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

Date : 01/07/2021

PRESENT

The Hon`ble Mr.Justice G.CHANDRASEKHARAN

CRL OP(MD). No.7104 of 2021

Anthoniraj ...Petitioner/Accused Rank No.1

Vs

The State rep.by
The Sub Inspector of Police,
(*)Sivakasi East Police Station,
Sivakasi,
Virudhunagar District.
(Amended as Per Order of this Court dated 24/06/2021 in CRL MP(MD)No.4249/2021 in CRL.OP(MD)No.7104/2021 by GCSJ).
... Respondent/Complainant

For Petitioner : Mrs.S.Alagusundar, Advocate.

For Intervener : M/s.M.Vijayarathinam, Advocate

For Respondent : Mr.Antony Sahaya Prabhakar,
Additional Public Prosecutor

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

PRAYER :-

For Anticipatory bail in Crime No. 212 of 2021 on the file of the respondent police

ORDER : The Court made the following order :-

The petitioner, who apprehends arrest at the hands of the respondent police for the alleged offences punishable under Section 420 of IPC in Crime No.212 of 2021, seeks anticipatory bail.

2.The case of the prosecution is that the defacto complainant is an Advocate living in Srivilliputtur. She planned to start a jewellery shop in the name of her father, B.Rajagopal as S.R.Naidu Jewellers at Chinnakadai Bazaar, Srivilliputtur. One Anthoniraj of Thiruvannamalai area approached her through one Kannan, who was the broker supplying gold jewels to the jewellery shop. She visited Anthoniraj on 14.04.2021 and discussed about the details. At that time, her father Rajagopal, her step father, Maheswran and the broker Kannan were with her. Anthoniraj told them that he would give 2 kgs of gold jewels and demanded Rs.16,00,000/- as advance. He had also shown his Aadhar Card and Pan Card as proof. He undertook to supply gold jewels worth of Rs.83,00,000/- through one Annamalai Aasari on or before 29.04.2021, after paying GST. However, she received an invoice through the phone of Anthoniraj for Rs.1,34,39,000/- as if that invoice was sent by Annamalai Aasari. There was no reference about GST number. Therefore, the defacto complainant got suspicious over him. She had deposited Rs.16,00,000/- to the account of Anthoniraj in three installments as RS.5,00,000/-, Rs.5,00,000/- and Rs.6,00,000/-. When she demanded her money back, he returned Rs.6,00,000/- on 30.04.2021. The defacto complainant understood that the petitioner is indulging in gold smuggling and he is not an authorised seller. Therefore, this case came to be registered.

3.The learned counsel for the petitioner submitted that the petitioner is an innocent person and he has been falsely implicated in this case. It is his submission that the defacto complainant and her step father are advocates, who are highly influential persons. The defacto complainant received gold jewels from the petitioner worth of Rs.52,00,000/- and Rs.6,00,000/- for opening jewellery shop. But, she did not pay the money. The petitioner sent an online complaint to the Superintendent of Police, Virudhunagar on 08.05.2021. To escape from that complaint, this complaint has been lodged. However, he submitted that to show his bonafide, the petitioner is willing to deposit a sum of Rs.10,00,000/- in this case for it being disposed of on merits. The petitioner filed an affidavit in that regard.

4.The learned counsel for the intervener opposes this petition on the ground that the petitioner had cheated her.

5.The learned Government Advocate(Crl.side) appearing for the respondent police opposed this petition on the ground that the investigation is pending.

6.A perusal of the FIR allegation shows that the defacto complainant alleged to have given Rs.16,00,000/- to the petitioner for supplying gold jewels. Even as per the allegation made in the FIR, out of the said amount, Rs.6,00,000/- was already paid to the defacto complainant. FIR allegation shows that she only requested Rs.10,00,000/- to be recovered from the petitioner. Now, the petitioner shows his bonafide by depositing Rs.10,00,000/- in this case. To that effect, the petitioner has filed an affidavit and it is placed on record. Therefore, without going into merits of the case, this Court is is inclined to grant anticipatory bail to the petitioner.

7.Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his 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, Srivilliputhur, Virudhunagar District, on condition that the petitioner shall execute 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 respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further conditions 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 is directed to deposit a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to the credit of Crime No.212 of 2021 before the learned Judicial Magistrate No.II, Srivilliputhur, Virudhunagar District, within a period of two weeks, without prejudice to his rights and contentions before the trial Court and produce the receipt/acknowledgment before the concerned Court while executing sureties;

[c]the petitioners shall report before respondent police daily, at 10.30 am., 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 petitioner 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].**

[g]If the accused thereafter abscond, a fresh FIR can be registered under Section 229-A IPC.

8.The learned Judicial Magistrate No.II, Srivilliputhur, Virudhunagar District is directed to deposit the amount in an interest bearing Account in any Nationalised Bank and pass appropriate orders with regard to the disbursement of this amount, at the conclusion of trial, either the order of paying this amount to the defacto complainant or to the petitioner, on the basis of the merits of the case.

sd/-
01/07/2021

/ 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 No.II,
SRIVILLIPUTHUR, VIRUDHUNAGAR DISTRICT.

2.DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

3.THE SUB INSPECTOR OF POLICE,
SIVAKASI EAST POLICE STATION,
SIVAKASI, VIRUDHUNAGAR DISTRICT.

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

+1 CC to M/s.M.VIJAYARATHINAM, Advocate (SR-4295[I] dated 02/07/2021

ORDER
IN
CRL OP(MD) No.7104 of 2021
Date :01/07/2021

SM
TK/VR/SAR.2/05.07.2021/4P/6C