BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 01/08/2021
PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI
CRL OP(MD) No.10698 of 2021

Thankapandiyan ... Petitioner/Accused No.2

Vs

The State Represented by
The Inspector of Police,
C.B.C.I.D.,
Nagercoil,
Kanyakumari District.
[Crime No.4 of 2020] ... Respondent/Complainant

For Petitioner : Mr.C.Emalias for Mr.P.T.RAMESHRAJA, Advocate.
For Respondent : T.Senthil Kumar, Government Advocate (Crl.Side)
For Intervenor : Mr.Poornachandran

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 was arrested in connection with Crime No. 4 of 2020 on the file of the Inspector of Police CBCID, Nagercoil, Kanyakumari District and remanded into judicial custody moved this bail application for grant of bail.

2.The case of the prosecution is that on 27.04.2018 the defacto complainant has received rupees one lakh as loan from the 1st accused, who is the son of this petitioner for interest and the 1st accused has collected a Federal Bank Cheque and the defacto complainant's two wheeler namely Harley Davidson Bike bearing Registration No.TN 74 AW 0009, worth about Rs.5,40,030/-. On 14.05.2018 itself the entire loan amount was repaid and the defacto complainant got back the given cheque and the two wheeler. Again the defacto complainant on 30.05.2018 borrowed Rs.2,00,000/- from the 1st accused, on production of cheque and two wheeler. Since the defacto complainant did not pay the interest, the 1st accused insulted and threatened the defacto complainant on 27.07.2018 in a hotel. On 22.08.2018 the petitioner paid the loan amount of Rs.2,00,000/- and paid Rs.62,500/- towards interest for 41 days. When the defacto complainant had demanded to hand over the cheque and the two wheeler, he was threatened. The petitioner and the 1st accused conspired and the petitioner approached the collection manager of HDFC Bank one Muthuvel Raja for third party settlement. It is the further case of the prosecution that the defacto complainant by obtaining Rs.4,50,000/- as loan from HDFC has purchased the vehicle, but he has committed default in repayment of the loan and therefore, the bank has agreed for 3rd party settlement and the 1st accused has settled the balance amount incurred by the defacto complainant and no objection certificate was issued to the 1st accused. The 1st accused without the knowledge of the defacto complainant along with the 3rd accused forged the document and fabricated documents and transferred the two wheeler in the name of the 1st accused.

3.The learned Counsel for the petitioner submits that the defacto complainant lodged a complaint before the Inspector of Police, Vadasery Police Station and it was registered in Crime No.316 of 2020. There is no allegation against this petitioner in the complainant. Even in the statement recorded under Section 161(3) CrPC there is no allegation as against the petitioner. Even in the statement of the Legal Manager of HDFC Bank and the RTO, Nagercoil there is no allegation as against this petitioner. He further submits that the above statements reveal that the defacto complainant had committed default in repaying the loan amount and the bank has permitted the third party settlement and no objection certificate was issued. Further the settlement notice dated 29.08.2019 of the Bank reveals that on the request of the defacto complainant, the due was reduced to Rs.1,05,000/- as one time settlement. At this stage, the investigation was transferred from the file of the Vadasery Police Station to CBCID and in order to prevent the effective legal assistance by the petitioner to the 1st accused and in order to corner the 1st accused, the CBCID police purposefully implicated the petitioner in the case by creating further 161 CrPC Statements from the defacto complainant and other witnesses.

4.The learned Counsel further submits that admittedly the defacto complainant Dravid purchased two wheeler under finance from HDFC Bank and committed default in repayment. According to the Bank concerned, the defacto complainant has not paid 20 EMIs and for recovery of the same, the bank has initiated proceedings in C.C.No.643 of 2019 before the learned Judicial Magistrate No.1, Trichy against the defacto complainant's father/ co-applicant. While so, one time settlement was arrived and thereafter only the amount was settled and NOC was issued by the bank concerned. The facts are suppressed by the defacto complainant in the FIR and in order to safeguard his father, the petitioner has lodged this false complaint. The defacto complainant did not array the Bank as an accused. The entire investigation has been focused on the petitioner and as per the confession of the third accused, he has forged his two wheeler (Yamaha Alpha) R.C.book, as if it is an R.C.Book of the Harley Davidson and changed the vehicle ownership from the name of the defacto complainant to the name of the 1st accused. Therefore, only the third accused created forged document and presented the same before the authority concerned and the third accused was enlarged on bail by this Court in Crl.O.P(MD)No.9172 of 2020 on 10.09.2020.

