BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on	Pronounced on
12.07.2021	16.07.2021

PRESENT

The Hon`ble Mr.Justice G.CHANDRASEKHARAN

CRL OP(MD) Nos.12374 of 2019 and 4844 of 2020
and
Crl.M.P.(MD)No.10977 of 2019

Crl.O.P.(MD)Nos.12374 of 2019 and 4844 of 2020
1. S.Hajee Mohammed
2. Syed Ibrahim ... Petitioners/Accused 1 and 2 (in both the petitions)

Vs

The State rep.by,
The Assistant Commissioner Of Police,
City Crime Branch,
Tirunelveli City, Tirunelveli.
(Crime No.20 of 2019) ... Respondent/Complainant (in both the petitions)

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

PRAYER :-For Anticipatory bail in Crime No.20 of 2019 on the file of the respondent police.

Crl.M.P.(MD)No.10977 of 2019:

Ponmarthandan ... Petitioner/Intervener/De-facto Complainant

Vs

1.The State represented by
The Assistant Commissioner of Police,
City Crime Branch, Tirunelveli.
(Crime NO.20 of 2019) ... 1st Respondent/Respondent/Complainant

2.S.Hajee Mohammed
3.Syed Ibrahim ..Respondents/Petitioners/Accused 1 and 2

PETITION FOR CANCELLATION OF ANTICIPATORY BAIL Under Sec.439(2) of Cr.P.C

PRAYER: to cancel the anticipatory bail granted to the accused 1 and 2 in crl.op(md)no.12374 of 2019, dated 13.09.2019 and direct the investigating officer 1st respondnet to secure the accused 1 and 2 and proceed with the completion of the investigation.

For Petitioners: Mr.B.Saravanan,
(in crl.OP.12374 of 2019) Advocate.
For Petitioners: Mr.B.Rajamohan,
(in crl.OP.4844 of 2020) Advocate.
For Respondent : Mr.Antony Sahaya Prabahar,
(in both the petitions) Government Advocate.
For Intervenor : Mr.V.Kathirvelu,
(in both the petitions) Senior Counsel for Mr.M.C.Samy Advocate.

COMMON ORDER : The Court made the following order :-

The petitioners/A.1 and A.2 who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 406, 418, 420 and 506(i) I.P.C., in Cr.No.20 of 2019, on the file of the respondent police seek anticipatory bail.

2. The case of the prosecution is that the defacto complainant is running MAPS enterprises. He is involved in supplying wood and electrical parts to construction work. One Sundar Singh is his friend. Sundar Singh introduced the accused in this case in January 2019. The accused, it is informed that, purchase wood from foreign countries and sell in India. It was also informed that they have timber depot, in Tenkasi. The defacto complainant and his friend visited the timber depot in Tenkasi and got confidence over the accused Hajee Mohamed. In the meanwhile, he got orders for teak wood for making the doors and windows. On 02.02.2019, he contacted Hajee Mohamed through phone and requested him to purchase teak wood. He informed him that he had negotiated a deal for teak wood worth Rs.1,50,00,000/- for only Rs.1,00,00,000/-. He has to pay advance for that deal and requested the defacto complainant to pay money for payment of advance. He also promised to give supply Rs.75,00,000/- worth of teak wood for Rs.50,00,000/-. He demanded Rs.20,00,000/- as advance and asked the defacto complainant to pay the balance amount after the supply of wood. Accordingly, the defacto complainant deposited a sum of Rs.16,00,000/- in the Indian Bank account of the accused Hajee Mohamed on 04.02.2019. The wood was not delivered in time. The accused Hajee Mohamed promised to supply the wood at the end of March. Meanwhile, he requested a sum of Rs.2,00,000/- for his medical expenses as a loan. The defacto complainant had given Rs.2,00,000/- as a loan and that was repaid. When the wood was not delivered, the defacto complainant approached the accused Hajee Mohamed for delivery. He told that there are some legal issues in taking the delivery of wood from Tenkasi depot. To resolve those issues, he requested Rs.10,00,000/-. Since the defacto complainant had only Rs.6,00,000/-, he paid Rs.6,00,000/- in the Indian Bank account of accused Hajee Mohamed on 08.05.2019.

