



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

Date : 12/11/2021

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.16907 of 2021

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Micheal Murray,
S/o.Rober Murray,
29/10, Pallavan Nagar,
Main Road, Mdaduravayil,
Tiruvalluvar District..

... Petitioner/Petitioner

Vs

The State represented by
The Inspector of Police,
District Crime Branch,
Thoothukudi District.
(Crime No. 15 of 2021).

... Respondent/Complainant

For Petitioner : M/s.Pon Karthikeyan R,
Advocate.

For Respondent : Mr.RMS.Sethuraman
Additional Public Prosecutor

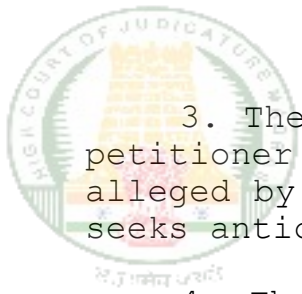
PRAYER :-

This Crl.O.P is filed under Section 482 r/w 439(1)(b) of Crl.P.C to modify condition imposed by Learned District Sessions Judge, Thoothukudi in so far as the condition that the petitioner should depositing a cash security of Rs.4,75,000/- before the Learned J.M.No.IV, Thoothukudi in CrMP No.4729/2021 dated 20.10.2021

ORDER : The Court made the following order :-

This Criminal Original Petition is filed seeking to modify the condition imposed by the learned District Sessions Judge, Thoothukudi insofar as the condition that the petitioner should deposit a cash security of Rs.4,75,000/- before the learned J.M.No.IV, Thoothukudi in Cr.M.P No.4729/2021, dated 20.10.2021.

2. The case of the prosecution is that the defacto complainant is running a rice wholesale business and the accused told the defacto complainant that several Bank Managers are known to him and he used to arrange loans to others and accordingly, the defacto complainant asked the petitioner to arrange Rupees Three Crores as loan and for that the petitioner received a sum of Rs.10,00,000/- as commission. Thereafter, the petitioner neither arranged the loan nor repaid the amount received from the defacto complainant. Hence, the present complaint.



3. The learned Counsel for the petitioner would submit that the petitioner is innocent and he has not committed any offence as alleged by the prosecution and he is a senior citizen and hence, he seeks anticipatory bail to the petitioner.

4. The learned Additional Public Prosecutor appearing for the State would submit that the petitioner received money from the defacto complainant under the pretext of getting loan from the Bank and thereafter, the petitioner neither arranged loan from the Bank nor returned back the money received from the defacto complainant.

5. Heard the learned Counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State and perused the materials placed on record.

6. It is the specific case of the defacto complainant that he had paid and the petitioner/accused received a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) towards commission for the loan of Rs.3,00,00,000/- (Rupees Three Crores only) to be arranged by the petitioner from the Banks; that the petitioner even after several months, has neither arranged loan amount nor repaid any amount and that therefore, he was constrained to lodge the complaint.

7. The learned Principal Sessions Judge, Thoothukudi, has passed the impugned order directing the petitioner/accused to deposit a cash security of Rs.4,75,000/- (Rupees Four Lakhs and Seventy Five thousand only) before the jurisdictional Magistrate Court and further directed the Court to keep the said amount in Criminal Court Deposit account till the disposal of the case.

8. No doubt, the defacto complainant has lodged the complaint only for the offences alleged to have been committed by the petitioner/accused and not for repayment of amount due to him and for that, he has to work out his remedy before the competent civil Court. Recently, the Honourable Supreme Court has come down heavily on the bail Courts for imposing conditions for deposit of certain amount allegedly due by the accused to the complainant in ***Dilip Singh Vs. State of Madhya Pradesh and another*** passed in ***Crl.A.No.53 of 2021, dated 19.01.2021*** and it is necessary to refer the following passages in the said decision hereunder:

"3.Ex facie, the disputes in the instant case are civil in nature. It is the contention of the complainant that despite having paid Rs.41 lakhs to the appellant pursuant to an agreement for purchase of agricultural land, the appellant has not executed the deed of sale in respect of the same. It appears that the complainant has also filed a civil suit for specific performance of the said agreement, which is pending adjudication.



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4. By imposing the condition of deposit of Rs. 41 lakhs, the High Court has, in an application for pre-arrest bail under Section 438 of the Criminal Procedure Code, virtually issued directions in the nature of recovery in a civil suit.

5. It is well settled by a plethora of decisions of this Court that criminal proceedings are not for realization of disputed dues. It is open to a Court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. The factors to be taken into consideration, while considering an application for bail are the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character behaviour and standing of the accused; and the circumstances which are peculiar or the accused and larger interest of the public or the State and similar other considerations. A criminal court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too, without any trial."

9. Very recently the Honourable Apex Court in **Dharmesh @ Dharmendra @ Dharmo Jagdishbhai @ Jagabhai Bhagubhai Ratadia and another Vs. The State of Gujarat**, passed in **Crl.A.No.432 of 2021, dated 07.07.2021** has reiterated the very same legal position and the relevant paragraphs are extracted hereunder:

" 17. We may hasten to add that we are not saying that no monetary condition can be imposed for grant of bail. We say so as there are cases of offences against property or otherwise but that cannot be a compensation to be deposited and disbursed as if that grant has to take place as a condition of the person being enlarged on bail.

18. Once we come to the aforesaid conclusion, the direction contained in the impugned order for deposit of compensation of Rs.2.00 Lakh for the legal heirs of the deceased naturally cannot be sustained and has to be logically set aside."



10. The above decisions are squarely applicable to the case on hand. In the case on hand also, the defacto complainant has only attempted to recover the amount allegedly due by the accused by lodging the complaint. As per the legal dictum laid down by the Honourable Supreme Court cited supra, no Court can impose such a condition for deposit. Considering the above, this Court has no hesitation to hold that the impugned condition is not good in law and the same is liable to be set aside.

11. In the result, this Criminal Original Petition is allowed and the impugned condition, passed in Cr.M.P.No.4729 of 2021, dated 20.10.2021, by the learned Principal Sessions Judge, Thoothukudi, by directing the petitioner to deposit a cash security of Rs.4,75,000/- (Rupees Four Lakhs and Seventy Five thousand only) before the Court of Judicial Magistrate No.IV, Thoothukudi, is set aside. The other conditions imposed in Cr.M.P.NO.4729 of 2021 stand remained unaltered.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

SSL

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 Principal Sessions Judge,
Thoothukudi.
- 2.The Judicial Magistrate No.IV,
Thoothukudi.
- 3.The Inspector of Police,
District Crime Branch,
Thoothukudi District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER

IN

CRL OP(MD) No.16907 of 2021

Date : 12/11/2021

PS (CO)

<https://hcse/SLN/16907-2021> 4P 5C