



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

Reserved on	Pronounced on
05.07.2021	09.07.2021

PRESENT

The Hon`ble Mr.Justice G.CHANDRASEKHARAN

CRL OP(MD) . No.7586 of 2021

Thankapandiyan

... Petitioner/Accused No.2

Vs

The State rep.by
The Inspector of Police,
C.B.C.I.D, Nagercoil, Kanyakumari District.
Crime No. 4 of 2020.

... Respondent/Complainant

Dravied

... Intervener/Defacto Complainant
in CRL MP(MD)No.4061 of 2021 in
CRL OP(MD)No.7586 of 2021

For Petitioner : Mr.R.Anand,
Advocate.

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

For Intervenor : Mr.S.Poornachandran, Advocate

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :- For Bail in Crime No.4 of 2020 on the file of the
Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A.2, who was arrested on 30.06.2020 for the
offences punishable under Sections 420, 406, 465, 467, 471, 384,
506(i), 120B, 109 r/w Section 34 I.P.C., and Section 4 of the Tamil
Nadu Prohibition of Charging Exorbitant Interest Act, 2003, in
Cr.NO.4 of 2020, on the file of the respondent police, seeks bail.



2. The case of the prosecution is that the defacto complainant and A.1 were friends and A.1 is a money lender. In April 2018, the defacto complainant borrowed a sum of Rs.1,00,000/- from A.1 and repaid the same in May 2018. Thereafter, in the month of June, the defacto complainant borrowed a sum of Rs.2,00,000/- from A.1 by giving one cheque and his two wheeler as security. The defacto complainant paid the interest regularly and during August 2018, he paid the loan amount and requested A.1 to return his two wheeler. At that time, A.1 informed that there is due in payment and refused to return the two wheeler. Later he came to know that the ownership of the two wheeler was changed into the name of A1, with the connivance of this petitioner and other accused, without consent from the defacto complainant. Hence, the present case came to be registered.

3. The learned Counsel for the petitioner submitted that the petitioner is innocent. He has been falsely implicated in this case for the reason that he is the father of the first accused Kasi. He was no way involved in any of the offence alleged by the defacto complainant either connected with this case or other cases. But the police, with a view to harass him and to see that his son and the accused Kasi could not get any legal assistance, had also implicated him in all the cases, where his son Kasi is an accused. The co-accused in this case had already been granted anticipatory bail. This case has to be considered independently and should not be clubbed with the allegations made against the first accused Kasi. So saying, the learned Counsel for the petitioner prays for bail to the petitioner.

4. The learned Counsel for the intervenor strongly opposes this petition on the ground that in this case, the trial is pending and this petitioner and other accused had deliberately protracting the trial by not cross-examining the witnesses. Not only that, during the pendency of this case, the associates of the petitioner abused him and criminally intimidated the defacto complainant by insisting him to withdraw the case against the petitioner and his son. In this regard, a complaint was lodged before the Kottur police station and the F.I.R., has been registered in Cr.No.882 of 2020 for the offences under Section 341, 506(i), 195-A I.P.C., and the same is pending for investigation. Again on 08.12.2020, two advocates and two other persons abducted him and brought him to the chamber of advocate Udhayakumar and all of them threatened the defacto complainant and sought signature in the blank papers. They also insisted the defacto complainant to withdraw the case against the petitioner, or else he would be eliminated. The defacto complainant gave a complaint and on the basis of that complaint, F.I.R., in Cr.No.646 of 2020 for the offences under Sections 147, 294(b), 406, 365, 468, 323, 506(i) I.P.C., was registered by Vadaseri Police Station. Therefore, the learned Counsel for the defacto complainant submitted that the conduct of the accused shows that their only aim is to derail this case. The defacto complainant



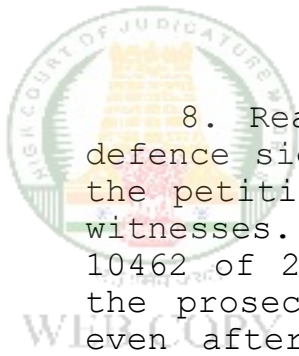
apprehends threat to his life. Therefore, the learned Counsel for the defacto complainant seeks dismissal of this petition.

5. The learned Additional Public Prosecutor also opposes this petition on the ground that the trial had been completed. Due non-cooperative attitude shows by the accused in this case, the trial process could not reach its finality. Therefore, he seeks dismissal of this petition.