Even thereafter, the wood was not delivered as promised. The construction companies gave pressure to the defacto complainant that if he will not supply the product, they would cancel the order. When he told this pressure given by the construction companies to Hajee Mohamed, he wanted the defacto complainant to give another sum of Rs.13,00,000/-. Therefore, on 23.05.2019, a sum of Rs.13,00,000/- was paid to Hajee Mohamed. Even after this payment, the wood was not supplied. When the defacto complainant demanded the wood or the payment, the accused said to have criminally intimidated with threat to life. Therefore, this case came to be registered.

3. The learned Counsel for the petitioners submitted that the petitioners are innocents and they have been falsely implicated in this case. There was absolutely no business transaction between the defacto complainant and the petitioners. It was only a loan transaction. The petitioners obtained a loan and the loan was repaid with interest. Even after the repayment of loan, this case was given with false details. A sum of Rs.22,00,000/- was received as loan and that was repaid with interest. He produced, proforma invoice dated 02.05.2019, repayment details, statement of account of Raja imports and exports, dated 01.03.2019 and 01.08.2019, whatsapp conversation of Sundarji dated 08.11.2019, whatsapp conversation of the defcto complainant dated 06.12.2019, in support of his case.

4. The learned Senior Counsel appearing for the defacto complainant strongly opposes this petition on the ground that the transaction involved in this case was purely a business transaction. The accused in this case with an intention to cheat the defacto complainant made him to pay money on the promise of supplying wood. After receiving the money, they failed to supply the wood. It is his further submission that, earlier the petitioners filed a petition seeking anticipatory bail. It was submitted by the learned Counsel for the defacto complainant during the course of hearing that the petitioners admitted their liability to the tune of Rs.22,00,000/-. On the basis of that undertaking, this Court ordered anticipatory bail petition, subject to payment of this amount to the defacto complainant. However, after getting anticipatory bail, the petitioners had withdrawn all the amount in their bank account, which was attached by the respondent police. Against the condition imposed in the anticipatory bail order, the petitioners filed S.L.P.(Crl.)No.9501 of 2019. Now the Honourable Supreme Court set aside the order and directed the High Court to rehear the matter. In the proceedings before the Honourable Supreme Court, the petitioners deliberately had not impleaded the defacto complainant as party. However, the defacto complainant got impleaded himself as party. The conduct of the petitioners shows that they had made false representation to the Court not impleaded the defacto complainant in the proceedings before the Honourable Supreme Court with deliberate intention to get an order behind the back of the defacto complainant. It is a clear case of fraud. Therefore, the learned Counsel seeks dismissal of this petition.

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

6. Heard the learned Counsel for the petitioners, the learned Counsel for the defacto complainant and the learned Additional Public Prosecutor appearing for the State and perused the materials placed on record.

7. As narrated above, the case of the prosecution is that the defacto complainant paid Rs.35,00,000/- towards the supply of wood by the accused in this case. Neither the wood was supplied nor the cash was returned. Therefore, alleging that the accused had with an intention to cheat the defacto complainant made him part with money on the promise of supplying the wood. Having failed to supply the wood and return the money, the accused are liable to be prosecuted for the offences under Sections 406, 418, 420 and 506(i) I.P.C..

8. Per contra, it is the submission of the learned Counsel for the petitioners that there was a never business transaction with the defacto complainant. There was only loan transaction, in which, he borrowed a sum of Rs.16,00,000/- and Rs.6,00,000/-, totally Rs.22,00,000/-. Out of which, Rs.2,00,000/- had been paid through bank transaction and Rs.20,00,000/- was paid in cash. Suppressing the payment and fabricating a story, this case came to be registered.

