepted for the terms and conditions had failed to pay the loan amount to the credit of Sakthi Sivam Motors who are their beneficiaries. He would further submit that earlier anticipatory bail was filed before the District Court and during the proceedings before the District Court mediation was held and in the mediation it was submitted by the de-facto complainant that Rs.90 lakhs have to be paid which was also agreeable by the petitioners, hence the anticipatory bail got dismissed. He would further submit that some of the vehicle numbers have been given for loan, on verification, it is found that there are not two-wheelers and in fact, four wheelers numbers have been given. Thus, it is a well planned forgery and cheating had been committed.

5.The learned Government Advocate (Crl.Side) would submit that after registration of the case, the petitioners immediately approached the District Court and immediately thereafter, they had approached this Court, hence the investigation is pending.

6.On perusal of the material, it is seen that the petitioners and the de-facto complainant have entered into a commercial understanding. The petitioners are dealers of TVS Motor Bikes. The de-facto complainant is a finance company, who had placed one of his staff in the petitioners' show room. The invoices and other documents are prepared in the showroom, the loan application along with the relevant documents are sent to the de-facto complainant office, who process the same. On verification of the same, the loan is approved, which is endorsed in the registration certificate of the vehicle and monthly EMI's are paid. In case, where the EMI is in default, the vehicle has to be secured as per the hypothecation agreement. In this case, the business relationship between the petitioners and the de-facto complainant is continuity for sometime and several vehicles have been hypothecated. In some of the cases, the entire loan amount had been paid and the hypothecation cancelled. There is dispute with regard to non-payment and the rate of interest. Now the de-facto complainant claiming that it is a case of forgery and cheating by the petitioners in collusion with the other employee of the de-facto complainant, who is also a accused, their complicity is not know further, the commercial relationship of business between them not denied. In view of the business relationship and the offence are document based, which are available with both the petitioners as well as the de-facto complainant.

7.Considering the facts and circumstances of the case and also considering the fact that it is only a commercial dispute, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

8.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.I, Madurai, 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)Each of the petitioners shall produce the original title deed which stands in his name or in his relative's name or in his friend's name worth about Rs.10 lakhs along with the property valuation certificate from the authorities competent before the concerned Court without prejudice to their defence and submit a photocopy while executing sureties. The learned Magistrate after receiving the photocopy of the original title deed shall accept the sureties furnished by the petitioners.

(c)the first petitioner shall report before the respondent police as and when required for interrogation;

(d) the second petitioner shall report before the respondent police daily at 10.30 a.m. until further orders.

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

(f)the petitioners shall not abscond either during investigation or trial;

(g)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;

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

sd/-
31/03/2021

/ 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, MADURAI.

2. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.

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

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

+1 CC to M/s.P.PETHU RAJESH, Advocate (SR-2831[I] dated 01/04/2021)

ORDER
IN
CRL OP(MD) No.2031 of 2021
Date :31/03/2021

SJI
MS/JC/SAR-4/08.04.2021/5P.6C