



IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Criminal Jurisdiction)

Monday, the Sixth day of June Two Thousand Twenty Two

WEB COPY

PRESENT

The Hon`ble Mr Justice G.K. ILANTHIRAIYAN

CRIMINAL ORIGINAL PETITION No.25830 of 2021

DIWAGAR @ RAJA

[PETITIONER / ACCUSED]

Vs

STATE REP BY
INSPECTOR OF POLICE,
ECONOMIC OFFENCES WING,
SALEM DISTRICT.
CR.NO. 4 OF 2021.

[RESPONDENT]

For Petitioner : M/S. J.JAYAN Advocate

For Respondent : M/S. A.DAMODARAN, ADDITIONAL PUBLIC PROSECUTOR

Advocate Commissioner : M.ELUMALAI Advocate

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

ORDER : The Court Made the following order :-

This Court granted anticipatory bail by Order dated 29.12.2021 in CrI.O.P.No.25830 of 2021 on the following conditions:-

" 9.Considering the nature of the offence, the memo filed by the learned counsel for the petitioner, and the petitioner's willingness to settle the issue, this Court passes the following order :

10.The petitioner is willing to return the money to those who have paid the amount for the Scheme e-tailoring. The de facto complainant and others, who paid money to the petitioner, shall return the machineries to the petitioner, if they incline to cancel the franchise agreement, and on receipt of the machineries, the petitioner shall return them the amounts deposited by them.

11.Mr.M.Elumalai, Advocate (MS No.22/1999), No.151, Thambu Chetty Street, Chennai - 600 001, who is having 22 years of experience and also former Additional Government Pleader, is appointed as Advocate Commissioner in this issue to monitor and facilitate the process of returning the amount by the petitioner to



the de facto complainant and others. He is appointed as the Advocate Commissioner with the concurrence of the learned counsel for the petitioner.

12. The Advocate Commissioner shall appoint any person(s) of his choice for secretarial assistance.

13. A dedicated mobile number and an e-mail ID shall be opened exclusively by the Advocate Commissioner.

14. The remuneration for the Advocate Commissioner is fixed at Rs.1,00,000/- (Rupees One Lakh only) per month. The petitioner shall pay the said amount to the learned Advocate Commissioner on or before 5th of every month.

15. The incidental expenses, including boarding and lodging, if any, incurred by the learned Commissioner, has to be met out by the petitioner.

Petitioner :

16. The petitioner shall furnish the details about all the persons / subscribers / customers / depositors, etc., who have taken franchise from his concern, along with copy of the agreement to the learned Commissioner.

17. The petitioner is also directed to furnish the details of the properties, assets, bank balance, deposits, etc., standing in the name of the petitioner, his firm, and also in the name of his family members to the learned Commissioner.

18. The petitioner shall also effect paper publication in two leading daily newspapers, one in English and one in Tamil in a prominent manner about the appointment of the Advocate Commissioner. The paper publication has to be vetted by the learned Advocate Commissioner.

19. The petitioner is directed to appear before the learned Advocate Commissioner once in a month, i.e., in the first week of every month.

Investigating Agency :

20. The investigating agency shall also furnish the number of complaints/depositors (so far identified and the ones who are yet to be identified) and their details, if any to the learned Commissioner. The learned Commissioner shall ascertain whether they are willing to continue with the Scheme or willing to cancel the franchise agreement.



21.The investigating agency is also directed to keep on updating the Advocate Commissioner about the investigation, periodically.

22.The Investigating Officer is expected to render his fullest co-operation to the learned Commissioner.

De facto complainant :

23.The de facto complainant is also at liberty to submit the details of the persons/customers/depositors as well as the properties of the bank balances of the petitioner, if known to him, to the learned Commissioner.

24.The de facto complainant and / or any other depositor(s), who are aggrieved over the petitioner with regard to the e-Tailoring business, are at liberty to approach the learned Commissioner, either in person or through the dedicated mobile number / e-mail ID created by the learned Commissioner in such regard.

General Directions :

25.The learned Commissioner, after collecting the particulars from all quarters, is to identify the persons / subscribers / customers /depositors and after due verification of their identification and genuineness of the documents, derive the amount deposited by them to the petitioner towards the business.

26.The learned Commissioner shall inform the concerned persons who have taken franchise from the petitioner's firm, ascertain their willingness to cancel the franchise or to continue with the Scheme and shall ensure that the persons get back their money on returning the machineries, if they incline to cancel the franchise agreement.

27.The petitioner and the learned Commissioner shall ensure that all the persons, who have paid the amount and have any grievance, are returned with their money, on returning the machineries.

28.The learned Commissioner is permitted to identify the properties standing in the name of the petitioner/petitioner's firm, his family members and staff,if any,through such modes as he deems fit.

