BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 29.03.2021

Pronounced on: 01.04.2021

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD). No.3159 of 2021

1. Nagarajan
2. Priyadarshini
3. Vijayalakshmi
4. Laila
5. Sumathi ... Petitioners/Accused Nos.7,9,13,14 and 15

Vs

1.The Inspector of Police,
Thirumangalam Taluk Police Station,
Thirumangalam, Madurai District.
Cr.No.52 of 2021. ... 1st Respondent/Complainant

2.Frances Amanda Murphy,
Proprietor of Teddy Group of Comapanies,
Tenkasi Road, Aalampatti Post,
Thirumangalam Taluk,
Madurai District. ... 2nd Respondent/ Defacto Complainant

For Petitioners : M/s.R.R.Kannan, Advocate.
For Intervenor (R2) : M/s.M.karthikeyavenkatachalapathy Advocate
For Respondent (R1) : Mr.R.Srinivasan, Government Advocate (Crl.Side)

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

PRAYER :-
For Anticipatory Bail in Crime No.52 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioners/A7,9,13,14 and 15, who apprehend arrest at the hands of the respondent police for the offences punishable under

Sections 120(B), 201, 403, 406, 408,420,465,468,471,506(i) of IPC and Section65 of Information Technology Act seek anticipatory bail.

2. The case of the prosecution is that the defacto complainant Mrs. Frances Amanda Murphy is a Irish lady who established a company by name Teddy exports in the year 1992 for the purpose of creating employment for the poor people who were in need of job. She had also established Teddy trust in the year 1993 and thereafter she established several institutions and firms like Teddy Higher Secondary School, Teddy Farm, Teddy Special School, Tailoring Unit, Teddy Hospital etc and the same were running profitably. Due to the efficient management of the defacto complainant, about 500 employees were working. The defacto complainant is a married woman having one son and two daughters and her husband had passed away earlier. During the year 2009 one Gavaskar S/o. Nagarajan was appointed a quality control Manager and after working for some time he left the job and went to pursue his education. Thereafter on 25.02.2013 the said Gavaskar came and requested to give job and he also assured that he will render full support to the development of the company. Believing his words the defacto complainant appointed him as Manager of Company on 10.06.2013.

3. During the year 2014 the defacto complainant had left to London for her son's education and her two daughters went to Kodaikanal for their studies and the defacto complainant came back staying along their daughters in Kodaikanal. On 16.05.2014 a meeting was conveyed and she informed that her absence would be for a long period and the day to day company's affairs has to be looked into and at that time A1 requested her to appoint him as General Manager and promised that he will take care of the entire establishment faithfully and sincerely. Based on the assurance given him A1 was appointed as General Manager on 19.06.2014, authorization was also given to him permitting to withdraw the money from the company accounts and to look after the day to day affairs of the company. During the year 2015 the defacto complainant's daughter left to London, at that time she enquired A1 whether he needs any support for the management, at that time A1 represented that he need no support and he will take care of the company.

4.Believing the words the defacto complainant left London on 10.06.2015 and gave all powers to A1 including financial power. In the meanwhile on several occasions she visited India between 2015-2019 and on 30.10.2019 when she came to India she was informed that A1 in connivance with the other staff of the company and his family members had created forged documents, misappropriated and cheated the defacto complainant and by using this money, he had purchased several properties in the name of his family members and relatives. The defacto complainant thereafter appointed one Auditor by name Manian to verify the company accounts for the period from 2014-2019. On 05.11.2019, Auditor Marian gave a report that A1 by fabricating documents had misappropriated the company's money and the company deposit of Rs.3 Crores in the Canara Bank, swindled by forging the signature of the defacto complainant. Further he had embezzled more than Rs.2 Crores under the pretext of construction of building and also stolen antique furniture and materials in her house which cost around several lakhs with the help of contractor.

5.When the defacto complainant went to London there were 18 vehicles in the company and out of which 10 vehicles have been sold and not properly accounted for the same. On 06.11.2019 the defacto complainant called A1 and enquired A1 about the misappropriation, A1 admitted the same and accepted to repay the same by selling the properties purchased through illgotten money. Believing the same, the defacto complainant withheld lodging the complaint immediately and thereafter citing the corona lock down he took time later failed to make payment. When the defacto complainant again enquired with A1, he and his family members threatened the defacto complainant, that she is a single lady and there is no body to protect her and no one will question them if she is done away and warned her to keep quiet otherwise she will be done away. Hence the complaint.

6. The learned counsel for the petitioners would submit that the first petitioner is the father of A1, second petitioner is the wife of A1, third petitioner is the wife of A8, brother of A1, fourth petitioner is the mother-in-law of the A1 and the fifth petitioner is the mother of A1. He would also submit that it was A1 who was working as a General Manager with the Defacto complainant, inorder to settle the scores the entire family members of A1 have been made as accused in this case. He would further submit that though the alleged occurrence said to have taken place during the period from 19.06.2014 to 30.10.2019 the compliant was lodged by the defacto complainant after 1 ½ years. Further no explanation was given for the delay. The property purchased by the petitioners on their own are projected as though it has been purchased with the money given by A1.Further the first petitioner was running several business like Ginning factory, water business job work, tailoring work for many years and they all have independent income. The petitioners visit to defacto complainant at time is to meet A1 and other which cannot be now termed as conspiracy. The entire family members of A1 family have been falsely implicated.

