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

Reserved on	Pronounced on
28.06.2021	02.07.2021

PRESENT

The Hon`ble Mr.Justice G.CHANDRASEKHARAN

CRL OP(MD). No.7171 of 2021

Nagarajan ... Petitioner/Accused No.7

Vs

State Rep.by
The Inspector of Police,
Thirumangalam Taluk Police Station,
Thirumangalam, Madurai District.
Crime No.52/2021. ... Respondent/Complainant

Frances Amanda Murphy ... Petitioner/ Defacto Complainant
IN CRL MP(MD)No.4140 of 2021
IN CRL OP(MD)No.7171 of 2021

For Petitioner : Mr.R.R.Kannan,
Advocate.
For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor
For Intervenor : Mr.R.Anandharaj, Advocate

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 petitioner/A.7, apprehending arrest at the hands of the respondent police for the alleged offence punishable under sections 120(B), 201, 403, 406, 408, 420, 465, 468, 471, 506(i) I.P.C., and under Section 65 of Information Technology Act, 2000 in Cr.No.52 of 2021 on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution is that the defacto complainant is the founder of Teddy group of companies. She had established several companies/institutions. There are 500 employees working in these group of companies. In August 2009, Gavasker, son of Nagarajan of Thirumangalam, joined in the company as quality control

manager. After some time, he left the company. On 25.05.2013, he came back again and asked for a job. He was appointed as Manager of the company on 10.06.2013. He gained the confidence of the defacto complainant. The defacto complainant's daughters were studying at Kodaikanal to pursue their studies. Therefore, she also stayed with them in Kodaikanal. She convened a meeting on 16.05.2014 to find out a person to manage the company in her absence. The first accused Gavasker requested her to appoint him as General Manager and he promised to take care of the company. On the basis of faith and confidence on him, the defacto complainant appointed him as General Manager of the company on 19.06.2014. She gave him authorisation to withdraw money and operate bank accounts and manage the day to day affairs of the company. The company was running profitably when she handed over the management to Gavasker. In 2015, the defacto complainant decided to give education to her daughter at London and stay with her. When, she asked Gavasker as to whether he wanted any other person to take additional responsibility, he replied that he prepared to take all the responsibilities. Therefore, the entire responsibility of running 30 groups of company were given to Gavasker. From 10.06.2015 to 26.10.2019, she visited Tirumangalam 14 times and enquired about the company management. Gavasker showed her the income and expenditure of the company. She asked the company accountant Basker, statff Anandhi, store keeper Vijaya, Computer operator Jeganathan and the previous company auditor Meiyappan to verify the accounts and they told her that the accounts are correct. Therefore, she did not personally verify the accounts. She was informed my Shanmuganathan that Gavasker's father Nagarajan, brother Rohan, his wife Priyadarshini and relatives used to come to the company often. When she enquired Gavasker about that, he told that they came to meet him. The defacto complainant did not take this seriously. On return from London on 30.10.2019, the company security Sivaprakash reported that the accused Gavasker forged documents and misappropriated several crores from the company. He also purchased several properties in the name of his relatives from the year 2014-2019. The company auditor Meiyappan, Company accountant Baskar, Anandhi, store keeper Vijaya, computer operator Jegan, Arasi, Parimalam, contractor Sekar, Gavaskar's father Nagarajan, his wife Piyadarshini, brother Rohan, Rohan's wife Vijayalakshmi, his mother Sumathi and his mother-in-law Laila rendered assistance to Gavasker and colluded with him for committing offence. On enquiry, she found that the income tax return has not been filed for the financial year 2018-2019. The auditor did not give proper details. Therefore, she asked another auditor Manian to verify the accounts of the company from the year 2014-2019. As per the report given by him on 05.11.2019, it came to light that Gavasker, by fabricating the documents, misappropriated the company's money to the tune of Rupees Fifteen Crores and more. He had obtained a loan of Rupees Three Crores from the bank by showing the fixed deposits amount stood in the name of the company. He withdrew the fixed deposits amount stood in the name of the Teddy Exports and in the name of the defacto complainant's children. He paid the debt borrowed by him by using the fixed deposit amount by creating forged document. On verification of the bank account for the year 2014-2019, it is seen that Gavasker withdrew a sum of Rupees Two Crores and Seventy Two Lakhs in his name and misappropriated the money. Likewise, he also embezzled more than Rupees Two Crores under the pretext of construction of building. School fees paid the students to the tune of Rupees Two Crores and Thirty Eight Lakhs for the year 2016-2019 had been misappropriated by Gavaskar in collusion with the accountant Arasi and school incharge Parimalam. He sold the company guest house at Iyer bungalow for Rupees Eighty Lakhs. Out of furniture worth of Rupees Two Crores and Seven lakhs, only the furniture worth about Rupees Sixty Five Lakhs have been sold and accounted. The remaining furniture worth about Rupees Two Crores and Seven Lakhs was sold by Gavaskar without bringing into account. He also sold the company goods on lesser amount and cheated to the tune of Rupees One Crore and Sixty lakhs. He also sold ten vehicles belonging to the company. Totally from the year 2014-2019, Gavasker in connivance with other staff members and his relatives had misappropriated and embezzled Rupees Fifteen Crores and more, from the defacto complainant. Therefore, this case came to be registered.

