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Crl.O.P.No.28652 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2022

CORAM

THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.28652 of 2022

K.Sivasankar

... Petitioner

-Vs.-

State rep by
The Inspector of Police,
St.Thomas Mount Police Station,
CSCID-Chennai District
(Crime No.323 of 2022)

.. Respondent

Criminal Original Petition filed under Section 438 of Code of Criminal Procedure to enlarge the petitioner on bail in the event of his arrest in Crime No.323 of 2021 pending investigation on the file of the respondent police.

For Petitioner : Mr.S.N.A.Hussainy

For Respondent : Mr.N.S.Suganthan,
Government Advocate (Criminal side)



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ORDER

This Criminal Original Petition has been filed to enlarge the petitioner on bail in the event of his arrest in Crime No.323 of 2021 pending investigation on the file of the respondent police.

2. The petitioner herein is the second accused in Crime No.323 of 2021 on the file of the respondent police wherein the complaint by Mrs.G.Bharathirani is under investigation for the alleged offences under Sections 406 and 420 IPC.

3. The allegations as found in the complaint is that this petitioner, who is a friend of A1/Nandhakumar, has induced the *de facto* complainant in real estate business that it will give a huge return and on the said promise, she has invested around Rs.40,00,000/- with them. But later, they neither gave any dividend for her investment nor returned the money received. Hence the complaint.



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4. The FIR dated 29.12.2021 indicates that the transaction between the *de facto* complainant and the petitioner has been commenced in the year 2012 and the complaint is given after 9 years. The investigation has revealed that a sum of Rs.5,45,000/- has been transferred from the *de facto* complainant to the petitioner/A2's account and the same is transferred to the account of A1/Nandhakumar.

5. Earlier, when the anticipatory bail petition was moved before this Court, this Court taking note of the fact that for receiving Rs.5,45,000/- from the *de facto* complainant, the petitioner herein has not given any plausible explanation to why he received that money and whether the money was returned to the *de facto* complainant. Hence the anticipatory bail was dismissed on 04.03.2022 for the said reason.

6. The learned counsel for the petitioner would submit that the change of circumstances is that A1 has already been arrested. Further it is submitted by the learned counsel that without prejudice to the rights of the petitioner herein to establish his innocence, he is ready to deposit the money in the crime account, which he had allegedly received from the *de*



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facto complainant, though it was withdrawn and given to A1. Hence he seeks the anticipatory bail for the petitioner herein.

7. The learned Government Advocate (Criminal side) submits that the abscondence of this accused in this case of alleged cheating of the *de facto* complainant, the investigation could not be proceeded and the trial of money could not be traced.

8. Even according to the prosecution, only Rs.5,45,000/- has been transferred to the account of this petitioner. Hence, on considering the rival submissions and the undertaking of the petitioner to deposit of Rs.5,45,000/- to the crime account without prejudice to his rights and to establish his innocence, this Court grants anticipatory bail to the petitioner on the condition that the petitioner deposit Rs.5,45,000/- and shall execute a 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 learned Judicial Magistrate No.I, Alandur, failing which, the petition for anticipatory bail shall stand dismissed.



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9. In detail the conditions for Anticipatory Bail are:

(a) the petitioner shall deposit a sum of Rs.5,45,000/- (Rupees Five Lakhs Forty Five Thousand Only) in the account of Crime No.323 of 2021 on the file of the learned Judicial Magistrate No.I, Alandur, within a period of 15 days from today (23.11.2022);

(b) the petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the Court concerned may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(c) the petitioner shall report before the respondent police daily at 10 a.m., until further orders;

(d) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(e) the petitioner shall not abscond either during investigation or trial;

(f) on breach of any of the aforesaid conditions, the learned Magistrate/ Trial Court is entitled to take appropriate action against the petitioner 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



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down by the Hon'ble Supreme Court in ***P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]***; and;

(g) if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

10. Accordingly, this Criminal Original Petition is allowed.

23.11.2022

Speaking/Non-speaking order

Index: Yes/No

Internet : Yes/No

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To

- 1.The Judicial Magistrate No.I,
Alandur.
- 2.The Inspector of Police,
St.Thomas Mount Police Station,
CSCID-Chennai District
(Crime No.323 of 2022)



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Dr.G.JAYACHANDRAN.J.,

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