IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :28.03.2022

Pronounced on :30.03.2022

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.No.6285 of 2022
and
Crl.MP.No.4107/2022

1.S.Mahendran
2.Priya Mahendran .. Petitioners

/versus/

State rep.by its
Inspector of Police,
District Crime Branch Police Station,
Kancheepuram District.
(Crime No.2/2022) ..Respondent

A.GANDHI ..Petitioner/Defacto Complainant/Intervenor ordered as per order of this Court dated 28/03/2022 made in Crl.MP.No.4107/2022

Criminal Original Petition has been filed under Section 438 of Cr.P.C., praying to enlarge the petitioners on bail in the event of their arrest in Crime No.2/2022 on the file of the respondent police.

For Petitioners :Mr.MA.Muthalakan

For Intervenor :Mr.G.Ethirajulu

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

O R D E R

The petitioners, who apprehend arrest at the hands of the respondent police for the alleged offences punishable under Sections 420 R/W 34 of IPC in Crime No.2 of 2022 are before this Court seeking anticipatory bail.

2.The petitioners are husband and wife. They are the Directors of Private Limited Companies by name, M/s Pranaav Tele-ventures Private Limited and M/s Sai Tronics Private Limited. Apprehending arrest by the respondent police on the complaint given by one Gandhi, seek anticipatory bail.

3.The defacto complainant is a Retired Assistant Executive Engineer, Public Works Department. On 03/03/2022, the District Crime Branch, Kanchipuram, has registered a case against the petitioners in Crime No.2 of 2022 under Section 420 r/w 34 of IPC.

4.According to the defacto complainant, in the year 2015, he approached the petitioners for loan to discharge his debt in LIC Housing Finance to a tune of Rs.10.5 lakhs and to meet out the medical expenses of his ailing wife. The petitioners promised to clear his debt in LIC Housing Finance Limited and to make him as a partner in their new venture, provided he gives his property as collateral security for the loan to be raised for the Business Development and the business venture will give him high dividend. Believing the words of the petitioners, he signed in several papers. Later, when he approached the petitioners for his share, they evaded paying his due share and told him that, he is made as a Director of the Company. The petitioners have created charge over his property by raising huge loan from several Private Financiers without his knowledge. This fraud came to his knowledge, when he recently applied for Encumbrance Certificate. When he received notice from the Bank intimating the declaration of the petitioners' company assets as Non-Performing Asset and recovery of the money through the security furnished, he came to know that his property has been given as collateral security and likely to be recovered by liquidating the security. When he asked about the misuse of the title documents, the petitioners threatened him with dire consequences.

5.The learned counsel for the Petitioners submits that, the defacto complainant had suppressed several facts and had given the above false complaint with concocted story. In fact, the defacto complainant voluntarily agreed to be part of the company run by these petitioners and expressed his willingness to provide his property as collateral security for running the company. He pledged his property in his personal name and availed loan and invested in the Company as one of the Directors of the company. Initially, Loan to a tune of Rs.1.15crores was borrowed from HDB Bank. Subsequently, for further loan, the same property was pledged with South Indian Bank, Madurai for Rs.2.60 crores and the loan due of Rs.1.40 crores with HDB Bank was settled. The balance amount was shared between the petitioners, defacto complainant, Annadurai and Thirumeni as per the wishes of the defacto complainant. For the due payable to South Indian Bank, all four are equally liable. The entire transactions are transparent and supported by the documents. The defacto complainant was inducted into the company as Director as early as 22/03/2013 and had executed documents in his personal capacity to raise loan as Director of the Company. While so, suppressing these facts with false and frivolous allegations, trying to wriggle out from his liability as one of the Directors by lodging this complaint by arm twisting.

6.The respondent police has filed counter in which it is stated that, from the investigation so far done it reveals that the defacto complainant availed loan from LIC Housing Finance for Rs.11,20,000/- pledging his house. To redeem the house, he approached the petitioners through one Sakthivel. With common intention to cheat the defacto complainant, they redeemed the property from LIC and also gave Rs.3 lakhs to the defacto complainant and retained the title document of the property and made the defacto complainant as one of the Directors of M/s Pranaav Televentures (P) Limited using the title document of the defacto complainant property for availing loan of Rs.1.15 crores from HDB Financial Services (P) Ltd in the name of M/s Pranaav Televentures (P) Ltd. After the loan amount credited into the account of M/s Pranaav Televentures (P) Ltd., except Rs.13,38,370/- was utilised to clear the LIC loan, without the knowledge of the defacto complainant, the remaining amount were withdrawn by the first petitioner through cheque. There is no evidence to show that the amounts were shared with the defacto complainant and others as claimed by the petitioners in the bail petition.

