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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Thirteenth day of June Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice G.K. ILANTHIRAIYAN

CRIMINAL ORIGINAL PETITION No.11594 of 2022

G.VIJAYAKUMAR [PETITIONER / ACCUSED]

Vs

STATE REP BY [RESPONDENT]
THE SUB INSPECTOR OF POLICE,
EDF-II, TEAM-III,
CENTRAL CRIME BRNACH,
VEPERY, CHENNAI-600 007.
X CR.NO.88/2016.

For Petitioner : M/S.S.D.VENKATESWARAN Advocate

For Respondent : MR.A.DAMODARAN, Additional Public Prosecutor,

For Intervener : M/S.S.SIVARAMAN, Advocate

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 406, 417, 420 and 465 of IPC in CCB Crime No.88 of 2016 on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution is that the complainant is engaged in manufacturing and trading of fertilizer products. The accused who is the authorized signatory of M/s.Mangal Trading Bombay Pvt Ltd had approached the complainant and offered to arrange an LC facility from his Bank for 2.25 crores for rock phosphate. In consideration of the said arrangement the complainant offered a lucrative deal whereby the complainant was willing to transfer the margin amount to the accused and also agreed to give a higher rate of interest that the bank interest would accrue for the said arrangement. Further, the accused had asked the complainant to transfer the margin money, a sum of

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Rs.45 lakhs to the account of M/s Mangal Trading Bombay Pvt Ltd., in order to arrange the said LC amount within a week and upon the accused's assurance and with good faith, the complainant by way of RTGS SBINH14127315756 had transferred Rs.45 lakhs from State Bank of India, Nungambakkam Branch, Chennai to Mr.Vijayakumar's account, after the transfer of money, the complainant has constantly been sending e-mails and other correspondents and there was no dispute on the transfer of money. In every correspondence, the accused had assured to honor his promise and also stated that he would take necessary steps to arrange for the LC amount. Further, the accused had sent e-mails stating that as there were some problems in his Bank and he was unable to arrange for the LC and the same would require some more time. The accused made false promises and allured the complainant to deposit Rs.45 lakhs when in reality he intended to fraudulently misappropriate the company's legitimate sums. With a bonafide belief, had issued a huge amount to the accused for the betterment of the complainant company but the accused has misappropriated the same and jeopardized the complainant's business leading to humongous losses. Hence, the complaint.

3. The learned counsel for the petitioner would submit that the petitioner is an innocent person and he has not committed any offence as alleged by the prosecution. He further submits that the defacto complainant had suppressed the entire facts and transactions with M/s.Mangal Trading Bombay Private Limited and has not come out with clean hands before accusing the petitioner/accused who is the Managing Director of M/s.Mangal Trading Bombay Pvt Ltd. These two companies had business relationship between them from the year 2009. This was primarily a buyer (Kothari) and seller (Mangal) relationship in which Mangal Trading Bombay Pvt Ltd., would use its Letter of Credit facility availed from Andhra Bank to open LC on suppliers identified by Kothari in order to purchase the material on behalf of Kothari. The material thus purchased would then be sold to Kothari who would convert the raw materials into finished products in their facility and sell it to dealers of Kothari across South India. After collecting the funds from its dealers, Kothari would pay Mangal the LC amount due also with any other incidental expenditures from the Bank like forex charges, LC opening charges, discounting charges as agreed upon. Hence, he prays to grant anticipatory bail to the petitioners.

4. The learned Additional Public Prosecutor appearing for the respondent admits that the crime is of the year 2016 and now only the petitioner was served under Section 41A of Cr.P.C. Therefore, the custodial interrogation of the petitioner does not required in this Case.

5. Taking into consideration the facts and submissions of the learned Counsel, this Court is inclined to grant anticipatory bail to the petitioners subject to the following conditions;.

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6. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date on which the order copy made ready, before the learned Metropolitan Magistrate for the exclusive trial of CCB Cases (relating to Cheating Cases in Chennai) and CBCID Metro Cases, Egmore, Chennai 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 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 report before the respondent police daily at 10.30 a.m for a period of four weeks and thereafter as and when required for interrogation;

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

[d] the petitioner shall not abscond either during investigation or trial.

[e] 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].**

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

-sd/-
13/06/2022

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

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

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TO

1 THE METROPOLITAN MAGISTRATE,
FOR THE EXCLUSIVE TRIAL OF CCB CASES
(RELATING TO CHEATING CASES IN CHENNAI) AND
CBCID METRO CASES, EGMORE, CHENNAI.

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

3 THE SUB INSPECTOR OF POLICE,
EDF-II, TEAM-III,
CENTRAL CRIME BRNACH,
VEPERY, CHENNAI-600 007.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+2 CC to M/S.S.D.VENKATESWARAN Advocate on payment of necessary charges SR.NO.8978

CRL OP.11594/2022

Date :13/06/2022

TA-17/06/2022

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