



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

Reserved on	Pronounced on
28.06.2021	02.07.2021

WEB COPY

PRESENT

The Hon`ble Mr.Justice G.CHANDRASEKHARAN

CRL OP(MD) . Nos.5810 and 7214 of 2021

Crl.O.P. (MD)No.5810 of 2021:

Sundar ... Petitioner/Sole Accused

Vs

State rep.by,
The Inspector of Police,
DCB, Theni,
Theni District.
Crime No. 07/2021

... Respondent/Complainant

For Petitioner : Mr.P.Gurudevaraj,
Advocate.

For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

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

PRAYER :-

For Anticipatory Bail in Crime No. 7/2021 on the file of the
respondent Police

Crl.O.P. (MD)No.7214 of 2021:

1. Sundar
2. Murugan ... Petitioners/Accused No.1 & 2

Vs

State rep.by,
The Inspector of Police,
Theni Police Station,
Theni District.
Crime No.344 of 2021.

... Respondent/Complainant

Vijaya ... Petitioner/Intervener
in Crl.MP (MD)No.4130/2021
in Crl.OP (MD)No.7214/2021



For Petitioner : Mr.R.Suriyanarayanan,
Advocate.
For Respondent : Mr.E.Antony Sahaya Prabahar,
Government Advocate (Crl.Side)
For Intervenor : Mr.M.Saravanakumar
Advocate in Crl.O.P.(MD)No.7214 of 2021

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

PRAYER :-

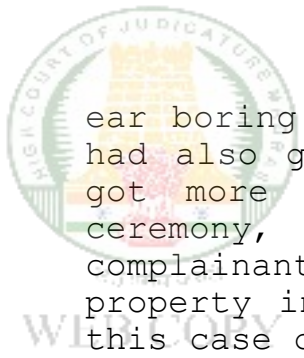
For Anticipatory Bail in Crime No. 344 of 2021 on the file of the respondent police

COMMON ORDER : The Court made the following order :-

The petitioner in Crl.O.P.(MD)No.5810 of 2021/sole accused, apprehending arrest at the hands of the respondent police for the alleged offence punishable under sections 420, 506(i), I.P.C., in Cr.No.7 of 2021 on the file of the respondent police, seeks anticipatory bail.

2. The petitioners in Crl.O.P.(MD)No.7214 of 2021/A.1 and A.2, apprehending arrest at the hands of the respondent police for the alleged offence punishable under sections 406 and 420 I.P.C., r/w 294(b) and 506(i) I.P.C., in Cr.No.344 of 2021 on the file of the respondent police, seek anticipatory bail.

3. The case of the prosecution in Crl.O.P.(MD)No.5810 of 2021 is that the defacto complainant is a Secondary Grade Teacher working in a Government Kallar Primary School for the last 13 years. He knew the accused Sundar, who is working in the Training Centre for the teachers functioning under the Chief Educational Officer, Theni. The defacto complainant's wife is Priya. The petitioner/accused Sundar lured the defacto complainant by stating that he would make arrangements for getting teacher job to his wife and he demanded Rs.70,00,000/- as first installment. Believing his words, a sum of Rs.70,00,000/- was paid on 24.01.2019 to the petitioner. As a security for that amount, the petitioner gave a cheque drawn on Canara Bank, Kodangipatti, bearing No.250982 for a sum of Rs.70,00,000/- in the name of Prabha - aunt of his wife Priya. The petitioner delayed in getting teacher job to his wife. One day he told the defacto complainant that he along with his brother was going to start a petrol bunk and he was going to be a silent partner. He demanded a sum of Rs.50,00,000/- for investing in the petrol bunk and promised to repay the amount within six months. Believing his words, the defacto complainant collected this amount from the teachers working with him viz., S.Gowri, V.Nalini and M.Vasanthavalli and adding his amount, he paid a sum of Rs.50,00,000/- to the petitioner. He promised to repay a sum of Rs.50,00,000/- from the money he would be got as "moi" during the



ear boring ceremony of his son, to be conducted on 28.02.2021. He had also given an undertaking letter dated 05.02.2021. Though he got more than Rupees one Crore as moi during the ear boring ceremony, he did not repay the amount received from the defacto complainant. He gathered information that the petitioner purchased property in the name of his father using this amount. Therefore, this case came to be registered.

4. The case of the prosecution in Crl.O.P.(MD)No.7214 of 2021 is that the first petitioner is known to the defacto complainant for the last ten years. He informed the defacto complainant that he was going to start a petrol bunk along with one person and asked the defacto complainant to be a partner in the said business. Believing his words, the defacto complainant gave him Rs.10,00,000/-, in four installments by giving Rs.7,00,000/- during January and February and Rs.1,00,000/- each subsequently in three installments. However, the defacto complainant was not included as partner. In spite of demanding the return of money, the petitioner Sundar did not return the amount. She read in the newspaper about the case in Cr.No.7 of 2021 registered by the District Crime Branch. Therefore, she visited the house of the first petitioner and the first petitioner was not there. When she asked his father/A.2 about the return of money, he scolded her in a filthy language and criminally intimidated her. Therefore, this case came to be registered.

