



Crl.O.P.No.1909 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 04.03.2022

Pronounced on : 11.03.2022

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Criminal Original Petition No.1909 of 2022

S.Senthil Kumar,

... Petitioner/Accused

/versus/

State, Rep.by,
Inspector of Police,
Team – II, EDF – I,
Chennai CCB – I,
EVK Sampath Road, Vepery, Periyamet,
Chennai – 600 007.

... Respondent/Complainant

Prayer: This Criminal Original Petition is filed under Section 438 of Cr.P.C., praying to grant anticipatory bail to the petitioner in the event of his arrest from the hands of the respondent police in Crime No.221 of 2021 on the file of the respondent.

For Petitioner : Mr.John Sathyan, for
Mr.S.Akash

For Intervenor : Mr.M.Devaraj

For Respondent : Mr.S.Santhosh,
Government Advocate (Crl.Side)



Crl.O.P.No.1909 of 2022

ORDER

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This Criminal Original Petition is filed by the petitioner, who apprehends arrest for the alleged offence under Section 406 and 420 of I.P.C., in Crime No.221 of 2021, seeks anticipatory bail.

2. The case of the prosecution is that, the First Information Report in Crime No.221 of 2021 dated 08.12.2021 given by Manager Administration, M/s.Air Media Networks Private Limited alleging that they are carrying on Multi System Operator (MSO) business by providing Digital Cable TV Signals through Digital Addressable System (DAS) from Thiruchendur District. They provide Digital Cable TV Signals to the Distributors who in turn redistribute the signals to various Local Cable TV Operators (LCOs). They in turn redistribute the same to the ultimate subscribers through Setup Boxes (STB) provided by their Company.

3. On 15.07.2017, the defacto complainant and M.Senthil Kumar (the petitioner herein) Proprietor of M/s.Senthil Cable Network entered into a Memorandum of Understanding. The said Mr.Senthil Kumar was appointed as Distributor to provide Digital Cable TV Signals to the customers directly through



Crl.O.P.No.1909 of 2022

Local Cable TV Operators (LCOs) in respect of specified areas in Thanjavur, Ariyalur and Pudukottai District. The defacto complainant as Multi System Operator (MSO) agreed to provide the Set Top Boxes and transmit the Digital Cable TV Signals to M/s.Senthil Cable Network enabling them to distribute the TV signal to the subscribers through Local Cable TV Operators (LCOs).

4. Pursuant to the agreement, M/s.Senthil Cable Network acted and served as Distributors and remitted the Monthly subscription Fees, STB Activation, Installation Charges, Bandwidth Network Charges etc., for a certain period. For receiving signal at the customers end, Set-Top Boxes accessories, AV Card, Adapters and Remote Controls, HDMI Cable and other necessary and accessories were handed over to the distributor-M/s.Senthil Cable Network. There is a specific negative covenant in the memorandum of understanding that the petitioner should not enter into a similar agreement with the competitors or others in the area to which he was given Distributorship. In case of termination of the agreement, M/s.Senthil Cable Network has to settle the dues, charges, fees etc., within 15 days and return the assets of the defacto complainant.



Crl.O.P.No.1909 of 2022

5. Alleging that M/s.Senthil Cable Network owned by Senthil Kumar (the petitioner herein) in violation of the agreement to Distributorship, Local Cable TV Operation, Services etc., clandestinely joined hands with the competitors in violation of the terms of Memorandum of Understanding. Therefore, the distributorship was terminated but the petitioners has not returned the Set Top Boxes, accessories and also failed to account within 15 days as per the memorandum of understanding. Particularly, after closing the business and ceased to operate with the complainant/Company. He has joint with the competitor and misappropriate the accessories and Set Top Box which are properties entrusted to petitioner. Nearly 41573 numbers Set Top Box at the rate of Rs.1,400/- with held by the petitioner and the subscription collected from the end users were not remitted by the petitioner to the complainant. Around Rs.1,06,50,856/- is due from the petitioner under this head. The worth of the Set Top Box with held by the petitioner runs to Rs.5,82,02,200/-. Thus, the total sum of Rs.6,88,53,056/- is due and payable.

6. For breach of trust, for misappropriation and cheating, case under Sections 406 & 420 of I.P.C., registered against this petitioner and subjected to



investigation.

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7. In the course of investigation, search was conducted on the premise of M/s.V.K.Digital Private Limited at about 4500 Set Top boxes were seized from that premises. Out of 60000 Set Top Box supplied, nearly 41,573 Set Top Box were misappropriated and by negotiation and raid, around 19,638 Set Top Box alone could be recovered.

8. Apprehending arrest, petition for anticipatory bail is filed, in which, it is contended that, the petitioner believing the words of the defacto complainant that he possess requisite technology support to carry out business of transmitting quality Cable TV Digital signals and he possess quality Set Top Box with Bureau of Indian Standards. Complainant entered into a memorandum of understanding with the defacto complainant and got more than 40,000 subscribers. The defacto complainant promised to bear all the expenses for BSNL dedicated lease wire and Airtel bandwidth charges, which is necessary for the transmission of Digital Signal through Set Top Boxes. Nearly 40078 Set Top Boxes were supplied by the defacto complainant to the subscribers and the business developed by the efforts of the



petitioner. However, the defacto complainant failed to honour the assurance of transmitting quality Digital Cable TV Signals. The Set Top Boxes provided by them was defective and did not receive signal to the expectation of the subscribers. Several issues of missing channels, different adopters and non-availability of remote in the private market were reasons for the loss in business and the cause for the loss in business, which is purely due to the in-difference of the defacto complainant.