9. The petitioners had earlier filed an anticipatory bail petition in Crl.O.P.(MD)No.12374 of 2019. The order dated 13.09.2019 made in Crl.O.P.(MD)No.12374 of 2019 reads as follows:

"4. The petitioner's counsel states that the petitioners admit their liability only to the tune of Rs.22,00,000/- and they are denying the transaction that is said to have taken place in Tirunelveli. The petitioners are based in Chennai. The defacto complainant is also based in Chennai. In fact, the petitioner's counsel would even attribute motive to the registration of the criminal case at Tirunelveli.

5. Be that as it may, in as much as, the liability to the tune of Rs.22,00,000/- is admitted. I am inclined to grant anticipatory bail to the petitioners by putting them on terms.

6.The primary grievance of the petitioners is that the bank account of the petitioners in Vadapalani Branch of Indian Bank has been attached. It is crippling their business operations. Therefore, the respondent is directed to send a communication to the concerned bank for raising the attachment. It is made clear that the raising of the bank attachment will depend on payment of a sum of Rs.22,00,000/- directly to the defacto complainant from the attached amount. The petitioners herein agree to give appropriate instructions to their bank.

10. It is seen from this order that this Court granted anticipatory bail to the petitioners for the reason that the petitioners' Counsel accepted the liability to the tune of Rs.22,00,000/-. Aggrieved against this order, the petitioners prepared S.L.P.(Crl)No.9501 of 2019 and it was decided as Criminal Appeal No.347 of 2020. During the course of submissions, it was urged on behalf of the petitioners that

(i) The transaction between the parties was essentially of a civil nature. Hence, having regard to the well settled principles governing the grant of anticipatory bail, it was not proper for the High Court to have imposed an onerous condition of this nature, which virtually amounts to the passing of a civil decree for payment of money to the complainant; and

(ii) As a matter of fact, no such statement was made before the High Court by the learned Counsel appearing on behalf of the appellant. In support, reliance has been placed on Ground '(b)' in the Special Leave Petition.

11. Considering the above said submissions, the Honourable Supreme Court directed to restore the anticipatory bail petition filed by the petitioners for fresh consideration and the order passed in Crl.O.P.(MD)No.12374 of 2019 was set aside. It is seen from the order of the Honourable Supreme Court in Criminal Appeal No.347 of 2020 that the Honourable Supreme Court ordered to set aside the impugned order passed in Crl.O.P.(MD)No.12374 of 2019, dated 13.09.2019 and restore the said Criminal Original Petition for fresh consideration. Further the Honourable Supreme Court granted to the petitioners a protection from arrest for four weeks within which period, it would be open to the petitioners to apply for anticipatory bail afresh.

12. In pursuance of the direction given by the Honourable Supreme Court, the petitioner have now filed anticipatory bail petition in Crl.O.P.(MD)no.4844 of 2020 and that is taken up for consideration now During the course of enquiry, the learned Counsel for intervenor has produced a copy of memorandum of grounds in S.L.P.(Crl.)No.9501 of 2019, a copy of counter affidavit filed by the Assistant Commissioner of Police, DCB, Tirunelveli in S.L.P.(Crl.)No.9501 of 2019, dated 11.02.2020, a copy of the counter affidavit filed by the defacto complainant in S.L.P.(Crl.)No.9501 of 2019, and a copy of the order made by the Honourable Supreme Court in S.L.P.(Crl.)No.9501 of 2019, dated 25.02.2020.

13. In the earlier anticipatory bail petition, the defacto complainant filed an intervening petition and strongly opposed the

anticipatory bail petition. Only after hearing the learned Counsel for the petitioners and the intervenor, this Court passed orders on 13.09.2019. In the SLP preferred before the Honourable Supreme Court in S.L.P.(Crl.)No.9501 of 2019, the petitioners deliberately had not shown the defacto complainant as a party. It shows that the petitioners had tried to get an order in their favour, behind the back of the defacto complainant. Further on coming to know about the filing of this petition, the defacto complainant got impleaded himself as party and contested the matter.

