



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Fourth day of January Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice M.DHANDAPANI

CRIMINAL ORIGINAL PETITION No.22941 of 2021

V.S.THAMILAN

[PETITIONER / ACCUSED]

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
VELLORE.
(CRIME NO.5 OF 2021)

[RESPONDENT]

For Petitioner : M/S.P.GUNARAJ Advocate

For Respondent : MR. S.BALAJI, Govt. Advocate (Crl. Side)

For Intervener : M/S. P.GOVINDARAJAN, Advocate

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

ORDER : The Court Made the following order :-

The petitioner, who apprehends arrest for the alleged offence u/s 406, 420, 294 (b), 506 (1) and 120 (B) IPC in Crime No.5 of 2021 on the file of the respondent police, seeks anticipatory bail.

2. It is the case of the prosecution that the defacto complainant, the owner of M/s.Balamurugan Transport, had entered into MoU with the petitioner for the take over of the 115 lorries, which were under hypothecation with M/s.Hinduja Finance Ltd. The MoU was entered into on the ground that the petitioner would take over the lorries and would also honour the dues that are due and payable under the hypothecation agreement. However, the petitioner not only failed to pay the dues under the hypothecation agreement, but also left the lorries stranded in open places, thereby causing much damage to the lorries, incurring much monetary loss to the defacto complainant. It is the further case of the prosecution that the original documents



pertaining to the lorries were taken over by the petitioner and were not returned to the defacto complainant and when the defacto complainant requested return of the said documents, the petitioner threatened him with dire consequences. Therefore, the present complaint has been filed by the defacto complainant resulting in the registration of the case.

3. Learned counsel appearing for the petitioner submits that the petitioner has not committed any offence as alleged by the prosecution and that this is the second bail application filed by the petitioner. It is the further submission of the learned counsel for the petitioner that due to certain miscommunication, the amount, which ought to have been transferred to the bank account of the defacto complainant firm, was transferred to the bank account of the proprietorship firm of one Sampath Kumar. It is further submitted by the learned counsel for the petitioner that though arbitration notice had been issued to the defacto complainant enforcing the arbitration clause, however, the defacto complainant did not reply to the arbitration notice. It is the further submission of the learned counsel for the petitioner that though the petitioner has all means to try to settle the matter, the defacto complainant is not aiding in settling the matter. It is submitted that the aforesaid facts were not placed before this Court while the previous anticipatory bail petitions were considered and the present change in circumstance may be taken note of by this Court and, prays for grant of anticipatory bail.

4. Learned Government Advocate submitted that the petitioner had, earlier, filed CrI. O.P. Nos.12823/21 16625/2021 and this Court, vide orders dated 19.08.2021 and 1.11.21, had dismissed the said anticipatory bail petitions. He further submits that there is no change of circumstance pointed out by the petitioner except for the fact that the petitioner had earlier issued arbitration notice and is trying to enter into a settlement with the defacto complainant. Therefore, he vehemently objected to grant of the prayer as made by the petitioner.

5. This Court, vide orders dated 19.8.21 and 1.11.21, while considering all the aspects of the matter, taking into consideration the fact that there is a huge financial loss suffered by the defacto complainant and that the petitioner, in connivance with other persons had caused serious damage to the business of the defacto complainant by not adhering to the conditions contemplated in the MoU, had dismissed the anticipatory bails plea on the ground that the alleged due to the defacto complainant is to the tune of more than Rs.10 Crores.

6. The present petition, the third one filed by the petitioner for anticipatory bail, while gives the details as was narrated in the earlier petition, the only circumstance pointed out by the petitioner is that arbitration notice had been issued and the defacto complainant



had not come forward to settle the issue and the said circumstance shows not only the attitude of the defacto complainant to the issue, but it is definitely a change in circumstance warranting an affirmative order from this Court, however, the mere fact that arbitration notice has been issued, that too prior to the filing of the anticipatory bail petition, on which no action has taken place till date, the said circumstance could in no way be termed to be a changed circumstance which would enure to the benefit of the petitioner. The gravity of the offence and enormity of the amount involved in the matter are so very high that granting anticipatory bail to the petitioner would not be conducive to the proper conduct of investigation.

7. As rightly pointed out by the learned Government Advocate, there being no change of circumstance or any other material to show that the petitioner had taken efforts to settle the dues except for issuing the arbitration notice, that too even before the filing of the complaint and no action having been taken on the said arbitration notice thereafter in accordance with law, this Court is of the considered view that the present petition also does not deserve to be favourably considered.

8. For the reasons aforesaid, this criminal original petition is dismissed.

-sd/-

04/01/2022

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 INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
VELLORE.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 CC to M/S.P.GUNARAJ Advocate on payment of necessary charges
SR.NO.129

CRL OP.22941/2021

Date :04/01/2022

RW 07/01/2022