BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Orders Reserved on : 23/02/2021

Orders Pronounced on: 12/03/2021

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD). No.16132 of 2020

Prashant Rathee ... Petitioner/Accused No.1

Vs

State of Tamil Nadu rep.by
The Inspector of Police,
City Crime Branch,
Trichy City.
(Crime No.10/2020). ... Respondent/Complainant

For Petitioner : Mr.Prashant Singh Yadav, Advocate.

For Respondent : Mr.R.Srinivasan, Government Advocate (Crl.Side)

For Intervenor : Mr.K.Suresh, Advocate

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

PRAYER :- For Anticipatory Bail in Crime No.10/2020 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner / A1 apprehending arrest at the hands of the respondent police for the offences punishable under Sections 406, 420, 468, 471 and 120(B) of IPC., in Crime No.10 of 2020, on the file of the respondent police, seeks anticipatory bail.

2. The gist of the case is that the defacto complainant, who is the proprietor of M/s.Kuberaa Global Impex, had placed order for 720 Metric Tons of Indian Raw Rice with 5% broken rice to be shipped to Venezuela through M/s.Sreeman Traders, has placed orders with the

petitioner, M/s.Urban Orchards Pvt. Ltd., Gurugram. The petitioner claimed himself as big rice exporter and has overseas branch in four countries. He further promised that he will complete the purchase order in time, as per the terms and conditions. A Purchase Order was issued in favour of M/s.Urban Orchards from M/s.Kuberaa Global Impex on 18.05.2020. As per the Purchase Order, the rice has to be exported in the name of M/s.Sreeman Traders in Andhra Pradesh, Vishakappattinam. As per the agreed terms, an advance amount of 20% to be paid initially, and the rest of 80% to be dispersed on loading the rice in the container and on submission of Shipping Documents / Bill of Lading etc. The defacto complainant had paid 20% of the advance amount through HDFC Bank, Trichy, to the Petitioner's Bank account, viz., ICICI Bank, on 23.07.2020, by online transaction.

2.1 One month thereafter, the petitioner had sent a video that the rice are loaded and made demand for the balance amount. Initially, it was represented that the rice would be procured from Chattisgarh and latter informed that it will be from Bihar. Further, he informed that due to COID-19 lock-down, the rice factory has been closed. On 08.08.2020, another video was sent by the petitioner. Thereafter demanded balance 80%, otherwise, the packaging of the rice will be removed. Thereafter, the balance amount transferred in favour of M/s.Urban Orchards Pvt. Ltd., and nearly 90% of the amount, as per the agreement, was transferred.

2.2. On verification, it was found that the videos and the supporting documents like L.R. copy etc., sent by the petitioner turned to be forged. In the meanwhile, on 07.09.2020, the petitioner had sent email informing that for non-payment of balance 10%, no further documents could be sent, on getting suspicious, when the video and documents verified, it was found that all the documents and videos were forged. During the transaction, five empty letter heads with seal and signature of M/s.Sreeman Traders were obtained for getting free sales certificate. The petitioner in criminal conspiracy with Vikas Parashar of Eagle Cargo Movers, Delhi and Synala Michael Raju of M.M.Impex, Rajamuindry, had created forged documents, claiming to be genuine, had misappropriated and cheated an amount of Rs.2,01,08,039/-. Hence, the complaint came to be lodged.

3. The contention of the petitioner is that the petitioner is running a business in Export Sector for the last several years in Delhi and Gurugram with the name and style of M/s.Urban Orchards. The petitioner got introduced to the defacto complainant through the 3rd accused and by mutual consent of both the petitioner and the defacto complainant, a Purchase Order on 18.05.2020 was issued for shipment of 720 MT of Indian rice with 5% broken rice to Venezuela, on condition that 20% paid up-front advance and balance 80% by irrevocable and confirmed LC. As per the agreement, 20% of the amount must be initially paid in advance. On the contrary, this amount was paid in nine instalments, from 28th May 2020 to 23rd July

2020. The defacto complainant in not paying the amount up-front, had delayed in printing of bags, since the printing press had refused to start the printing works without receiving 50% of the amount in advance.

4. It is the further contention of the petitioner that the petitioner, even during the lock down period from 04.07.2020 from 15.07.2020, had travelled to Bihar, after getting permission from the concerned Department and got finalized packing of the rice without delay. Due to non-releasing of funds by the defacto complainant in time, the entire export plant got cancelled. In similar way, it was cancelled thrice. The defacto complainant made a default payment and released Rs.75,00,000/- instead of Rs.2,05,00,000/- and again booking during September 2020 could not be made as projected. The cancellation of the export was due to the conduct of the defacto complainant, for which, the petitioner had the burden of paying penalties and charges for booking vessels and containers.

5. The learned counsel for the petitioner further submitted that the defacto complainant has an outstanding amount payable to Rs.1,11,58,961/- for the losses made and due to dollar conversion charges differences. The defacto complainant failed to reply for the mail sent by the petitioner and had not answered his calls during this period. On 21.08.2020, the petitioner attempted to call Sriniwas of M/s.Sreeman Traders to sort out the issues, the said Sriniwas failed to answer any call. Thus, the entire export, as planed, could not be fulfilled due to non payment, as promised.

