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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2022

CORAM

THE HON'BLE Mrs. JUSTICE T.V.THAMILSELVI

Crl.M.P.No.8184 of 2021

in Crl.O.P.No.9368 of 2021

R.Muruganantham ... Petitioner

-Vs.-

1. State represented by
Inspector of Police
Thiruvarur Police Station (District Crime Branch)
Thiruvarur District.
(In Crime No.4 of 2021)

2. Natarajan ... Respondents

Prayer: Criminal Miscellaneous Petition filed under Section 439(2) of Criminal Procedure Code, praying to cancel the anticipatory bail order in Crl.O.P.No.9368 of 2021 dated 27.05.2021.

For Petitioner : Mr.V.T.Narendiran

For Respondents: Mr.N.S.Suganthan (for R1)
Government Advocate

: Mr.S.Arivazhagan (for R2)

O R D E R

This Criminal Miscellaneous Petition has been filed seeking to cancel the anticipatory bail granted to the $2^{nd}$ respondent by this Court in Crl.O.P.No.9368 of 2021 by order dated 27.05.2021, in Crime No.04 of 2021 on the file of the first respondent Police.

2. The case of the prosecution is that the accused 1 & 2 were running an Indian Oil Corporation Petrol Bunk in the name and style of SPR Agency. The 2nd accused is the son of the 1st accused, namely, Vaikundam. The third accused is running a chit fund company. The third accused had approached the de-facto complainant a mediator, namely,

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Mr.Iyyappan, stating that the said petrol bunk is for sale with land and petrol bunk, which is owned by him and the total sale consideration was fixed at Rs.1,35,00,000/-. The de-facto complainant had agreed to purchase the said petrol bunk. On 27.06.2018, the petitioner/de-facto complainant herein had paid a sum of Rs.84,00,000/- as initial payment to the accused 1 to 3. However, after receiving the money, accused 1 to 3 have not come forward to register the sale deed in favour of the de-facto complainant. Thereafter, the de-facto complainant came to know that the said petrol bunk was already under lease with the Indian Oil Corporation. Thereafter, the third accused requested the de-facto complainant to give the remaining sale amount of Rs.74,00,000/- to settle loan dues, which has already borrowed from the accused 1 & 2. On 02.07.2018, the accused 1 to 3 jointly agreed and let out the petrol bunk to the de-facto complainant. The petitioner/de-facto complainant had been running the petrol bunk from 02.07.2018 to 28.10.2018, by investing a running capital of Rs.74,85,759/- (including petrol and diesel) as stock maintained by the petitioner and a new purchased Tanker Lorry, and as per the instructions given by the accused 1 & 2 , the de-facto complainant settled down the overdraft amount to the 2nd respondent's relative in SBI Bank contrary to the terms. On 28.10.2018, the accused 1 to 3 came to petrol bunk with rowdy elements and threatened the de-facto complainant to vacate from the petrol bunk. Hence the complaint.

3. The learned counsel for the petitioner/defacto complainant submitted that the de-facto complainant had given a complaint against all the accused and in the meantime, on 24.01.2020, the third accused had published "Public Notice" in Daily Thanthi, admitting that he had got Rs.74,00,000/- from the petitioner regarding the sale of the above said petrol bunk along with the land. The third accused had appeared before the Additional Deputy Superintendent of Police, Thiruvarur on 04.10.2019 in respect of the complaint given by the petitioner and thereby, admitted the amount of Rs.74,00,000/- received by him through his reply statement.

4. The learned counsel for the petitioner further submitted that he paid Rs.1,05,00,000/-. Out of this amount, Rs.85,00,000/- was paid to the third accused towards discharge of loan borrowed by the said Vaikundam (A-1) and the balance amount of Rs.20,00,000/- was paid to the State Bank of India, Thiruthuraipoondi towards discharge of over draft loan borrowed by Vaikundam.

5. The learned counsel for the petitioner further submitted that the said Vaikundam handed over the petrol bunk on 01.07.2018, i.e. on the date of agreement itself. On 28.10.2018, Vaikundam violently grabbed the petrol bunk from the petitioner with the help of henchmen forcibly. He further submitted that Vaikundam's friend Natarajan received a sum of Rs.85,00,000/- which is the loan borrowed by Vaikundam. Now Vaikundam, his friend Natarajan and Vaikundam's son

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Baranidharan (A2) jointly criminally conspired to cheat the petitioner and thereby cheated the petitioner to the tune of Rs.1,35,00,000/- as if they sold the petrol bunk to the petitioner. Therefore, Vaikundam and his associates i.e., his son Baranidharan and his friend Natarajan committed serious cognizable offences under various sections of IPC.

