



Crl.O.P.No.20422 of 2022

Crl.O.P.No.20422 of 2022

A.D.JAGADISH CHANDIRA, J.

The petitioners, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 406, 420 and 506(i) of IPC in Crime No.5 of 2022, seek anticipatory bail.

2. The case of the prosecution as per the defacto complainant one Balamurugan is that he is a proprietor, who is running business in the name and style of “N.M. Agencies”. He has been doing sub contract work for laying roads using lorry, JCB, Excavator, Grader, Roller and Bull Dozer. While so, the defacto complainant had entered into an agreement with one Oriental Structural Engineers Private Limited for laying roads between Kallagam and Karuppur. In the course of the contract, the petitioner had supplied sand to the tune of Rs.9,12,41,000.18/- whereas, the accused company had refused to clear the bill and when the same was questioned by the defacto complainant, the accused had criminally intimidated him. On the basis of the complaint, a case in Crime No.5 of 2022 has been registered for the offences under Sections 406, 420 and 506(i) of IPC.



CrI.O.P.No.20422 of 2022

WEB COPY

3. Mr.Solomon Francis, learned counsel for the petitioners would submit that the petitioners are employees of M/S Oriental Structural Engineers Private Limited, which had been successfully allotted the project work of laying roads by National Highway Authority of India (*i.e., 4-Laning of Kallagam to Karuppur from 38.700 km to 50.382 km and 2-laning with paved shoulders from Karuppur to Meensurutti from 50.382 km to 98.433 km of NH 227 under Bharatmala Pariyojana (Residual Project under NHDP phase-4) in the state of Tamil Nadu on Hybrid Annuity mode and the Concessions Agreement dated 24.04.2018*). The petitioners' company had handed over the sub contract dated 10.07.2019 to the defacto complainant. However, since the defacto complainant had violated the terms of the sub contract, the sub contract was terminated. In respect of the same, legal notice has been sent to the defacto complainant. Subsequently, public notice has also been published in the “Daily Thanthi” news paper on 20.08.2022.

4. Learned counsel for the petitioners would further submit that as per the sub contract, there is also a Arbitration Clause whereas, the defacto



CrI.O.P.No.20422 of 2022

complainant, who is local and influential person without resorting to legal procedures had given a false complaint against the petitioners, who are employees in the company. He would submit that the petitioners' company is a private limited company, which was registered at Delhi and the dispute is purely civil in nature.

5. Learned counsel for the petitioners would submit that the reading of FIR itself would show that the averment of cheating and criminal breach of trust cannot be made out against the petitioners. He would further submit that the petitioners company had already paid an amount of Rs.9,19,90,360/- to the defacto complainant, the complaint of the defacto complainant is an attempt to arm twist the petitioners under the threat of arrest and recover the money illegally. He would further submit that the petitioners are ready to appear before the respondent police for investigation and they are prepared to furnish the necessary documents before the respondent police. The case of the prosecution is also borne out by documents. Thereby, he prays to grant anticipatory bail to the petitioners.



Crl.O.P.No.20422 of 2022

WEB COPY

6. Mr.R.Vinothraja, learned Government Advocate (crl.side) would submit that the petitioners company have obtained project work from the National Highway Authority. The petitioners have given sub contract to the defacto complainant and on believing the assurance given by the petitioners company, the defacto complainant had supplied sand to the petitioners company whereas, the petitioners have cheated the defacto complainant. However, he opposed to grant anticipatory bail to the petitioners.

7. Mr.Maheswaran, learned counsel for the defacto complainant would submit that the defacto complainant is a proprietor, who has been doing sub contract work for dumping soil for the construction of roads. Based on the assurance given by the petitioners company, the defacto complainant had supplied sand to the tune of Rs.9,12,41,000.18/- whereas, they have not paid an amount and when the same was questioned by the defacto complainant, the petitioners, who are employees of the said company have threatened the defacto complainant with dire consequences. Hence, he vehemently opposed to grant anticipatory bail to the petitioners.

8. Heard the learned counsels and perused the FIR and the entire



CrI.O.P.No.20422 of 2022

documents filed along with the typed set.

WEB COPY

9. It is the case where the defacto complainant is stated to have supplied sand under Sub contract agreement dated 10.07.2019. There had been business transactions in which, the defacto complainant had supplied the sand and there are also a material to show that it was a running transaction and the bills have been paid by the company in the course of business. As per the petitioners, there is an arbitration clause in the contract. Further, it is the case of the petitioner that the sub contract has been terminated by issuing legal notice and publishing in the news paper.

10. Taking note of the facts and submissions made, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

11. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on their appearance, within a period of fifteen days from the date on which the order copy made ready, before the **learned Judicial Magistrate, Ariyalur** on condition that the petitioners shall



CrI.O.P.No.20422 of 2022

execute separate bond for a sum of **Rs.25,000/- (Rupees Twenty Five 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 petitioners 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 petitioners shall report before the respondent police daily at 10.30 a.m., for a period of two weeks and thereafter every Monday at 10.30 a.m., until further orders.

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

[d] the petitioners 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



Crl.O.P.No.20422 of 2022

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]**.

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

12. In view of the above, this Criminal Original Petition is allowed and the intervening petition is dismissed.

06.09.2022

shk/sma



WEB COPY



Crl.O.P.No.20422 of 2022

A.D.JAGADISH CHANDIRA,J.

Shk

Crl.O.P.No.20422 of 2022

06.09.2022