5. The learned Counsel for the petitioners submitted that the petitioners are innocents and they have been falsely implicated in this case. The defacto complainant in Crl.O.P.(MD)No.5810 of 2021 is a money lender. There was money transaction between the defacto complainant Karuppasamy and the petitioner Sundar wherein he borrowed a sum of Rs.5,00,000/- from him and he gave huge sum as interest. In spite of paying the interest and interest on interest and principal amount, the defacto complainant Karuppasamy had not returned the documents given as security. Therefore, he gave a complaint to the Superintendent of Police, Theni on 16.10.2021. During enquiry, the defacto complainant Karuppasamy admitted the money transaction between them and gave an undertaking that he would initiate action through due process of law in the Court. However, he has not done that. The petitioner Sundar had also filed O.P.No.70 of 2021, on the file of the Subordinate Judge, Theni for the return of security documents available with the defacto complainant Karuppasamy. Karuppasamy had set up his friends and relatives to initiate several proceedings against the petitioner and his father. One such complaint is a complaint given by Tmt.Vijaya in Cr.No.344 of 2021. He produced the documents viz., a copy of the complaint given by the petitioner, a statement of the defacto complainant before the Inspector of Police, copy of the petition in O.P.No.70 of 2021 filed before the Subordinate Judge, Theni, legal notice to the father of the petitioner and a complaint to the



apart, he also produced a copy of notice dated 08.06.2021 and the reply sent by the petitioner on 17.06.2021.

6. The further submission of the learned Counsel for the petitioners is that the defacto complainant Karuppasamy is a teacher and he know pretty well that there is a recruitment process through separate Recruitment Board for recruiting teachers. There is no way that the recruitment process can be infiltrated and a job could be secured by spending Rs.70,00,000/-. Again nobody would pay a sum of Rs.50,00,000/- for joining as a partner or as a loan in a petrol bunk without executing any written document.

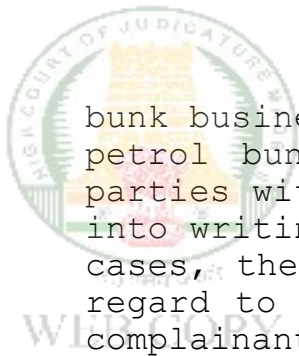
7. As already submitted, it is the case of the petitioners that due to some money transaction between the defacto complainant Karuppasamy and petitioner Sundar and inspite of paying amount with interest, the defacto complainant Karuppasamy, not satisfied with the amount received, had given false complaint and induced Tmt.Vijaya to give false complaint. Therefore, he seeks anticipatory bail.

8. The learned Counsel for the intervenor strongly opposes this petition on the ground that whatever allegations made in the criminal complaints are true. The petitioner Sundar got a sum of Rs.70,00,000/- for getting teacher job to the wife of the defcato complainant Karuppasamy. He had also borrowed Rs.10,00,000/- from the defacto complainant Vijaya for including her as a partner in a petrol bunk business. In this regard, the petitioner Sundar undertook to repay the amount and had executed an undertaking document dated 05.02.2021 in the presence of notary public. He produced copies of this document along with the copy of the notarial register. That apart, he produced a copy of the agreement dated 11.07.2018, a copy of the complaint dated 16.03.2021, a copy of the letter submitted by the petitioner on 16.03.2021, an extract of bank statement of the defacto complainant Karuppasamy.

9. The learned Additional Public Prosecutor appearing for the State opposes these petitions on the ground that the investigation in this case is pending.

10. Heard the learned Counsel for the petitioners, the learned Counsel for the intervenor and the learned Additional Public Prosecutor appearing for the State and perused the materials placed on record.

11. The allegation in Crl.O.P.(MD)No.5810 of 2021 is that the petitioner Sundar received a sum of Rs.70,00,000/- on the promise of getting teacher job to the defacto complainant Karuppasamy's wife Priya. He also received a sum of Rs.50,00,000/- for investing in a petrol bunk business. The allegation in Crl.O.P.(MD)No.7214 of 2021 is that the first petitioner received a sum of Rs.10,00,000/- to

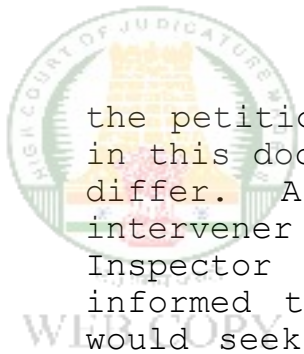


bunk business. Huge sums are involved in this case. Investing in a petrol bunk business, requires a basic understanding between the parties with regard to the terms of agreement. It has to be reduced into writing in the form of agreement or partnership deed. In both cases, there is no written agreement or partnership agreement with regard to the investment in the petrol bunk business. The defacto complainants claim that they invested the amount stated from them, only on the basis of friendship between them and the petitioner Sundar. It is very hard to believe that on the basis of friendship, the defacto complainant invested such a huge sum for starting / standing as a partner in a petrol bunk business, without any agreement or supporting document.