6. On the contrary, the petitioner had placed orders with the rice mill, printing of the bags to pack the rice and also transported the same through the lorry transport. The Lorry bills and shipping bills were sent to the petitioner. Finally, the rice could not be shipped, brought back and stored in the Warehouse. Suppressing all these facts, the defacto complainant lodged a false complaint against the petitioner.

7. The learned counsel for the petitioner submitted that the petitioner was on pilgrimages trip to Vaishno Devi Temple on 23.10.2020. The defato complainant using his contacts with the police had arranged two Aligarh Police, who picked up the petitioner from Kashmir and he was taken in a car, bearing Registration No.HR-98-0321, followed by the police officials in TATA Sumo, latter he was kept in confinement at the instance of the Senior Superintendent of Police one Muniraj and in the presence of one Vinod and their Lawyer Manoj Selvaraj, at the residence of Sh.Muniraj, SSP, Aligarh, they forced the petitioner, put him under pressure and threat to his life and got transferred Rs.66,25,000/-, in the account of the defcto complainant and also forcibly taken five undated cheques, promissory notes and documents signed from the petitioner. The car GPS track, Hotel Bills, CCTV Footage of the Hotels would prove that

the petitioner was forcibly taken by the Aligarh Police. After extracting and obtaining the money and documents, the petitioner was latter dropped on 31.10.2020 at Mahilpalpur, Delhi. The petitioner was released only on the assurance that the balance amount of Rs.1,34,00,000/- to be transferred to the defcto complainant shortly.

8. The learned counsel for the petitioner further contended that the petitioner had also lodged a complaint to the Ministry of Homes, for the high-handedness of the police in extracting the money and the documents from him. The respondent police for a commercial transaction, which could not be fulfilled due to the act of the petitioner had registered a false case against him and the dispute between the petitioner and the defacto complainant which is a commercial dispute, which has to be decided in a civil suit had given a criminal clog and extracted money and documents. Further, they threatened the petitioner to settle the entire amount received from the defacto complainant, without considering the fact that the petitioner had suffered a huge loss by placing orders with rice mills making arrangement for transport of rice, booking containers and the vessels for export. These facts have not been considered and the petitioner has been falsely implicated in this case. In support of his contention, the petitioner has filed a typed set, containing the copies of bill, travel permission, bills for booking of shipment, mail conversation and the complaint of the petitioner sent to DGP and Home Ministry.

9. The learned counsel appearing for the defacto complainant submitted that believing the representation of the petitioner, the defacto complainant had placed Purchase Order, for supply of 720 MT of 5% broken rice to be exported to Venezuela. It was agreed that 20% of the Invoice amount would be paid in advance, on condition that after proof of packing and make ready exports, the rest of the 80% to be paid after receipt of loading documents. The packing, printing, loading upto the destination will be the responsibility of the petitioner.

10. The learned counsel further submitted that on the quotation submitted by the petitioner advance amount for printing has been paid on 28.05.2020 and full payment towards printing of bags were paid on 25.06.2020. Further various payments towards advance of 20% to the tune of Rs.47,50,000/- had been paid to the petitioner, through RTGS transfer, from 28.05.2020 to 23.07.2020. The defcto complainant believing the video sent by the petitioner made payments. Initially, it was represented that packing process is going on in the State of Haryana and latter, without assigning any reason it was represented that the packing process was going on in the State of Bihar.

11. The learned counsel for the defacto complainant also submitted that in the first week of August, 2020, the petitioner had

insisted for payment of remaining 80% of the invoice amount. The defacto complainant insisted for loading documents as per the agreement. The petitioner had sent a drat Bill of Lading on 10.08.2020, in which the petitioner was mentioned as Exporter, which was contrary to the purchase order, since export has to be made in the name of M/s.Sreeman Traders. Thereafter, another Bill of Lading with the very same reference number changing the shipper's name was sent. On receipt of Bill of Lading, the defacto complainant made a payment of Rs.75,00,000/-, on 20.08.2020, thereafter, Rs,15,00,000/- on 28.08.2020 and Rs.64,08,039/- on 05.09.2020. Thus, totally, the defacto complainant made a payment of Rs.2,01.58,039/- to the petitioner and all the payments are through banking channel. Since the petitioner was giving different version on each occasion, delaying the export and also at his will were sending Bills of Lading, lorry receipts and other documents getting suspicious over the same, the same was verified and found that all the documents sent by the petitioner turned to be forged. The lorry receipts, which was issued by a Transport Service from Bihar, on verification found that there was no such lorry. In fact, one of the vehicle number turned to be TATA Ace, which is a small vehicle, which cannot have the loading capacity of 680 bags of rice, as mentioned in the lorry receipt.