7.Thereafter, mortgaging the defacto complainant's house property, through the defacto complainant, loan for Rs.88 lakhs was raised from a Private Financier M/S GNR Enterprises, T.Nagar, Chennai. From that loan amount, the property mortgaged with HDB bank was redeemed, only to raise loan for Rs.2.60 crores from South Indian Bank. For this loan, apart from the house property of the defacto complainant, the properties of one Annadurai and Thirumeni also were given as collateral security. The Bank has intimated all the guarantors about the mortgage of their respective properties. On 16/04/2018, from the loan amount, Rs.1,43,00,000/-transferred to the defacto complainant account. Rs.21,50,000/- transferred to the first petitioner account. Rs.80,00,000/- transferred to Annadurai Account. That apart, the first petitioner has received Rs.31,50,000/-.

8.As of now, the loan due payable along with interest is Rs.5,63,90,910/-. The property of the defacto complainant with present market value of Rs.10 crores is now subjected to auction sale for recovery of the loan due of Rs.5,63,90,910/-.

9.The defacto complainant has filed petition to intervene and in his petition, he has stated that, initially to clear his LIC loan and for personal expenses, he agreed to receive Rs.3 lakhs in cash and Rs.10.61 lakhs to be paid to LIC for redeeming the property. Later, believing the words of the first petitioner mortgaged his property with HDB on 11/10/2013 for the petitioners to avail loan of Rs.1.15 crores. The MoU dated 11/01/2014 is a concocted document. The loan availed from M/s GNR Enterprises for Rs.88 lakhs and from Jayaraman Reddiar for Rs.32 lakhs on 06/04/2018 to clear the loan of HDB bank is to cheat the defacto complainant.

10.The defacto complainant in his intervening petition admits his participation and knowledge of the transactions involving his property. This is contrary to his own complaint. Further, he admits that from the loan of Rs.2.60 crores availed from South Indian Bank, he was paid Rs.1.43 crores and from this amount he cleared the loan availed from the private financiers on 17/04/2018.

11.Thus, it is clear from the own admission and from the material collected during investigation that the defacto complainant is part of the company which is in default in payment of the loan availed from South Indian Bank. He is an educated and retired Government Official. He had signed documents to be inducted as Director of the company and continue to be its Director since 2013. Several transactions and encumbrances on his property has taken place within his knowledge and participation all these years. He has now come with a story of cheating, concoction and fraud after 8 years, having admittedly received Rs.13,61,000/- initially to redeem the property from LIC Housing Finance and later Rs.1,43,00,000/- to clear the debts raised by mortgaging his property with GNR Enterprises and Jayaraman Chettiar.

12.In the said factual circumstances, the dispute between Directors cannot be given a criminal colour to settle the dispute. The forum for adjudication of these disputes is not the police station. Hence, this Court is inclined to grant anticipatory bail to the petitioners.

13.Accordingly, the petitioners are ordered to be released on anticipatory bail in the event of arrest or on their appearance, within a period of seven days from the date of receipt of a copy of this order, before the learned Judicial Magistrate, Kancheepuram District, on condition that each of the petitioners shall execute a bond for a sum of Rs.1,00,000/- (Rupees one lakh Only)each, with two sureties each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

(a)if the petitioners failed to surrender before the concerned Magistrate within a period of seven days from the date of receipt of a copy of this order, this order shall stand automatically cancelled;

(b)the petitioners and the sureties shall affix their photographs and left thumb impression in the surety bond and the Court concerned may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(c)the petitioners shall report before the Investigation Officer as and when required for interrogation.

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

(e) the petitioners shall not abscond either during investigation or trial;

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

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

-sd/-
30/03/2022

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 JUDICIAL MAGISTRATE,KANCHEEPURAM DISTRICT.

2 THE CHIEF JUDICIAL MAGISTRATE,CHENGALPATTU(FOR INFORMATION)

3 THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH POLICE STATION,
KANCHEEPURAM DISTRICT.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 CC to M/S.M.A.MUTHALAKAN Advocate on payment of necessary charges sr.4795

+1 CC to Mr.G.Ethirajulu Advocate on payment of necessary charges SR.NO.4913

CRL OP.6285/2022
and Crl.MP.No.4107/2022

Date :30/03/2022

RVR 31/03/2022