5.The learned Counsel further submits that the trial Court conducted the case in a hurried manner and local Bar Association passed a resolution against the petitioner and therefore, they moved transfer petition in Crl.O.P(MD)No.9988 of 2021 to transfer the case to the other district and on 15.10.2020, this Court transferred the case from the Judicial Magistrate Court No.1 Nagercoil to the Judicial Magistrate Court No.III, Nagercoil and permitted the petitioner to file recall petition for the purpose of cross examination of the witnesses. However, the petitioner moved an application in Cr.M.P.No.808 of 2021 for denova trial before the learned Judicial Magistrate No.III, Nagercoil and the same was dismissed on 03.03.2021. As against the same, the petitioner filed a revision in Crl.R.C(MD)No.321 of 2021, wherein interim order of stay was granted on 01.07.2021.

6.The learned Counsel also submitted that apart from the allegation of fabricating the documents in Crime No.4 of 2020, in all other cases, the allegation as against the petitioner is that he tampered the evidences available in the laptop of A1. But the statement of the Assistant Director of Computer Forensic Division, Forensic Science Department, Chennai under Section 161(3) of CrPC shows that none of the video contents of the laptop and i-phones belonging to A1 has been tampered with by the petitioner and the entire data was cloned for the purpose of investigation. Moreover, the petitioner has studied only upto 5th standard and he is not familier with the gadgets to tamper the evidence. Therefore, the petitioner with the minimum educational qualification could neither operate an i-phone or a laptop. The petitioner is 65 years old man and having multiple ailments and 50% disability with kneecap displacement in his both legs, having been in custody from 30.06.2020 for the past 395 days, his health is deteriorating. During July 2020 while the petitioner was in judicial custody, the petitioner affected by Covid-19 and was admitted in Asaripallam Medical College. Again he was admitted in Tirunelveli Medical College from 28.01.2021 to 06.02.2021 for diabetics and other complications. He is also suffering from BPPV disorder and is taking daily 3 insulin injections for his irregular blood sugar at Prison hospital.

7.The learned Government Advocate (Crl Side) appearing for the respondent police submitted that defacto complainant Dravid paid the entire borrowed amount to A1 Kasi and requested to return the bike and cheque. But A1 Suji demanded more interest and did not return the bike and cheque. In the meantime, the Collection Manager of HDFC Bank Manager, Muthuvel Raja conducted a search procedure and found that the bike was found with A1 Kasi. The HDFC collection Manager Muthuvel Raja initiated legal action in this regard and the petitioner and A1 Kasi approached the HDFC bank and on the compulsion of A1 Kasi and this petitioner the bank reduced the amount and agreed for payment Rs.1,05,000/- and cleared the due through third party settlement. The petitioner Thangapandian obtained NOC in the name of Dravid, without his knowledge and signed in the customer cum acknowledgement receipt form. When the defacto complainant demanded to hand over the bike and the cheque, the petitioner threatened that "already you gave a blank cheque to us and it will be filled as Rupees Ten Lakh and file a case against you". A1 also threatened the defacto complainant. A1 and this petitioner forged the signature of Dravid in RTO application form and produced fake RC book instead of original RC Book of the Harley Davidson Bike and the application was submitted for cancellation of hypothecation to the RTO Office, Nagercoil with the help of one tout Narayanan, the third accused, who has forged the authentication letter and received the hypothecation cancelled RC book from the RTO Office and then produced the fake documents with forged signature to the RTO office and got the RC book transferred in the name of A1 Kasi.

