Crl.O.P.No.10607 of 2022

G.K.ILANTHIRAIYAN, J.

The petitioner who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 406 & 420 of IPC in Crime No.54 of 2022, seeks anticipatory bail.

2. The case of the prosecution is that the complainant is the Director of Asia Med Hospital Private Limited, whereas A1 and A2 are the Directors of Ferdous Hotels Private Limited. They owned multiple complex at Dr.Radhakrishnan Road, Chennai. It was mortgaged with the Indian Overseas Bank, Peters Road Branch, Chennai and availed loan. Thereafter, the accused failed to repay the said loan and there is total outstanding loan to the tune of Rs.130 crores. Therefore, the banker had proceeded with the legal action under SARFAESI ACT. At that juncture, the first accused suggested to the defacto complainant that initially a sum of Rs.5 crores have to be paid to the banker as part payment of outstanding loan amount. Thereafter, the first accused will request the bank to inform the remaining outstanding loan and the same was also

accepted by the second accused. Accordingly, memorandum of understanding was entered into between A1 & A2 and the defacto complainant on 29.08.2018 with regards to the transfer of property in favour of the defacto complainant. Accordingly, the defacto complainant paid a sum of Rs.5 crores directly to the Indian Overseas Bank through HDFC Bank cheque as part payment of loan outstanding. Thereafter, the accused persons have failed to keep up their promise and when it was questioned by the complainant, there is no response and subsequently the defacto complainant came to understand that they approached another person for settlement of loan outstanding. The first accused sent email to the complainant stating that they have cancelled the MOU executed in favour of the defacto complainant. The first accused sent letter dated 29.06.2019 stating that they will repay the amount of Rs.5 crores and issued four post dated cheques. However, they requested not to present the said cheques thereby they cheated the defacto complainant.

3. Mr.C.Emalias, the learned counsel appearing for the petitioner submitted that as per the MOU dated 29.08.2018, a sum of

Rs.5 crores shall be paid at the time of signing the MOU. Thereafter, a sum of Rs.20 crores to be paid by the defacto complainant on or before 30.09.2018. Only thereafter, the petitioner will arrange transfer forms for all the shares. Further, a sum of Rs.66 crores shall be paid to the Indian Overseas Bank to the credit of financial assistance availed by the first accused on or before 15.10.2018. The balance sale consideration of Rs.39 crores shall be paid to the first accused on or before 31.10.2018. However, the defacto complainant failed to act upon and only because the defacto complainant, the petitioner suffered huge loss. Therefore, the petitioner filed suit before this Court claiming damages as against the accused persons in CS.SR.No.21264 of 2022. Therefore, the custodial interrogation of the petitioner does not require and he is also aged about 70 years. Therefore, he prays for grant of anticipatory bail to the petitioner.

4. Per contra, Mr.A.Nagarajan, the learned counsel appearing for the defacto complainant / intervenor submitted that the petitioner cheated to the tune of Rs.5 crores by way of MOU dated 29.08.2018.

Believing the words of the accused, the defacto complainant paid a sum of Rs.5 crores directly to the Indian Overseas Bank, Peters Road Branch, Chennai. Thereafter the accused sold part of the property to third party. While pending this petition, the matter has been referred for mediation for amicable settlement between the parties. However, the mediation failed and referred before this Court.

5. Admittedly, the defacto complainant paid a sum of Rs.5 crores directly to the Indian Overseas Bank, Peters Road Branch, Chennai towards part payment of loan amount which was availed by the petitioner herein. It was adjusted through part payment of the loan amount. Now the petitioner is facing proceedings under SARFAESI Act and with the help of the banker, portion of the property was already sold out. As per the memorandum of understanding dated 29.08.2018, the defacto complainant paid a sum of Rs.5 crores directly to the banker. Thereafter, it was not acted upon and the petitioner failed to return the said amount. Though the petitioner filed suit for damages as against the defacto complainant in CS.SR.No.21264 of 2022 before this Court, he

again escaped from the liability to the tune of Rs.5 crores which was paid by the defacto complainant towards loan amount. In fact, the said suit is even not numbered till today and it is in SR stage.

6. At this juncture, the learned counsel appearing for the petitioner would submit that the petitioner is ready and willing to pay a reasonable amount as directed by this Court without prejudice to his rights of defence.

7. Considering the above facts and circumstances of the case and also the age of the petitioner, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

8. Accordingly, the petitioner is directed to pay a sum of Rs.2,50,00,000/- (Rupees Two Crores and Fifty Lakhs only) directly to the defacto complainant / intervenor by way of demand draft within a period of four weeks from the date on which the order copy made ready, and on such payment the petitioner is ordered to be released on bail in

the event of arrest or on his appearance, before the learned Judicial Magistrate Court-I, Tambaram on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) 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, failing which, the petition for anticipatory bail shall stand automatically dismissed and on further condition that:

[a] the petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioner shall pay a sum of Rs.2,50,00,000/- (Rupees Two Crores and Fifty Lakhs only) directly to the defacto complainant / intervenor by way of demand draft within a period of four weeks from the date on which the order copy made ready.

[c] the petitioner shall appear before the respondent police daily at 10.30 a.m., for a period of six weeks and thereafter as and when required for interrogation.

[d] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[e] the petitioner 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 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].**

[g] If the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

12.08.2022
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