14. Learned Counsel for the petitioners submitted that the proforma invoice dated 02.05.2019, was sent by the defacto complainant to the accused. He produced whatsapp message dated 08.11.2019 to show that this proforma invoice was forwarded to the petitioners. He produced payment schedule alleged to have been sent by the defacto complainant's friend Sundar Singh. In accordance with this payment schedule, he claimed that the petitioners had paid a sum of Rs.20,00,000/- with interest. He has also produced bank statement to show that a sum of Rs.1,00,000/- was paid on 20.03.2019 and on 02.08.2019. These documents, according to the learned Counsel for the petitioners, show that the monetary transaction between the defacto complainant and the petitioners is only a loan transaction, but not a business transaction.

15. In reply to these submissions, the learned Counsel for the defacto complainant submitted that the proforma invoice dated 02.05.2019 has no signature of the buyer. The payment schedule can be created by anyone. The whatsapp message is dated 08.05.2019, but the complaint in this case was given on 03.08.2019. When the accused received a sum of Rs.6,00,000/- through Bank from the defacto complainant on 08.05.2019, it is absolutely not possible for him to supply goods to the accused through invoice dated 02.05.2019.

16. The real issue between the defacto complainant and the accused is as to whether there was business transaction between them or it was only a money transaction. Admittedly, even as per the case of the petitioners, they received a sum of Rs.22,00,000/-from the defacto complainant through Bank in two installments. That is Rs.16,00,000/- on 04.02.2019 and Rs.6,00,000/- on 08.05.2019. This apart, there is a claim by the defacto complainant that he paid Rs.2,00,00/- as loan for medical treatment of the first accused and that was repaid. He had also paid Rs.13,00,000/- during the course of business transaction as cash. There is no supporting evidence, to show that the defacto complainant paid Rs.13,00,000/- in cash to the accused. With regard to the payment of Rs.20,00,000/-, which has been paid through bank to the first petitioner, it is the contention of the learned Counsel for the petitioners that it was received as loan and repaid in cash. However, the petitioners have not produced any piece of material to show the repayment of Rs.20,00,000/- to the defacto complainant.

17. The disputed question with regard to the nature of transaction, repayment can only be decided in a full fledged trial and not on the basis of the copies of documents produced. The issue involved in this case have to be decided by production of oral and documentary evidences in the trial. Therefore, this Court is of the considered view that the custodial interrogation of the petitioners is not necessary. However, the interest of both parties have to be safeguarded. It is admitted by the petitioners that they received Rs.20,00,000/- through Bank from the defacto complainant. Their case is that they repaid this amount. However, they have not produced any material to support their case. Therefore, this Court considers it necessary, in the interest of both parties, to direct the petitioners to deposit a sum of Rs.20,00,000/- in Cr.No.20 of 2019.

18. 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, Tirunelveli, 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 shall deposit a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) towards Court deposit to the credit of Cr.No.20 of 2019 without prejudice to their defence and only on such deposit the learned Magistrate shall accept the sureties. On such deposit being made, the learned Magistrate is directed to the deposit the same in any one of the Nationalized Banks within his jurisdiction, in an interest bearing fixed deposit scheme. The learned Magistrate, at the conclusion of the trial, is directed to pass appropriate orders with regard to the disbursement of this amount either directing payment to the defacto complainant or to the accused on the basis of merits of the case;

(b) 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;

(c)the petitioners shall report before the respondent police daily at 10.30 a.m., until further orders;

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

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

(f)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;

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

19. In view of the order passed in Crl.O.P.(MD)No.4844 of 2020, Crl.O.P.(MD)No.12374 of 2019 and Crl.M.P.(MD)No.10977 of 2019 in Crl.O.P.(MD)No.12374 of 2019 are closed.

sd/-
16/07/2021

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/ /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 JUDICIAL MAGISTRATE NO.I,
TIRUNELVELI.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.

3 THE ASSISTANT COMMISSIONER OF POLICE,
CITY CRIME BRANCH,
TIRUNELVELI CITY, TIRUNELVELI.

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

ORDER
IN
CRL OP(MD) Nos.12374 of 2019
and 4844 of 2020
and
Crl.M.P.(MD)No.10977 of 2019
Date :16/07/2021

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MK/SRS/SAR.IV/20.07.2021/8P/5C