IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.11.2022
Pronounced on : 17.11.2022

CORAM

THE HON'BLE **Dr.JUSTICE G.JAYACHANDRAN**

Crl.O.P.No.26372 of 2022

1.Sundaramoorthy
2.Kathirvel
3.Maridurai
4.V.Pushpa
5.Velusamy
6.Ajithkumar
7.Singathurai ... Petitioners

Vs.

The State by
The Inspector of Police,
District Crime Branch,
Coimbatore.
(Crime No.3 of 2022) ... Respondent

Prayer:- Criminal Original Petition has been filed under Section 438 of Cr.P.C., praying to enlarge the petitioner on anticipatory bail in the event of their arrest in Crime No.3 of 2022 on the file of the respondent.

For Petitioners : Mr.A.Nagarajan for
Mr.S.Kathiravan

For Respondent : Mr.N.S.Suganthan
Government Advocate (Crl.Side)

For Intervenor : Mr.R.John Sathyan

ORDER

The Criminal Original Petition for anticipatory bail, by the persons accused is in respect of the First Information Report on the complaint given by the Senior Manager of Tamilnadu Mercantile Bank, R.S.Puram, Coimbatore.

2. The petitioners are A-5, A-12, A-13, A-17, A-19, A-20 and A-21.

3. The gist of the First Information Report:

Rajesh(A-1), the then Manager, Tamilnadu Mercantile Bank, Coimbatore in connivance with one Kanakaraj(A-2) has sanctioned loans to 17 fictitious firms started by A-2 with the help of his relatives and employees. As against properties worth about Rs.2.75 crores, knowingly loans for over Rs.10 crores sanctioned by inflating the value with the connivance of the valuer. Same properties were shown as surety for multiple loans. Out of 35 accused, 13 were arrested. 12 still absconding. The investigation is pending. The absconding accused have earlier filed separate anticipatory bail petitions, but dismissed for more than once.

4. The allegations against each of these petitioners as narrated in the First Information Report are:-

> "*3. The allegations as against the 1st petitioner (5th accused) is that he was the proprietor of one M/s. Mages Fabrics and, that he had obtained a loan for Rs.36,00,000/- on 11.03.2019 called GECL loan during COVID on cash credit basis and another loan Period for Rs. 7,26,000/- on 05.06.2020 and; that his loan account was declared as Non Performing Asset on 17.08.2021. It is further alleged that during inspection, the defacto complainant found that it was functioning in the same premises as 3 other concerns namely M/s. Banu Tex, M/s. Siddesh Tex, M/s. Sanchanaa Fabrics; that as on the date of FIR, a sum of Rs.7,16,571/- was due to the Bank. It is further alleged that A6 had mortgaged his property purchased by way of Sale Deed dated*

30.09.2014 bearing Document No. 6524/2014 measuring 2495 Sq Ft by Memorandum of Deposit dated 11.03.2019 bearing Document No. 1782 of 2019

4. The allegations as against the 2nd petitioner (12th Accused) is that he was the proprietor of one M/s. Kathir Textitles; that he had obtained a loan for Rs 80,00,000/- on 05.11.2020 on cash credit and, that he has not repaid the loan amount and as on 26.08 2021 a sum of Rs 80,96,767/- was due to the Bank and he had mortgaged his property purchased by way of Sale Deed dated 14.08.2020 bearing document No 4950/2020 with the Bank, and that the property was overvalued by A4.

5. The allegations as against the 3rd petitioner (13th Accused) is that he was the proprietor of one M/s. MSM Mills, that he had obtained a loan tor Rs. 50,00,000/-on 14.11.2019 on cash credit and, that he has not repaid the loan amount and as on 26.08.2021 a sum of Rs 60,29,188/- was due to the Bank and a property purchased by way of Sale Deed dated

10.09.2019 bearing document No. 7267/2019 had been mortgaged with the Bank in favour of the 3rd petitioner herein by the 3rd accused, and that the property was overvalued by A4

6. The allegations as against the 4th petitioner (17th Accused) is that she was the proprietor of one M/s Pushpa Textitles, that she had obtained a loan for Rs.60,00,000/- on 03.07.2020 on cash credit and, that she has not repaid the loan amount and as on 26 08 2021 a sum of Rs 59,99,460/- was due to the Bank. As per the allegations in the FIR, she had obtained the loan by mortgaging her property purchased by way of Sale Deed dated 24.04.2020 bearing document No. 2602/2020 with the Bank and the property was overvalued by A4, that the 18th Accused one Thangavel had given his personal guarantee in favour of the 4th petitioner, and that the property was overvalued by A4.