12. In the meanwhile, the principal exporters M/s.Sreeman Traders, received a call from one Navjodh Singh Sahota of M/s.Narv Agro Foods, Haryana and informed that M/s. Narv Agro Foods had received orders for 100% broken rice in the name of M/s.Sreeman Traders placed by the petitioner. Further, M/s.Narv Agro Foods submitted that the goods have been made ready for delivery and no payment has been received by them. This was informed to the defacto complainant, then only it was confirmed that the petitioner had planned and executed a well orchestrated conspiracy with the other accused, prepared forged documents, in a deceitful manner cheated the defacto complainant and misappropriated the huge sums of money running to several crores in the name of trade.

13. The learned Government Advocate (crl.side) appearing for the State submitted that based on the complaint received from the defacto complainant and on verification of the documents it was found that the documents submitted by the petitioner are forged. Thereafter, the respondent police took up investigation. During investigation it revealed that the petitioner had committed a serious offence of forgery and cheating running to several crores. The documents are to be collected from banks, shipping agents and witnesses have to be examined in Bihar, Haryana and other places, the investigation has now commenced, custodial interrogation of the petitioner is very much necessary to find out the complicity and act of the other accused, including the named and unnamed accused and therefore, he strongly opposed the petition.

14. I have heard the learned counsel appearing on either side and perused the materials available on record.

15. It is to be seen that the defacto complainant's Purchase Order is only for 5% of the broken rice. On the contrary, the petitioner had made arrangement for 100% broken rice with M/s.Narv Agro Foods. The petitioner had contacted the defacto complainant for an amicable settlement on coming to know about the registration of the case. The Petitioner had made a payment of Rs.66,25,000/- through bank on various dates and thereafter, agreed to pay the remaining sum of Rs.1,34,83,039/- within a short span of time. The petitioner had also given a promissory note and undertaking oath on 31.10.2020 and also issued cheques.

16. Contrary to the undertaking for repayment, the petitioner had failed to make payment. On the other hand, approached this Court, seeking anticipatory bail. The petitioner had furnished forged video recordings, as though the export process is going on, as per the purchase orders and also produced the Bill of Lading, lorry receipts and other documents which all turned to be forged. Despite the receipt of crores of rupees, the petitioner failed to export even one grain of rice. The petitioner by deception in a well planned manner had cheated the defacto complainant.

17. On the contrary, now projecting as though it is business and commercial transaction, which is given a criminal colour. From the act of the **petitioner** it is amply proved that the petitioner had committed a rank forgery and cheating. It is further stated that custodial interrogation of the petitioner is necessary to find out the manner, place and where the forged documents have been created using the same, huge sums of money has been siphoned out and misappropriated. This money has to be traced and the involvement of the other accused have to be unearthed.

18. Considering the rival submissions and on perusal of the materials, it is seen that the purchase orders, dated 18.05.2020 for supply of 720 MT of rice had been entered between the petitioner and he defato complainant wherein the packing and payment particulars are clearly stated. From the statement of HDFC bank account of the defacto complainant, which clearly reveals the payment made to the petitioner on several occasions, which is not disputed. Further, it is seen that immediately on receipt of payment from M/s.Sreeman Traders, the defacto complainant on the same day or the next day had transferred the amount to the petitioner, as per the purchase order. The documents such as booking confirmation and the shipping bill sent by the petitioner on the face of it appears to be forged. In the first shipping bill in the name of M/s.Urban Orchards, the vessel number is not available. Likewise, the date of issue is also not found. The shipping bill in the name of Sreeman Traders, the vessel number is given as CMA CGM MOLIERE / OMX6VW1MA. In the booking confirmation document, the vessel name has been shown as CMA

CGM A.LINCOLN/OTUDYN1MA CMA CGM MOLIERE/ OMX6VW1MA. Thus, the vessel and voyage documents are totally different. Likewise, the lorry receipt contains the name of Navjodh Singh of M/s.Narv Agro Foods, which is for 100% broken rice. The other lorry receipts are also forged. The petitioner had made payment of Rs.66,25,000/- on various dates and also the promissory notes on oath, on 31st October, 2020 admitting his guilt. Contrary to the undertaking it is now projected as though the same has been obtained in duress. The petitioner till filing of the anticipatory bail application has not made any such claim. Further, nearly Rs.2,01,58,039/- have been cheated and misappropriated by the petitioner in deceitful manner by using forged documents and had cheated and misappropriated huge sums, which in any manner cannot be construed as business and commercial transaction. It is to be seen that in this case the petitioner not even exported even a single grain after receipt of such huge amount.

19. In view of the same, finding that custodial interrogation is necessary to unearth the entire gambit of conspiracy, cheating, to recover the forged documents, persons involved, to trace the misappropriated amount and to recover and seize the misappropriated amount, this Court is not inclined to grant anticipatory bail to the petitioner. Hence, this petition is dismissed.

sd/-
12/03/2021

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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 INSPECTOR OF POLICE,
CITY CRIME BRANCH, TRICHY CITY.

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

ORDER IN
CRL OP(MD) No.16132 of 2020
Date :12/03/2021

MPK
AE/JC/SAR-IV (17/03/2021) 7P / 3C