12. With regard to the payment of Rs.70,00,000/- for getting teacher job for defacto complainant Karuppasamy's wife Priya, he himself is a teacher as stated in the F.I.R. As rightly pointed out by the learned Counsel for the petitioners that there is a separate recruitment board for recruiting teachers. As a teacher, the defacto complainant Karuppasamy ought to know the selection process. The selection process normally would be based on the written test followed by interview. Only if a candidate comes through a written test and interview, there is a possibility of getting an appointment. It is nowhere stated in the F.I.R., as to whether the defacto complainant's wife Priya had undergone any such selection process and that she has participated in written examination and cleared it. There is no information on this.

13. As seen from the typed set of papers filed on behalf of the petitioners that the petitioner Sundar had already sent a complaint dated 16.03.2021 to the Superintendent of Police alleging that he already borrowed a sum of Rs.5,00,000/- from the defacto complainant Karuppasamy. In spite of returning this amount with interest, the defacto complainant Karuppasamy has not returned the unfilled promissory notes, cheque leaves, stamp papers given as security. When he demanded them, he was informed that he lost those documents and criminally intimidated. During enquiry of this complaint, it appears that the defacto complainant gave a letter of undertaking to initiate action through Court. In response to this complaint, the learned Counsel for the intervenor filed an undertaking affidavit alleged to have been executed by the petitioner Sundar, wherein it is alleged that the petitioner had undertaken to return the sum of Rs.1,20,00,000/-. This undertaking is dated 05.02.2021. There is also a reference about this undertaking in the F.I.R.

14. The learned Counsel for the petitioner seriously disputed the genuineness of the document alleging that the stamp paper for executing this undertaking agreement dated 05.02.2021 was purchased during July 2018. An old stamp paper was used for creating and fabricating this agreement by forging the signature of the petitioner Sundar. He also submitted that the notarial register was



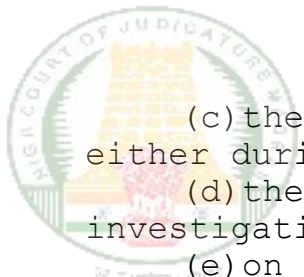
the petitioner. His further submission is that his signature found in this document and other documents filed by the intervenor totally differ. As pointed by the learned Counsel for the petitioner, the intervenor filed a letter written by the petitioner to the Sub-Inspector of Police, Palanichetti Police Station, wherein he informed the Sub-Inspector of Police, that the petitioner Sundar would seek remedy through Court of law with regard to the amount paid to the defacto complainant Karuppasamy. Apparently, the signature of the defacto complainant found in this letter and the undertaking agreement dated 05.02.2021 totally differ with each other. When there are photographs affixed for five persons in notarial register, photo of one Balammal is missing. Therefore, there is some substance in the submission of the learned Counsel for the petitioners that this undertaking affidavit dated 05.02.2021 might have been created for the purpose of this case.

15. The claim and counter claim with regard to giving money on the promise of getting teacher job, on the promise of induction into partnership, have to be established only through production of material documents and examination of witnesses. This aspect cannot be gone into deep while deciding anticipatory bail petition. There is a serious doubt created with regard to the genuineness of the claim made by the defacto complainant in both the cases. This Court is not inclined to comment anything on the merits of the case of the defacto complainant. It is suffice to say that there are some serious doubts and short falls with regard to the manner in which they alleged to have paid money to the petitioner Sundar. Since the allegations and counter allegations have to be proved only by oral and documentary evidence, this Court is of the view that the custodial interrogation of the petitioners is not necessary in both cases. In such view of the matter, both the petitions are allowed and the petitioners are granted anticipatory bail with certain conditions.

16. 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, Theni, 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 petitioner - Sundar shall report before the respondent police in Crl.O.P.(MD)No.5810 of 2021 daily at 10.30 a.m., and the petitioner-Murugan shall report before the respondent police in Crl.O.P.(MD)No.5814 of 2021 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/-

02/07/2021

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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, THENI.

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

3.THE INSPECTOR OF POLICE,
DCB, THENI THENI DISTRICT.

4.THE INSPECTOR OF POLICE,
THENI POLICE STATION, THENI DISTRICT.

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

+2. CC to Mr.R.SURIYA NARAYANAN Advocate SR.Nos.4304(I) & 21007(F)

ORDER IN

CRL OP(MD)Nos.5810 & 7214 of 2021

Date :02/07/2021

SSL

PK/MNR/SAR-V/06.07.2021 : 7P/8C

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