



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P. No.3041 of 2022

& Crl.M.P.No.1778 of 2022

Syed Habis @ Habis

...Petitioner / A-3

versus

State Rep. by
Inspector of Police,
F4 Thousand Lights Police Station,
Chennai.
(Crime No.393 of 2021)

... Respondent / Complainant

PRAYER: Criminal Original Petition has been filed under Section 439 of Cr.P.C., praying to enlarge the petitioner on bail pending investigation in Crime No.393 of 2021 on the file of the respondent police.

For Petitioner : Mr.J.Samiullah

For Intervener : Mr.B.R.Shankaralingam

For Respondent : Mrs.G.V.Kasthuri
Additional Public Prosecutor

ORDER

The petitioner, who was arrested and remanded to judicial custody on 28.10.2021 for the offences punishable under Sections 406 and 420 of IPC in Crime No.393 of 2021, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that the petitioner and others are working in Bhoomi Development Authority and they approached the de facto complainant's company, namely, Square Network Solutions Pvt. Ltd. and ordered 100 nos. of Laptops and 50 nos. of Computers. Based upon the order dated 08.12.2021, the de facto complainant has sent 45 nos. of Laptops and 5 nos. of computers to the petitioner's company. After getting delivery, they promised to make payment within two days for which they issued a cheque. Further, the de facto complainant



approached for payment but they failed to do so. Thereafter, the petitioner and others went to de facto complainant's company, abused him in filthy language and also threatened him to return the cheque. Hence, the complaint.

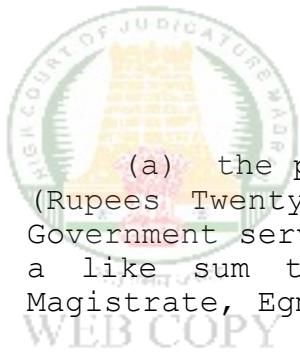
3.The learned counsel for the petitioner would submit that the petitioner is an innocent person and he has been falsely implicated in this case. He would further submit that during the relevant point of time, the petitioner and two others after issuing a cheque, received Laptops to the tune of Rs.1,00,00,000/- [Rupees One Crore]. Though the cheque issued by the other accused was not honoured, the remedy is available only before the Magistrate Court, in otherwise, the offence under Sections 406 and 420 of IPC cannot be attracted. It is his specific submission that the petitioner is in judicial custody from 28.10.2021 onwards. Hence, he prays for bail.

4.The learned Additional Public Prosecutor appearing for the respondent police raised objection stating that investigation is pending. However, she would further submit that the petitioner is having similar cases before the Myladuthurai Court and also the petitioner belongs to the State of Karnataka. In this regard, she strongly opposed this petition.

5.Considered the submissions made by the learned counsel on either side. This case has been registered against the petitioner for the offences punishable under Sections 406 and 420 of IPC. The averments found in the First Information Report would disclose the fact that the de facto complainant and two others sold 100 Laptops and received cheque from the petitioner and afterwards the other accused in this case sent a letter to the de facto complainant threatening him to not to present the cheque for encashment. Later, the de facto complainant lodged complaint and the present case has been registered.

6.No doubt, the averments found in the First Information Report would disclose the fact that only for the business transaction having by the de facto complainant, petitioner and other accused, the present case has been registered. The de facto complainant is having option to file a suit, in otherwise, to lodge a complaint under Section 138 of N.I. Act, instead of adopting those modes, the petitioner has lodged this complaint before the respondent police and afterwards the present case has been registered.

7.Therefore, taking note of all the above said aspects into consideration and having regard to the nature of offence committed by the petitioner and also by considering the period of incarceration, this Court is inclined to grant bail to the petitioner subject to certain conditions. Accordingly, the petitioner is ordered to be released on bail subject to the following conditions;



(a) the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties, who are all Government servants drawing salary not less than Rs.30,000/-, each for a like sum to the satisfaction of the learned XIV Metropolitan Magistrate, Egmore, Chennai;

(b) 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;

(c) the petitioner is directed to appear before the respondent police daily at 10.00 a.m. until further orders;

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

(e) 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];

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

8. With the above directions, this Criminal Original Petition is ordered. Consequently, connected Miscellaneous Petition is dismissed.

-sd/-

18/02/2022

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 XIV METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI.

2 THE CHIEF METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI. [FOR INFORMATION]



3 THE INSPECTOR OF POLICE,
F4 THOUSAND LIGHTS POLICE STATION,
CHENNAI.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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

CRL OP.3041/2022

AND

CRL.MP.1778/2022

Date :18/02/2022

CSK 22/02/2022