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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 23/03/2021

PRESENT

The Hon'ble Mr.Justice M.NIRMAL KUMAR

CRL OP (MD) . No.15824 of 2020

and

CrI.O.P. (MD) No.2541 of 2021

Pappa ... Petitioners/Accused No.3
in CRL OP (MD) No.15824/2020

M.Raju ... Petitioners/Accused No.1
in CRL OP (MD) No.2541/2021

Vs

The State Rep. by
The Inspector of Police,
District Crime Branch,
Tirunelveli District.
Crime No. 07 of 2020.

... Respondent/Complainant
in both the petitions

Ram Prasath ... Petitioner/Intervener/
Defacto Complainant
in CRL MP (MD) No.49/2021
in CRL OP (MD) No.15824/2020

In both the Petitions:

For Petitioners : Mr.V.Palaniappan
for Mr.Susi Kumar.C, Advocate
For Respondent : Mr.M.Chandrasekaran,
Additional Public Prosecutor
For Intervenor : Mr.V.Prakash, Senior Counsel
for Mr.P.Samuel Gunasingh

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

PRAYER :-

For Anticipatory Bail in Crime No.07 of 2020 on the file of the
respondent police.

**COMMON ORDER :**

The petitioner in Crl.O.P.(MD).No.15824 of 2020 has been arrayed as A3 and the petitioner in Crl.O.P.(MD).No.2541 of 2021 has been arrayed as A1 and both are mother and son. Totally four accused in this case, in which, A2 is the father of A1, A4 is the wife of A1. Both A2 and A4 were granted anticipatory bail by this Court.

2. The case of the prosecution is that the first accused borrowed a sum of Rs.3,00,00,000/- from the defacto complainant on various dated for his business. Since he was unable to pay the amount the defacto complainant agreed settle the issue by payment of Rs.40,00,000/- as one time settlement. Pursuant to which an agreement was entered into between the defacto complainant and the first accused on 15.02.2020 in the office of the respondent. It is further alleged that the defacto complainant has not paid any amount as per the undertaking, for which the present case has been registered.

3.The learned counsel for the petitioner would submit that the defacto complainant has lodged a complaint on 13.01.2020, in which, it is averred that the petitioner/A1 had borrowed a sum of Rs.2 Crores on various dates from 25.01.2018 to 09.01.2019 from the defacto complainant through bank transaction for his business purpose and has agreed to return the same to the tune of 4% on the investment and the same shall be paid every month till the repayment of the entire investment. Contrary to the undertaking, the petitioner has not taken any steps to do so. Hence, on 13.01.2020, the defacto complainant has lodged a complaint before the Additional Superintendent of Police, Cheranmahadevi Police Station, Tirunelveli, and another complaint has been lodged before the Deputy Superintendent of Police, Cheranmahadevi, on 20.01.2020. Thereafter, the petitioner has filed a Civil Suit in O.S.No.10 of 2020 seeking for interim injunction. Thereafter, the respondent police had issued summons to the petitioners to appear before the Inspector of Police, District Crime Branch, Tirunelveli. Thereafter, the petitioners and the defacto complainant have entered into an agreement to settle the issue and the amount has reduced from Rs.2 crores to Rs.40 lakhs and the petitioner agreed to repay a sum of Rs.40 lakhs to the defacto complainant, in which, the agreement has been clearly mentioned that it is a business transaction and a criminal colour has been given. Thereafter, the FIR in Crime No.7 of 2020 has been registered by the respondent Police against the petitioners for the offence under Sections 406, 417 and 420 of IPC. From a reading of the FIR, it is clearly stated that agreement has been obtained in force and without the knowledge of the Police Station, which is enforceable.



4.The learned Senior Counsel appearing for the intervener submitted that the petitioners have known the defacto complainant. He further submitted that the petitioner/A1 had borrowed a sum of Rs.2 crores on various dates from 25.01.2018 to 09.01.2019 from the defacto complainant through bank transaction for investing in their contract works. He further submitted that the defacto complainant had made payment through banks apart from this transaction there are other transactions between them. After receiving money from the defacto complainant and agreeing to repay a sum of Rs.40 lakhs, the petitioner had failed to make payment. Later, the defacto complainant has lodged a complaint against the petitioner. After registration of the FIR, A1 and A2 have approached this Court in Crl.O.P.(MD).No.8114 of 2020 seeking anticipatory bail before this Court and the same has been granted only to A2, who is the father of A1 and dismissed the petition in respect of A1 on 07.09.2020 for the reason that there is no transaction with A2. Thereafter, the defacto complainant has filed a petition to cancel the anticipatory bail in favour of A2 in Crl.M.P.(MD).No.5028 of 2020, and this Court by order, dated 27.11.2020 had directed A2 to deposit the original title deed not less than a value of Rs.20 lakhs to the credit of Crime No.7 of 2020 within a period of four weeks from the date of receipt of a copy of this order. Now it has been complied with by A2. Thereafter, A3 and A4, who are the mother of A1 and wife of A1 have approached this Court in Crl.O.P.(MD).No.9627 of 2020 seeking anticipatory bail and this Court by order dated 01.10.2020 had granted anticipatory bail only to A4 and dismissed the petition as against A3 for the reason that there are several transactions between A1 and A3. He further submitted after registration of the FIR, the petitioner has filed a Civil Suit. He further submitted that A1, in this case, is the person, who had received a sum of Rs.2 Crores from the defacto complainant and cheated him. He further submitted that this Court had earlier dismissed the anticipatory bail application to the petitioners and there is no change in circumstances in this petition, the present petition has been filed. Hence, he opposed this petition.

5.The learned Government Advocate (Crl. Side) appearing for the respondent Police submitted that the Civil Suit is only for interim injunction, which has been filed by the petitioners, which has clearly exposed the intention of the petitioner/A1, who has involved in money transaction with the defacto complainant and the same is proved by bank transactions from 25.01.2018 to 09.01.2019. He further submitted that though the petitioners would state that they repaid the amount, there is not even a single paper produced by the petitioner and in what angle money has been repaid immediately to the defacto complainant. Thereafter, the petitioners have approached this Court and had been sending representation to various authorities, thereby scuttling the investigation. He further submitted that the custodial interrogation of the petitioner is very much required to find out whether the money have been swindled.



6. Taking into consideration of the above facts and circumstances and also the fact the petitioners have voluntarily come forward to deposit another a title worth about Rs.20 lakhs which stands in his name or in his relative's name or in his friend's name worth about Rs.10 lakhs along with the property valuation certificate from the authorities competent before the concerned Court without prejudice to his defence, this Court is inclined to grant anticipatory bail to the petitioners.

7. 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 No.I, Tirunelveli, 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 shall produce the original title deed which stands in his name or in his relative's name or in his friend's name worth about Rs.20 lakhs along with the property valuation certificate from the authorities competent before the concerned Court without prejudice to his defence and submit a photocopy while executing sureties. The learned Magistrate after receiving the photocopy of the original title deed shall accept the sureties furnished by the petitioner.

(c) the petitioners shall report before the respondent police daily at 10.30 a.m., for a period of two weeks and thereafter as and when required for interrogation.

(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 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**



(g)if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

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sd/-
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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 No.I, TIRUNELVELI.
2. DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.
3. THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
TIRUNELVELI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER IN
CRL OP(MD) No.15824 of 2020 &
Crl.O.P.(MD)No.2541 of 2021
Date :23/03/2021

AAV/LS
TE/JC : 07/04/2021 : 5P/5C