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

Date : 30/03/2021

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD). Nos.4585 and 759 of 2021

R.Mohankumar ... Petitioner/Accused No.4 in Crl.O.P.(MD)No.4585 of 2021

N.Pugazhenthi ... Petitioner/Accused Rank Not Known in Crl.O.P.(MD)No.759 of 2021

-Vs-

State Rep.by
The Inspector of Police,
District Crime Branch,
Karur District.
Crime No.9 of 2020. ... Respondent/Complainant in both petitions

The Commissioner,
Kulithalai Municipality,
Karur District. ... Intervenor / Defacto Complainant IN CRL MP(MD)Nos.2789 & 2252 of 2021 IN CRL OP(MD)Nos.4585 & 759 of 2021

For Petitioner
(in Crl.O.P.(MD)No.4585 of 2021)
: Mr.Veerakathiravan, Senior Counsel for M/s.Veera Associates, Advocate.

For Petitioner
(in Crl.O.P.(MD)No.759 of 2021)
: Mr.J.Sulthan Basha, Advocate for M/s.Ajmal Associates

For Respondent
(in both petitions)
: Mr.R.Srinivasan, Government Advocate (Crl.Side)

For intervenor
(in both petitions)
: Mr.L.P.Maurya, Advocate

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

COMMON PRAYER :- For Anticipatory Bail in Crime No.9 of 2020 on the file of the respondent Police.

COMMON ORDER : The Court made the following order :-

In Crl.O.P.(MD)No.759 of 2021 filed by the petitioner/A-3 and in Crl.O.P.(MD)No.4585 of 2021 filed by the petitioner/A-4. The petitioners/A3 and A-4, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 406, 409 and 420 of IPC, seek anticipatory bail.

2.The case of the prosecution is that on 20.07.2020, the petitioner/A-4, the then Commissioner, Special Officer, Kulithalai Municipality have lodged a complaint against A-1(Sathya), who is the Accountant, had interpolated and corrected the cheque and thereby, misappropriated a sum of Rs.59,73,435/- based on the audit report submitted by the Assistant Director, Local Administration Audit Department, Karur. During the financial year 2019-2020 in the irregularities were found in the contribution as well as the pension account, provident fund account etc, wherein, open cheques were issued in the name of SBI and later, the same has been changed in the name of one Balamurugan, Balaji, R.Subramani and S.Subramani and later, they have been encashed. These cheques were in possession and control of the Accountant Sathya/A1. Further, the then Manager, Accountant, Revenue Assistant have joined together and committed the offence. On receipt of the complaint, a case in Crime No.9 of 2020 was registered on 28.07.2020 for the above said offences and thereafter, on 11.02.2021 an alteration report was filed by the respondent including the petitioners and one Karthikeyan were arrayed as accused in this case. From the audit report, dated 07.11.2020, it is seen that during the period from 01.04.2019 to 30.07.2020, the amount was misappropriated to the tune of Rs.93,45,359/-. The guidelines and rules, were not followed normally, when the Municipality funds are released, the officers would be given a exclusive password through the same, the funds utilised, supported with vouchers can be viewed. Further, all the payments are made only after getting approval from the Commissioner. The vouchers are prepared by the Assistant, thereafter, passed through the Accountant, thereafter to the Manager and lastly to the Commissioner. After getting approval from the Commissioner, the print out of the soft copy would be taken and thereafter, making entry in the payments register and on obtaining initial from the Manager, the amount would be released. The commissioner's are given exclusive Sim cards by which, the daily income, expenditure and other details are sent in short SMS. The petitioner/A-4(Mohankumar) as Commissioner during the period from 09.03.2020 to 30.07.2020 and the petitioner/A-3(Pugazhenthi) was during the period from 19.08.2019 to 05.03.2020.