6. The learned counsel for the petitioner further submitted that even after the representation, the first respondent did nothing to set the criminal law in motion against the culprits who committed a serious crime of cheating and fabricating false documents to the tune of Rs.1,35,00,000/- from the petitioner/de-facto complainant.

7. The learned counsel for the petitioner further submitted that the A3 (Natarajan), suppressing the aforesaid facts, had obtained anticipatory bail and the accused A1, A2 and A3 committed very serious offences as alleged by the prosecution and the aforesaid amount has not been recovered from the accused. Therefore, detailed investigation is required and custodial interrogation is also required. Hence, the anticipatory bail granted by this Court in Crl.O.P.No.9368 of 2021 by order dated 27.05.2021 may be cancelled.

8. A Counter affidavit is filed by the first respondent police, wherein it has been stated that A1-P.Vaikundam and A2-Bharanidharan were running the Indian Oil Corporation Petrol Bunk in the name of SPR Agency, and, Natarajan/A3 is running a chit fund company and lending money on interest. The de-facto complainant agreed to purchase the said petrol bunk for a sale consideration of Rs.1,35,00,000/-. On 27.06.2018, the de-facto complainant had paid part purchase price of Rs.85,00,000/- to the accused persons. On 02.07.2018, the accused persons handed over the said petrol bunk to the de-facto complainant. The de-facto complainant gave capital amount of Rs.75,00,000/- to be invested in the said petrol bank. Suddenly, on 28.10.2018, A1 and A2 came to petrol bunk with rowdy elements stated that they settled the land to A3, and directed him to get amounts for A3 (financier) and also made the de-facto complainant to vacate from the petrol bunk forcibly by using rowdy elements. Therefore, the accused 1 & 2 along with A3 colluded and cheated the de-facto complainant.

9. It is further submitted that, based on the complaint, a case was registered by the District Crime Branch, Tiruvarur in Cr.No.04 of 2021 under Sections 406, 420 r/w Sections 120-B, 506(i) IPC against A1 to A3 on 23.04.2021. It is further submitted that during the course of investigation, the then Inspector of Police has examined the witnesses. In the meanwhile, A3 filed anticipatory bail petition before this Court in Crl.O.P.No.9331 of 2021 and the same was dismissed on 19.05.2021. The third accused suppressing the facts, filed second anticipatory bail petition before this Court in Crl.O.P.No.9368 of 2021 and had obtained anticipatory bail on 27.05.2021. Hence, the learned counsel for the petitioner/de-facto complainant filed the present petition for cancellation of

anticipatory bail granted to A3 by this Court in Crl.O.P.No.9368 of 2021, dated 27.05.2021 and A1 and A2 in Crl.O.P.No.7926 of 2021 in Crime No.4 of 2021.

10. From the facts, it could been that the defacto complainant had entered into an agreement for purchasing the petrol bunk, in the year 2018, from A1 and A2, and he paid a part of the sale consideration of amounting Rs.75 Lakhs to A3 who is the financier of A1 A2, as per the direction of A1, A2 . Therefore, A1 and A2 along with rowdy elements threatened the defacto complainant to vacate the petrol bunk and also directed him to get amount from A3/financier. Hence, he gave a complaint to the respondent police but it was not taken on file and subsequently as per directions under Section 156(3), complaint was taken on file and FIR was registered.

11. Even after getting anticipatory bail, there is no progress in this case as submitted by the prosecution. Furthermore, at that time of getting anticipatory bail, the contention on the side of the A3/financier/second respondent herein was that the persons are relatives but on the other hand, as per the submission made by the complainant, he is not a relative, and by giving false information to the Court, the order was obtained by A3, As per the submission made by the prosecution, so far neither the amount was recovered nor there is any progress for the investigation.

12. On seeing the facts and circumstances of the case, it is evident that A1 to A3 are not co-operating with the investigation, the complaint against A3/second respondent herein is serious and he is also not co-operating with the investigation.

13. In view of the above, the anticipatory bail granted by this Court by order dated 27.05.2021 in Crl.O.P.No.9368 of 2021 is hereby cancelled. Accordingly, this Criminal Miscellanous Petition is allowed.

-sd/-
25/02/2022

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 JUDICIAL MAGISTRATE,
THIRUVARUR.

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2 THE CHIEF JUDICIAL MAGISTRATE
THIRUVARUR. [FOR INFORMATION]

3 THE INSPECTOR OF POLICE,
THIRUVARUR POLICE STATION,
(DISTRICT CRIME BRANCH),
THIRUVARUR DISTRICT.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 C.C. to MR.S.ARIVAZHAGAN Advocate on payment of necessary charges SR.NO. 2953

Order

in
CRL MP.8184/2021
in
CRL OP.9368/2021

Date :25/02/2022

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RW 01/03/2022