7. The learned counsel for the intervenor/defacto complainant would submit that the petitioners herein are none other then family members and close relatives of A1/Gavaskar. The first petitioner is the father of A7, Second petitioner is the wife of A1, third petitioner is the sister-in-law of A1, fourth petitioner is the mother-in-law of A1 and the fifth petitioner is the mother of A1. He would also submit that all the accused persons conspired with A1 and induced him to do all sorts of mischiefs for misappropriation of funds from the company and thereby colluded with A1 and purchased various properties in their names during the period 2014-

2019. The first petitioner/A7 along with 5th petitioner purchased a prime property in their name for Rs.40,00,000/- on 26.11.2019 which was kept pending document No.P144/2019 before the Sub Registrar, Thirumangalam for about two months and later it was registered in document No.874/2020 on 07.02.2020 and immediately pledged the property with the Canara Bank, Thirumangalam and availed business credit loan on 21.02.2020 vide MOD dated 21.02.2020. Further the 5th petitioner along with the 3rd petitioner had purchased properties in their names on 10.03.2016 and 27.03.2019. The 4th petitioner had purchased a property in Thirumangalam City on 08.05.2016 and she also got a mortgage loan for Rs.15 lakhs in HDFC bank Salem. He would further submit that the petitioner have no proper source of income and all of them have colluded with each other along with A1 and purchased the above said properties. He would submit that the petitioners have started a family business in the name and style of Raghupathy Creations a textile unit and diverted the jobs/ works contract of the Teddy exports and mischievously claimed and obtained lakhs and lakhs. In total 15 crores has been misappropriated by creating forged documents, tampering the office records, destroying the soft copies. The company bank account has been used as ATM to siphon out huge sums of money. He would also submit that if the petitioners were granted anticipatory bail it will affect the investigation and they will tamper the witnesses hence he opposed to grant anticipatory bail to the petitioners.

8. The learned Government Advocate(Crl.Side) would submit that A1 is the General Manager, A2 is the accountant, A3 is the store keeper, A4,A5 and A6 are the computer operator, A7 is the father of A1, A13is the wife of A8, A4 is the mother-in-law of A1, A15 is the mother of A1, and the other accused are the close relatives and associates of A1. He would further submit that the first was appointed as the Manager of the Company on 10.06.2013 and subsequently he was appointed as General Manager of the Company on 19.06.2014. Since the defacto complainant was away from India from 10.06.2015 to 26.10.2019 taking advantage the first accused along with other accused have misappropriated several crores of money from the company by creating forged documents misappropriated the funds of the company. Further the petitioners herein have also threatened the defacto complainant and criminally intimidated her, hence he opposed to grant anticipatory bail to the petitioners.

9. It is seen that there are totally 17 accused in this case and the petitioners herein are arrayed as A7,9,13,14 and 15. Further A1 in this case is the prime accused who has misappropriated the huge sum of money and cheated the defacto complainant. In this the first petitioner is the master mind behind the entire crime and according to his instructions and direction all his family members had abetted each other in the commission of offence and thereby swindled the company money and cheated the defacto complainant. Further A1 in connivance with the other staff members of the company have prepared forged invoices and bills to show the supply of

portable water and the job work of the defacto complainant in company was carried out and in fact the forged bills have been prepared as though rice was also supplied to the canteen. The cheque of the defacto complainant company has been misused and money have been transferred and withdrawn by A7 and his family members. Further several properties have been purchased in the names of family members of A7 who apparentely had no source of income and it is only A1 who had diverted the funds of the defacto complainant company and purchased the properties. The first accused had purchased the property in the name of his family members no money was paid by the petitioners in whose name property was purchased. A1 being the General Manager of the defacto complainant company taking advantage of the same, used the company fund as ATM had withdrawn the amount and used the same for various means. In this case only some accused arrested and some are still absconding. Investigation has just commenced and in progress

10.Taking into consideration the facts and circumstances of the case and also taking note of the fact that only the names of the family members of the first petitioner has been used for the purpose of purchasing properties and other allegation has been levelled against them, this Court is inclined to grant anticipatory bail to the petitioners 2 to 5 alone with certain conditions.

11. Accordingly, the petitioners 2 to 5 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, Thirumangalam, 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 2 to 5 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 2 to 5 shall report before the respondent police daily at 10.30 am., until further orders.

(c)the petitioners 2 to 5 shall not tamper with evidence or witness either during investigation or trial;

(d)the petitioners 2 to 5 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 2 to 5 in accordance with law as if the conditions have been imposed and the petitioners 2 to 5 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.

12. As regards the first petitioner since there are allegations against him the petition stands dismissed.

sd/-
01/04/2021

/ 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, THIRUMANGALAM,
MADURAI DISTRICT.

2.DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI.

3.THE INSPECTOR OF POLICE,
THIRUMANGALAM TALUK POLICE STATION,
THIRUMANGALAM, MADURAI DISTRICT.

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

+1. CC to Mr.R.R.KANNAN, Advocate SR.No.2806

ORDER
IN
CRL OP(MD) No.3159 of 2021
Date :01/04/2021

AAV
PK/SMA/SAR-11/09.04.2021 : 6P/6C