9. In this regard, notice were exchanged between the defacto complainant and the petitioner herein. In spite of explaining the reason for loss of business and breach of promise made by the defacto complainant, the defacto complainant could not rectify the defects pointed out. Therefore, subscribers started migrating to other Multi System Operators (MSO's) which ended up in termination of Memorandum of understanding between the defacto complainant and the petitioner herein. Around 15,445 Set Top Boxes which were in custody of the petitioner was returned. The subscribers who migrated to other Local Cable TV Operators promised to pay their dues for the month between August 2020 to October 2020 within two months.



10. Only after due termination of the memorandum of understanding

with the defacto complainant, the petitioner entered into a business relationship with V.K.Digital Private Limited. He hired the warehouse of V.K.Digital Private Limited and stored the STB's will be returned to the defacto complainant, on receipt of Rs.29,97,619/- payable by the defacto complainant. However, with malicious intention, the complaint was filed and the godown of V.K.Digital Private Limited was raided. Due to the breach of agreement, the petitioner has already initiated proceedings before the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) for recovery of Rs.2,13,95,595/- from the defacto complainant. While so, the complaint against the petitioner is misconceived, hence he must be released on bail in the event of any arrest.

11. The defacto complainant has intervened the bail petition, wherein, he has stated that, out of 41,573 Set Top Boxes worth around Rs.5 crores, only 19,683 numbers been recovered so far and the balance is not available till date. The petitioner has not accounted for it or handed over the same. While admitting the receipt of more than 41,573 Set Top Boxes which are to be returned to the defacto complainant at the time of termination of memorandum of understanding,



there is no justifiable reason for the petitioner to withhold about 23,000 Set Top Boxes each worth Rs.1,300/-. Further, even the Set Top Boxes recovered was not along with the accessories like HDMI cable and Chip card.

12. In the pretext of petition before the Telecom Disputes Settlement and Appellate Tribunal (TDSAT), the petitioner cannot withhold the Set Top Box supplied to him which worth more than Rs.5 crores. Therefore, unless the petitioner is taken to custodial interrogation, the Set Top Boxes withheld by the petitioner herein and concealed elsewhere in an unknown place cannot be recovered.

13. The Learned Government Advocate (Criminal Side) would submit that the petitioner herein, admits that still several thousands of Set Top Boxes held by him and to be returned to the defacto complainant. However he neither available for interrogation nor ready to return the Set Top Boxes. Claiming lien over the Set Top Boxes for the alleged counter claim against the defacto complainant to a tune of Rs.5 crores, the petitioner herein is making wrongful gain by illegally retaining the Set Top Boxes entrusted to him for a particular purpose.



14. On considering the rival submissions and on perusal of records, this Court finds that, it is an admitted case of the petitioner herein that around 40,780 Set Top Boxes were supplied to him. It is also admitted by him, only less than 20,000 Set Top Boxes returned to the defacto complainant. The Set Top Boxes around 40,000 entrusted to the petitioner herein for specific purpose and he can either distribute it to the end user to Local Cable Operators (LCOs) or return it.

15. In case, Set Top Boxes not recovered, any surplus should have been returned to Multi System Operators (MSO's) namely the defacto complainant. Instead, it appears that he has entered into a fresh agreement with M/s.V.K.Digital Private Limited to whom he has entrusted the Set Top Boxes. It is also brought to the notice of this Court that after the unauthorised entrustment of Set Top Boxes owned by the defacto complainant to M/s.V.K.Digital Private Limited, the representative of M/s.V.K.Digital Private Limited had contacted the petitioner herein and tried to sell it to the defacto complainant himself. So, it is unbelievable to accept that the Set Top Boxes were kept in the godown of M/s.V.K.Digital Private Limited for safe custody and for to be returned to the defacto complainant.



Crl.O.P.No.1909 of 2022

16. Pendency of claim before the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) cannot be an excuse for withholding the Set Top Boxes and accessories entrusted to the petitioner on a specific terms and conditions. Therefore, this Court is of the view that the petitioner herein cannot have the advantage of withholding the Set Top Boxes and accessories entrusted to him and continue to enjoy the interim bail granted to him earlier. Having failed to account for the Set Top Boxes worth more than Rs.5 crores, custodial interrogation of the petitioner is necessary to trace the trail of missing Set Top Boxes.

17. For the reasons stated out above, this Criminal Original Petition is dismissed.

11.03.2022

Index :Yes/No.
Speaking order/Non Speaking order

To:-

1. The Metropolitan Magistrate (For the exclusive Trial of CCB cases),

Page No.10/12



Crl.O.P.No.1909 of 2022

Egmore, Chennai.

2. The Inspector of Police, Team – II, EDF – I, Chennai CCB – I,
EVK Sampath Road, Vepery, Periyamet, Chennai – 600 007.
2. The Section Officer, V.R.Section, High Court, Madras.



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Crl.O.P.No.1909 of 2022

DR.G.JAYACHANDRAN,J.

bsm

Pre-delivery order made in
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11.03.2022