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. This is the second bail petition filed by the petitioner. When the matter came up for last hearing, this Court directed the learned Judicial Magistrate No.III, Nagercoil to submit a report stating the reasons for pendency of this case. It is seen from the report of the learned Judicial Magistrate No.III, Nagercoil that the case in C.C.No316 of 2020, on the file of the Judicial Magistrate No.I, Nagercoil was transferred to the Judicial Magistrate No.III, on 25.01.2021 at the stage of defence side evidence. The case was taken on file as C.C.No.28 of 2021 in the Judicial Magistrate Court No.III, Nagercoil on 29.01.2021. The accused 1 and 2 engaged private advocates of their choice by relieving the Legal Aid Counsel. However, they did not file any petition for recalling the prosecution side witness as ordered by this Court in Crl.O.P.(MD) Nos.9988 and 10462 of 2020. The accused 1 and 2 filed an application seeking the Court to order denovo trial in Crl.M.P.Nos.808 and 809 of 2021. On 24.02.2021, enquiry was conducted in these two petitions and they came to be dismissed on 03.03.2021. There was no representation for the accused 1 to 3 on 16.03.2021 and the case was adjourned to 25.03.2021 for defence side evidence. On 25.03.2021, the accused 1 and 2 filed a copy application for getting orders in Crl.M.P.Nos.808 and 809 of 2021 for filing revision before this Court and copies were granted and the Court granted time till next hearing for filing recall petitions for recalling prosecution witnesses as ordered by this Court. On 07.04.2021, the accused 1 and 2 were produced through video conference and the third accused was personally present. The case was adjourned to 20.04.2021 and it was informed by the prosecution that the accused 1 and 2 have filed revision against the orders made in Crl.M.P.Nos.808 and 809 of 2021. When the accused 1 and 2 were produced through video conferencing on 30.04.2021, the Counsel for A.2 filed a memo informing about the filing of a revision petition. Subsequently on 12.05.2021, it was informed that order has been reserved in the revision petition filed before this Court in Crl.M.P.Nos.9673 and 9675 of 2021. It is finally submitted that though the case is posted for defence side witness, the accused have not proceeded to commence defence side witness. That apart, due to

<https://hccs.echam.in/hccs/> is a delay in disposal of this case.



8. Reading of this report shows that the case is pending for defence side evidence. However, the accused in this case including the petitioner have not taken any steps for producing defence side witnesses. It was ordered by this Court in Crl.O.P.(MD)Nos.9988 and 10462 of 2020 that the accused in this case are entitled to recall the prosecution witnesses for cross-examination. It appears that even after transfer of this case from Judicial Magistrate No.I, Nagercoil to Judicial Magistrate No.III, Nagercoil, the accused including the petitioner have not taken any steps for recalling the prosecution witnesses. Instead, the accused 1 and 2 filed a petition for denovo trial and after the dismissal of the petition seeking denovo trial, they again approached this Court by way of revision and it is reserved for orders. The conduct of the accused in this case including the petitioner shows that they are not interested in facing the trial and its result.

9. It is seen from the submissions made by the learned Counsel for the defacto complainant that during the pendency of this case, he was criminally intimidated and threatened to withdraw this case. He also apprehends threat to his life from the accused in this case. It appears that the petitioner, who is the father of A.1 is knowingly or unknowingly assisted and helped his son A.1 in all his illegal activities. Of course, this is a matter for trial and this Court does not want to go deep into the issue, while considering the bail petition. As of now, there are materials to implicate this petitioner for his role in this case and the subsequent threat said to have been made to the defacto complainant for withdrawing this case. The defacto complainant apprehends threat to his life. Taking into all these factors into consideration, this Court is of the considered view that the petitioner is not entitled for bail at this stage. Accordingly, this Criminal Original Petition is dismissed.

sd/-
09/07/2021

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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. THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI,
TAMIL NADU DISTRICT.

<https://hcservices.gov.in/>



2.THE INSPECTOR OF POLICE,
C.B.C.I.D NAGERCOIL, KANYAKUMARI DISTRICT.

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

+1 CC to Mr.C.JOSEPH SATHIANESON, Advocate (SR-4447[I] dated
09/07/2021)

ORDER
IN
CRL OP(MD) No.7586 of 2021
Date :09/07/2021
(1/2)

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AE/JC/SAR-II/13.07.2021/5P/5C