3.The contention of the learned counsel appearing for the petitioners is that the petitioner/A-4 (Mohankumar) was appointed as Kulithalai Municipal Commissioner on 09.03.2020 and on 30.07.2020, he was placed under suspension. He was in service as Commissioner of Kulithalai Municipality only for a few months. During this period, he was also deputed on 01.07.2020 to report before the District Collector, Chengalpattu and posted here on Special duty for providing support to prevent and control activities to contend the spread of Covid-19. Further, the petitioner/A-4 had given a detailed explanation to the respondent police, dated 03.08.2020; The petitioners have nothing to do with the manipulation committed by the other accused. It is further submitted that the municipality having a account in the Indian Bank of Kulithalai Branch and the cheque payable to the statutory authorities, namely, employees provident fund, provident fund and contributory pension schemes have to be issued in favour of SBI. All these cheques are issued in favour of SBI, the amount would be credited automatically. The main accused, had tampered and fabricated the cheques SBI, in which, inserted the name of Balaji and Balamurugan. Further, it is submitted that in the payment registar maintained in the municipality, it is seen that all the cheques have been entered as SBI and not in the name of Balaji and Balamurugan. The three corrected cheques issued in the name of Balaji and Balamurugan copy produced, from which, it is seen that the tampering is very much apparent. The three cheques, bearing No.262387, 262392 and 262396, dated 03.06.2020 and 18.06.2020 respectively. All these three cheques are to the value of Rs.5,55,720/-, which is the allegation against the petitioner/A-4. The other irregularities have been committed prior to the petitioners posting in the place. The petitioner/A-4, had lodged the complaint and set the law in motion immediately after receipt of the audit report and he has been falsely implicated in this case.

4.As regards, the petitioner/A-3 in Crl.O.P.(MD)No.759 of 2021, it is seen that he was In-charge as Commissioner from 19.08.2019 to 05.03.2020. During this period, he had issued seven cheques bearing Nos.259185, 236292, 236373, 259173, 259174, 259232 and 259244. All these cheques are all statutory payments for a total sum of Rs.6,29,235/-. These cheques also have been forged and SBI name has been interpolated and corrected and the money has been encashed by the prime accused/A-1. The earlier procedures followed by the municipality was continued and followed by the petitioner, who was In-charge as Commissioner of Municipality. In the register, the cheques have been issued and recorded only as SBI cheque and there was nothing to doubt the same. Further, the vouchers are prepared by the Assistant and forwarded to the Accountant and thereafter, the cheques are verified by the Manager as per the office procedures and thereafter, it is placed before the petitioner/A-3. The petitioner/A-3 signed these cheques. The cheques are placed along with the voucher file and the register. On verification of the voucher register, thereafter, the cheques are signed. After getting the sign of the Commissioner, the forgery has been committed by A-1 and others, for which, they cannot be founded fault with. Further, the petitioners were only for a short duration acted as the Commissioner of the Municipality. It is the permanent staff of Municipality, who have joined together and committed the offence.

The petitioners called for an enquiry and appeared before the respondent police and given their explanation. The petitioners are Government servants, who have been in service for sufficient number of the years and residing with their family and they will not evade justice. Further, the petitioners have been suspended from service and all the documents are in possession of the investigating agency, to which, the petitioners have no access.

5.The learned counsel for the intervenor would submit that the petitioners herein, are posted as Commissioner and In-charge Commissioner. A-4 was the Commissioner of Municipality and A-3 succeeded him during that period, using 10 cheques funds has been misappropriated. These ten cheques are all statutory payments cheques. The petitioners along with other accused of the municipality, committed the offence over a period of time. Further, the petitioners were not following the protocol and the procedures, had indirectly facilitated the other accused to commit the offence. There is specific finding of misappropriation by all the accused, found during the audit, the audit committee has scrutinised the records and found that a sum of Rs.93,45,359/- has been misappropriated. During the investigation, it is seen that A-4 as Commissioner and A-3 as In-charge Commissioner were given exclusive password to monitor and to keep a tag on the income and expenditure of the municipality. The cheques have to be signed after verifying the voucher and register only. In this case, the vouchers have been prepared by the Assistant. Based on which, the cheques have been prepared by the Accountant, which is verified by the Manager and thereafter, the petitioners have signed the same. The petitioners have been given a Sim card, through which, the debit and credit particulars of the municipality are regularly sent. The petitioners now giving an explanation that they are not aware of the misappropriation committed by the other officials of municipality, cannot be accepted. The audit report clearly fixed the responsibilities on the petitioners. A huge amount of public money has been misappropriated, for which, the petitioners are facilitated.