3. The learned Counsel for the petitioner submitted that the petitioner is innocent and he has been falsely implicated in this case. Even prior to the first accused joining in the company of the defacto complainant, this petitioner was running industries and owning properties. Whatever the properties purchased in his name, were purchased only from the money generated from his own business. He is no way involved in the alleged cheating and misappropriation of money from the companies of the defacto complainant. The remaining accused had either been granted bail or anticipatory bail. There is no requirement for his custodial interrogation. Therefore, he seeks anticipatory bail.

4. The learned Counsel for the defacto complainant opposes this petition on the ground that the petitioner, as the father of the main accused Gavasker had actively participate in the cheating and misappropriation committed by the first accused and by using that money, several properties were purchased in the name of this petitioner and other relatives. Therefore, he prays for dismissal of this petition.

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

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

7. From the submissions made and from the documents produced, it is seen that the case of the prosecution is the petitioner's son Gavasker was employed as General Manager in Teddy group of companies. The defacto complainant had taken a break from day to day administration of the case, for the reason that she had to be with her daughters at Kodaikanal and then at London to support their studies. During that period, when the defacto complainant was not in managing the day to day affairs of the companies, taking advantage of the faith and confidence shown on Gavasker, he had cheated and misappropriated the company accounts to the tune of Rupees Fifteen Crores and add. Using that money, it is alleged that the properties had been purchased in the name of his father and other close relatives. However, this case of prosecution is denied by the petitioner alleging that the petitioner is a businessman and earning handsome income through his business. Whatever the properties he had purchased, they were purchased using his business income and raising loan. It is further submitted that the prosecution has not produced any positive evidence to show how and in what manner, the accused had cheated the defacto complainant and misappropriated the money. Except this petitioner, other accused had either been released on bail or anticipatory bail and the investigation is almost completed.

8. The petitioner and the defacto complainant filed typed set of papers containing various documents in support of their case. The petitioner filed documents to show the registration K.Regupathi Ammal Water Sysem, Alagarsamy and Brothers, K.Regupathy Ammal Ginning Factory. He produced these documents to show that he is in one or other way involved in running all these business. he has also filed sale deeds in the name of A.1 and others to show that those sale deeds had been executed by paying money from their independent source. There is no iota of any evidence that sale considerations in these sale deeds were paid from the misappropriated amount. He has also filed documents in the name of the defacto complainant with regard to purchase of property and fixed deposits owned by the defacto complainant and the income tax returns and other property details of the defacto complainant.

9. On behalf of the intervenor/defacto complainant, certain documents like documents relating to Sri Regubathi Creations, relaing to payments of water bills relating to Regubathiammal water systems and income tax returns relating to Gavasker, had been produced. Both parties have produced documents in support of their case. However, both questioned and challenged the veracity of the documents. The genuineness of these documents has to be decided only on the basis of documentary evidence, supported by oral evidence. In a petition for considering the anticipatory bail, the proof of these documents cannot be considered. It is a matter for trial.

10. The status report filed by the respondent police shows that they had examined 10 witnesses. A.1, A.2 and A.5 were already released on bail and except the petitioner, other accused were granted anticipatory bail. A specific overt act against the petitioner is that taking advantage of the cheque of the defacto complainant's company, money had been transferred and withdrawn by A.7 and his family members. Several properties had been purchased in the name of the family members of the accused.

11. As already stated, the transaction of money and purchase of properties, the consideration of purchase of properties, as to whether it was the money alleged to have been misappropriated from the defacto complainant or it was the personal money of the persons concerned, have to be proved only by examining the concerned witnesses and marking relevant documents. Considering the fact that all the other accused had either been released on bail or anticipatory bail and the fact that the substantive part of the investigation is completed, this Court is of the considered view that this case has to move to next stage. Only if the investigation is completed, the case can move to next stage. Though this case was registered on 21.02.2021, the police has not taken any effective steps to arrest the petitioner. Therefore, this Court is of the considered view that the anticipatory bail can be granted to the petitioner with a direction to co-operate with the Investigating Officer for completing the investigation and making this case ready for trial. In such view of the matter, this Court is inclined to grant anticipatory bail to the petitioner, with certain conditions.

12.Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance before the Judicial Magistrate, Thirumangalam, Madurai District, within a period of fifteen days from the date of receipt of a copy of this order, on his executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the said Magistrate and on further condition that:

[a] the petitioner 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 shall report before the respondent police daily at 10.30 a.m., until further orders.

[c]the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner 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 petitioner in accordance with law as if the conditions have been imposed and the petitioner 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].**

[f] If the accused/petitioner thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-
02/07/2021

/ 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 DISTRICT.

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 M/s.RR.KANNAN, Advocate (SR-4310[I] dated 02/07/2021)

ORDER
IN
CRL OP(MD) No.7171 of 2021
Date :02/07/2021

SSL
MS/VR/SAR-3/06.07.2021/6P.6C