IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.1529 of 2022

Rozario Sylvester Shane ...Petitioner

Vs.

State rep. by
The Sub Inspector of Police,
Bank Fraud Investigation Wing,
Central Crime Branch,
Chennai.
(Crime No. 236 of 2021) ... Respondent

PRAYER: Criminal Original Petition has been filed under Section 439 of Cr.P.C. praying to enlarge the petitioner/accused on bail in Crime No. 236 of 2021 pending investigation on the file of the Respondent Police.

For Petitioner : M/s.S.Aravind

For Respondent : Mr.A.Gokulakrishnan
(Additional Public Prosecutor)

O R D E R

(The case has been heard through video conference)

The petitioner who was arrested and remanded to judicial custody on 07.01.2022 for the offences under Sections 420, 465, 467, 468 and 471 r/w 120 (B) of IPC, in Crime No. 236 of 2021 , on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the petitioner as AGM of Punjab National Bank, Mylapore Branch, Chennai has sanctioned an overdraft facility in favour of A1 for Rs.42.78 lakhs secured by a single mortgage over 161 sq.Ft. of undivided share in 2775 sq.ft. of land and the 815 sq.ft. of residential flat built thereon. But the secured property is in deviation of the approved building plan and the accused A1 to A3 have forged the approval plan of the Greater Chennai Corporation and submitted the same to the bank to get overdraft facility. The petitioner had visited the secured property and reported of its existence as land and building and its possession by the owners though the secured property is now alleged to have not

been in existence at that time and thereby, the petitioner being part of the conspiracy, defrauded the bank.

3.The learned counsel for the petitioner would submit that the petitioner has not committed any offence as alleged by the prosecution and he has been falsely implicated in this case. He would submit that the petitioner has been serving in the bank from the year 1991 and that the petitioner is no way connected with the offence and that the petitioner has been suffering incarceration for about 20 days from 07.01.2022. Hence, he would pray for grant of bail to the petitioner.

4.The learned Additional Public Prosecutor appearing for the respondent would submit that A2/S. Muralidharan and his wife Jayanthi/A3 are partners of A1 company/M/s. Sri Nivas Constructions. They approached the defacto complainant bank for sanction of overdraft against immovable property facility and obtained OD-IP facility for Rs.42.78 lakh by mortgaging the property flat G1 measuring 815 sq.ft. At Anbu Residency along with UDS 161 sq.ft., since they have committed default in payments, the bank initiated recovery proceedings under SARFEASI Act and came to know that the flat was sealed by the Corporation of Chennai as it has been constructed without sanctioned plan approval. On enquiry, it came into light, at the time of sanctioning of loan during 2017, there was no construction at all and the present petitioner/A5 had signed the sanctioned letter as if he personally inspected the property and the property was occupied by the owners/ A2 and A3. Thus all the accused conspired together and cheated the bank to the tune of Rs.57.87 lakh. Due to the misdeeds of this petitioner, he has been removed from the service on 22.06.2021. The petitioner was arrested only on 07.01.2022 and if the petitioner is released on bail, there is every chance of tampering of witnesses. Accused A2 and A3 colluded with bank officials and other accused obtained loan on Overdraft facility against property (Flat G1) from the defacto complainant bank and committed default in payments. During recovery process under SARFEASI Act, it came to light that the property mortgaged was sealed by the Corporation of Chennai as it was constructed without sanctioned plan approval and even at the time of sanctioning of the loan, there was no construction at all. This petitioner with the connivance of other accused had signed the sanction letter as if he had personally inspected the property, without there being the construction. He is also actively involved in the commission of crime Thus, all the accused conspired together with dishonest intention and caused wrongful loss to the bank to the tune of Rs.57.87 lakh. He would further submit that some more accused are still absconding and hence vehemently resisted for grant of bail to the petitioner.

5. Considering the above facts and circumstances of the case and the fact that the investigation is almost completed and also considering the period of incarceration undergone by the petitioner,

this Court is inclined to grant bail to the petitioners with certain conditions.

(a) Accordingly, the petitioner is directed to deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) to the credit of concerned loan account and on proof of such deposit, the petitioner is ordered to b e released on bail on executing his own bond for a sum of Rs.10,000/- (Rupees ten thousand only), before the Superintendent of the concerned prison, in which the petitioner has been confined and thereafter on his release;

(b) the petitioner shall execute two sureties for a sum of Rs.10,000/- (Rupees Ten Thousand only) each, before the learned The Special Metropolitan Magistrate, CCB&CBCID cases, Egmore, Chennai, within 15 days from the date of commencement of the Court's normal functioning, failing which the bail granted by this Court shall stand dismissed automatically;

(c) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(d) the petitioner shall report before the respondent police on every Wednesday at 10.30 a.m. until further orders and co-operate with the investigation agency.

(e) the petitioner shall not commit any offences of similar nature;

(f) the petitioner shall not abscond either during investigation or trial;

(g) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(h) on breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner 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 5560];

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

-sd/-
25/01/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SPECIAL METROPOLITAN
MAGISTRATE, CCB & CBCID CASES,
EGMORE, CHENNAI

2 THE CHIEF METROPOLITAN
MAGISTRATE, EGMORE, CHENNAI

3 SUB INSPECTOR OF POLICE,
BANK FRAUD INVESTIGATION WING,
CENTRAL CRIME BRANCH, CHENNAI

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE SUPERINTENDENT,
CENTRAL PRISON, CHENNAI

CC to M/S.S.ARAVIND Advocate on payment of necessary charges

CRL OP.1529/2022

Date :25/01/2022

RVR 27/01/2022