29.The petitioner shall disburse the amounts, as arrived by the learned Commissioner, to the de facto complainant and other persons, who have taken franchise from the petitioner, on receipt of the machineries provided to them, through the TNPID Court, Coimbatore.

30.If the petitioner is unable to disburse the amount to the de facto complainant or other persons, the learned Commissioner is permitted to sell the properties standing in the name of the



petitioner, their family members and staff, in the open market, either by private negotiation or public tender for more consideration, as he deems fit, which amount shall be utilized to settle the de facto complainant and other subscribers / customers / depositors. In such case, the jurisdictional District Revenue Officers and Superintendents of Police/Commissioners of Police concerned are directed to provide all necessary assistance to the learned Commissioner for visiting the properties of the petitioner in the course of their sale.

31. Since the District Revenue Officer is the competent authority and custodian of the properties attached as per the TNPID Act, the petitioner shall give authorisation to the jurisdictional District Revenue Officers to execute the sale of the properties on his behalf. The Sub-Registrars concerned shall register the documents submitted by the District Revenue Officers regarding the properties of the above Crime Number, without raising any query. The District Registrars are directed to issue necessary instructions in this regard to the Sub-Registrars concerned.

32. The petitioner and the learned Commissioner shall ensure that the entire process is completed within a period of three months from the date of receipt of a copy of this order.

33. For any clarification / modification of the aforesaid terms of reference, it is open to the parties concerned to approach this Court. It is made clear that, in the event of any non-compliance of the aforesaid terms on the part of the petitioner, the anticipatory bail granted would be cancelled and the learned Commissioner is at liberty to bring to the notice of this Court about any such non-compliance.

34. Subject to the aforesaid terms of reference, anticipatory bail is granted to the petitioner and he 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 of receipt of a copy of this order, before the learned Judge, TNPID Court, Coimbatore, on condition that he shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty five thousand only) each with two sureties each for a like sum to the satisfaction of the learned Judge, TNPID Court, Coimbatore. (The learned counsel for the petitioner mentioned before this Court that the jurisdictional Court is the TNPID Court, Coimbatore.)

35. Apart from the above, the following conditions are also imposed :

[a] the petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the learned Judge may obtain a copy of their Aadhaar card or Bank pass book to ensure their identity.



[b]the petitioner shall report before respondent police every Monday at 10.30 a.m. until further orders.

[c]the petitioner shall not tamper with the 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 Judge/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 is released on bail by the learned Judge/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 229-A IPC."

2. In the same Order, this Court appointed the learned Advocate Commissioner to monitor and facilitate the process of returning the amount by the petitioner to the victims. If the petitioner failed to settle the amount, the petitioner shall furnish the details about all the depositors and furnish the details of the properties, assets, bank balance, deposits, etc., standing in the name of the petitioner, his firm, and also in the name of his family members to the learned Advocate Commissioner. On receipt of the same, the learned Advocate Commissioner is permitted to sell the properties standing in the name of petitioner, their family members and staff, in the open market, either by private negotiation or public tender.

3. The learned Advocate Commissioner represented that the petitioner neither settled, as directed by this Court, nor furnished any documents or property details and on failure to furnish such details, he could not identify any properties to comply with the direction issued by this Court on 29.12.2021. Further, this Court imposed a condition that for any clarification/modification of the aforesaid terms of reference, it is open to the parties concerned to approach this Court. It was further observed that, it is made clear in the event of any non-compliance of the aforesaid terms on the part of the petitioner, the anticipatory bail granted would be cancelled and the learned Advocate Commissioner is at liberty to bring to the notice of this Court about any such non-compliance.

4. Further this Court by Order dated 28.02.2022 extended the time limit in the earlier Order dated 29.12.2021 and observed as follows:-

"6. Accordingly, time for compliance is extended on or before 29.04.2022, on condition that the petitioner shall report the



settlement progress every week to the Investigating Officer i.e. by Sunday of every week."

5. In view of the non-compliance of the earlier Orders of this Court, dated 29.12.2021 and 28.02.2022, and considering the submissions made by the learned Advocate Commissioner, the anticipatory bail granted by this Court on 29.12.2021 to the petitioner shall hereby stand cancelled. The respondent/Police is at liberty to proceed as against the petitioner and other accused persons, in accordance with law.

-sd/-

06/06/2022

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 JUDGE,
TNPID COURT, COIMBATORE.

2 INSPECTOR OF POLICE,
ECONOMIC OFFENCES WING,
SALEM DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 MR.M.ELUMALAI,ADVOCATE (MS NO.22/1999) ,
NO.151, THAMBU CHETTY STREET,
CHENNAI - 600 001.(MOB.9444062425)

CC to M/S. J.JAYAN Advocate on payment of necessary charges

CC to M/S. M.ELUMALAI Advocate on payment of necessary charges
SR.NO.8525

CRL OP.25830/2021

Date :06/06/2022

RVR 09/06/2022