6.The learned Government Advocate (Criminal side) had filed a counter stating that the public funds of the municipality had been misappropriated by the accused. These accused have actively participated in the misappropriation. The audit report clearly mention the laxity of these petitioners and the involvement in the offence. A-1/Accountant had given a confession stating that the cheque signing authority, the commissioner of municipality, keeps one note book for the cheques issued. Only on the orders of the Commissioner, the cheques can be prepared and submitted for signature. The cheque issued only two types. One is cross cheque and another is Account Payee Cheque. The Commissioner herein, has not insisted an issuance of cross cheque or Account Payee Cheque and allowed the cheques to be issued as open cheque. Further, in her confession, stated that the Commissioner had only insisted that the cheques to be issued as open cheque, thereby, facilitating forgery and misappropriation. Further, A-1/Accountant had admitted before the departmental enquiry that only on the instruction of the Commissioner, the misappropriation was committed. From the audit report, it reveals that the petitioners herein have also participated in the forgery and misappropriation and hence, an alteration report was filed and the petitioners have been arrayed as accused in this case. The petitioners had the full knowledge about the misappropriation, without their permission and involvement, the cheques cannot be issued and presented for collection. The petitioners were earlier summoned under Section 41 A of Cr.P.C., but they failed to appear for the enquiry. Hence, he strongly opposed for grant of anticipatory bail to the petitioners.

7.Considering the rival submissions and perused the materials, it is seen that the procedures adopted in the Kulithalai Municipality is that for every payment vouchers to be prepared by the Assistant and thereafter, the vouchers have to be submitted to the Accountant. The Accountant/A-1, who prepares the cheque along with the register and the same presented to the Manager. The Manager, who verifies the same and thereafter, it is put up to the commissioner's sign. These procedures have been followed in this case. The forgery and misappropriation had taken place after signing and issuance of the cheque. In this case, the cheques have been forged and misappropriated. The SBI has been corrected and in that place some beneficiary name have been written, after which, they have been encashed later. There is noting to show that the petitioners are also beneficiaries. Though the petitioners were provided with the Sim Card, wherein, they have been informed through short messages, but they have failed to follow the same and have proper control. The act of the petitioners in the absence of any reverse flow, would amount to dereliction of duty. Now, huge loss nearly around one crore to the municipality caused. These petitioners are concerned, they have only signed and issued the cheques and A-4 issued only three cheques for a sum of Rs.5,55,720/- and A-3 issued only seven cheques for a sum of Rs.6,29,235/-. Other than that, the petitioners are not involved in any other complicity of the offence as could be seen from the audit report. The petitioners have already appeared before the respondent police and had given their explanation. The petitioners are only posted for a short period and now suspended from service. Now the petitioners undertake that they shall appear before the respondent police and co-operate with the investigation.

8.In view of the same, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

9.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.II, Kulithalai, 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/-
30/03/2021

/ 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.II, KULITHALAI.

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

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

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

+1 CC to M/s.L.P.MAURYA, Advocate (SR-2760[I] dated 31/03/2021)

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-2804[I] dated 31/03/2021)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-2754[I] dated 31/03/2021)

+1 CC to M/s.L.P.MAURYA, Advocate (SR-2761[I] dated 31/03/2021)

ORDER IN
CRL OP(MD). Nos.4585 and 759 of 2021
Date :30/03/2021

SJI
MS/PN/01.04.2021/7P.9C