7. The allegations as against the 5th petitioner (19th Accused) is that he was the proprietor of one M/s. Velu Fabrics; that he had obtained a loan for Rs.48,00,000/- on 14 11 2019 on cash *credit and, that he has not repaid the loan amount and as on 26.08 2021 a sum of Rs 58,23,645/- was due to the Bank. As per the allegations in the FIR, a property purchased by way of Sale Deed dated 10.09.2019 bearing document No. 7267/2019 had been mortgaged with the Bank by A13; and that the property was overvalued by A4.*

8. The allegations as against the 6th petitioner (20th Accused) is that he was the proprietor of one M/s. PAK Textitles; that he had obtained a loan for Rs.60,00,000/- on 11.05.2020 on cash credit and, that he has not repaid the loan amount and as on 26.08 2021 a sum of Rs.60,82,742/- was due to the Bank. As per the allegations in the FIR, he had obtained the loan by mortgaging his property purchased by way of Sale Deed dated 24.04.2020 bearing document No. 2601/2020 with the Bank; and that the property was overvalued by A4.

9. The allegations as against the 7th petitioner (21st Accused) is that he was the proprietor of one M/s. SAP Fabrics; that he had obtained a *loan for Rs.50,00,000/- on 09.11.2019 on cash credit and; that he has not repaid the loan amount and as on 26.08.2021 a sum of Rs.60,81,380/- was due to the Bank. As per the allegations in the FIR, a property purchased by way of Sale Deed dated 10.09.2019 bearing document No. 7267/2019 belonging to A13 had been mortgaged with the Bank; and that the property was overvalued by A4."*

5. The Respondent police had filed objection for granting anticipatory bail to these petitioners for the following reasons:-

"14.It is submitted that for the said 17 loan accounts, used for committing the offences, A2 has given his phone number in order to operate the said loan accounts through net banking.

15.It is submitted that the public money to a total of Rs.10.73 crores as been looted by the accused persons. RBI has traced the offensive act of the accused and has initiated action.

16.It is submitted that for each loan the A1 and A4 has obtained commission from A2 *and A10 and has sanctioned the loan in favour of accused, in furtherance of conspiracy, knowing very well about the offensive acts of the accused persons.*

17.It is submitted that apart from the Sections u/s.120B, 418, 420, 409, 468, 471, 477A I.P.C., and some more heinous offences may also be culled out through investigation.

18.It is submitted that the other accused persons are still absconding and the investigation is in the initial stage.

19.It is submitted that the confession of A1 and A2 revealed the said details and the involvement of other accused in the above said case and the investigation also confirmed the same.

20.It is submitted that the documents from the bank, Registration Department and from the GST department. The accused are connected through conspiracy and investigation will cull out more truth in the above said case and for which custodial interrogation is highly essential."

6. The learned counsel for the petitioners pleads that, except

Section 409 I.P.C., all other offences against the petitioners are punishable for a term less than 7 years. They are private individuals and no offence under section 409 I.P.C., is alleged against them. Except to claim that they were party to the conspiracy, there is no material evidence worth prosecuting them much less refusal of bail.

7. Whereas the learned Government Advocate(Crl.Side) representing the state, submitted that, the accused persons to cheat the *de facto* complainant bank conceived a scheme of conspiracy and pursuant to conspiracy hatched between the accused A-1 the Bank Manager and A-2 the borrower, 17 fictitious firms were floated in different names and loan of Rs.10.73 lakhs was availed. The loans sanctioned to those fictitious company reverted back to M/s.Sangeetha Mills. The scheme was conceived to circumvent the restriction on A-1 as Manager of the *de facto* bank empowered to sanction loan only upto one crore rupees and to show the same property as surety for most of these loans or documents of property which already alienated were given as surety. The crime has been successfully executed by A-2 with the connivance of A-1 the Bank

Manager and the relatives/employees of A-2. Since the complexity of the crime involves deeper investigation, the abscondency of this petitioner and others, (12 out of 35 named accused) causes delay in completion of investigation and tracing of the money siphoned.

8. The Learned Counsel for the intervenor/*de facto* complainant submitted that, the fraud, fabrication of document and breach of trust manifestly established from the records. In the SARFAESI proceedings, the bank could able to recover hardly 1/4th of the loan amount and no other assets worthy for recovery available with these accused and by absconding the accused persons able to screen the money they got through the crime.

9. On considering the records and the previous orders passed by this court, the submissions made by the learned counsel for the petitioner that the due to the change in circumstances the petitioner be granted bail does not carry merit. Hence, this Criminal Original Petition stands dismissed.

17.11.2022

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Index: Yes/No
Speaking Order/Non Speaking Order

To

1.The Inspector of Police,
District Crime Branch,
Coimbatore.

2.The Public Prosecutor,
High Court of Madras,
Chennai.

Dr.G.JAYACHANDRAN, J.

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Pre-Delivery Order made in
Crl.O.P.No.26372 of 2022

17.11.2022