8.The learned Government Advocate (Crl Side) submits that even though the petitioner is in judicial custody, through his associate he threatened the defacto complainant Dravid and attempted to tamper the witnesses. On the complaint of the defacto complainant Dravid (PW1), another case was also registered as against this petitioner and his son Kasi A1/ on 28.08.2021 in Crime No.882 of 2020 on the file of the Kottar Police Station for the offence punishable under Sections 341, 506(i) and 195 (A) IPC. Again on 15.12.2020 at the instance of this petitioner and his son Kasi, Jeya Vikraman, Advocate Agastheeswaran, Advocate Balai and four known persons kidnapped the defacto complainant and threatened him, tampered the witnesses and in this connection, another case was registered in Vadasery Police Station in Crime No.646 of 2020, under Sections 147, 294 (b), 406, 365, 468, 323 and 506 (i) IPC. He further submits that though final report was filed in this case and witnesses were examined, the petitioners/accused are protracting the trial without examining the witnesses and if he is released on bail, then there is every possibility of the petitioner tampering the witnesses. A1 Kasi had cheated several girls, captured videos, when they were in a compromising position and by using the same, threatened the victims and continued his illegal activities. The investigation reveals that more than 120 such girls have been exploited by A1. In that case also, from the laptop of A1, they have retrieved more than 1900 full and half nude photographs of women and above 400 videos and this laptop was concealed by this petitioner and the same was recovered from him by the investigation agency. The petitioner, the father of A1 knowingly or unknowingly helped his son in all his illegal activities and this is a matter for trial. As of now, there are materials to show that the petitioner has attempted to conceal the evidence as against the petitioner's son and also attempted to threaten the witnesses. This is the 6th bail petition and considering the nature of allegation as against the petitioners, the earlier bail applications were dismissed by this Court.

9.This Court paid its anxious consideration to the rival submission and perused the materials placed on record.

10.The petitioner was arrested and remanded into judicial custody on 30.06.2020. He is in judicial custody for more than 400 days. The case in Crime No.4 of 202 was registered on 29.04.2020 and after investigation, the investigation agency has also filed the final report before the learned Judicial Magistrate.I and the same was taken on file in C.C.No.316 of 2020, copies were furnished to the accused on 12.08.2020 and charges were framed on 14.08.2020. The trial also commenced and the witnesses were also examined. The petitioner's side advocate did not cross examine the witnesses. The petitioner filed an application for transfer of the case from the learned Judicial Magistrate No.I, Nagercoil and this Court by order dated 15.10.2020 in Crl.O.P(MD)Nos.9988 and 10462 of 2020 transferred the investigation from the file of the learned Judicial Magistrate No.I, Nagercoil to the learned Judicial Magistrate No.III, Nagercoil and permitted this petitioner and A1 to recall the witnesses for the purpose of cross examination. Though the case was transferred, the petitioner has not cross examined the witnesses. The petitioner and the other accused have not taken any steps to cross examine the witnesses. Instead they filed an application for denova trial and the same was dismissed by the learned Judicial Magistrate No.III, at Nagercoil in Cr.M.P.Nos.808 and 809 of 2021, dated 03.03.2021 and as against the same the petitioner along with his son A1 has filed a revision in Crl.R.C(MD)Nos.316 and 321 of 2021 before this Court and obtained an order of interim stay on 01.07.2021.

11.Though the witnesses were examined, the petitioner and the other accused are not allowing the trial to proceed further. The allegations against the petitioner's son are serious in nature and there are incidences of threat to the witnesses, even when they are in judicial custody and subsequent complaints have also been registered.

12.Considering the serious allegations against A1 Kasi and the nexus of this petitioner with A1, the earlier incidence of threat to the witnesses and the conduct of the petitioner and other accused in not cross examining the witnesses, the earlier bail applications of the petitioner, even after filing of the final report were dismissed by this Court with elaborate discussion and now there is no change in circumstance and therefore, this Court is not inclined to grant bail to the petitioner.

13.In the result, this petition is dismissed.

sd/-
01/09/2021

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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.

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.P.T.RAMESHRAJA, Advocate SR.No.5874

ORDER
IN
CRL OP(MD) No.10698 of 2021
Date :01/09/2021

SS/JC/SAR-IV/06.09.2021 : 6P/5C