BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Reserved on : 25/04/2022
Delivered on : 18/05/2022
PRESENT
The Hon`ble Mr.Justice K.MURALI SHANKAR
CRL OP(MD). Nos.4010 and 4150 of 2022

1.D.Roshini
2.K.Vijayalakshmi ... Petitioners/Accused No.2&4 in Crl OP(MD)No.4010/2022

1.P.Kamaraj
2.K.Sathishkumar ... Petitioners/Accused No.3&5 in Crl OP(MD)No.4150/2022

M.Shahul Hameed ... Intervenor/De-facto Complainant in both petitions

Vs

State Rep.by
The Inspector of Police,
District Crime Branch,
Sivagangai.
(Crime.No.16 of 2021) ... Respondent/Complainant in both petitions

IN Crl.O.P(MD)No.4010/2022
For Petitioners : Mr.H.Arumugam, Advocate

IN Crl.O.P(MD)No.4150/2022
For Petitioners : Mr.H.Arumugam, Advocate for Mr.V.Kishok Kumar, Advocate

IN BOTH PETITIONS
For Respondent : Mr.M.Muthumanikkam, Government Advocate (Criminal Side)
For Intervenor : Mr.Issac Mohanlal, Senior Counsel, for Mr.V.Muthu Kamatchi, Advocate

PETITIONS FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

COMMON PRAYER :-
For Anticipatory Bail in Crime No.16 of 2021 on the file of the Respondent police.

COMMON ORDER :- The Court made the following the Common Order:

The petitioners/accused, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 406, 468, 471, 420 and 120(b) IPC, in Crime No.16 of 2021, seek anticipatory bail.

2.Admittedly, the first accused is the son of accused Nos.3 and 4; husband of A2 and brother of A5.

3.The case of the prosecution is that all the five persons approached the complainant for getting investment for their business in the name of P.K.Oil Store, Dinesh Store and Mangai Pickle, from various persons with the promise that the investor would be paid appropriate lump sum returns, that based on the said promise, the defacto complainant gave a sum of Rs.80 Lakhs, but he was paid interest only Rs.1,50,000/- and that thereafter, the accused have refused to return back investment and on enquiry, the complainant came to know that the accused had cheated many persons to the tune of Rs.10,70,00,000/-. Hence, the complaint.

4.The petitioners' case is that they are no way connected with the business run by the first accused Dinesh kumar, that except the relationship as father, mother, brother and wife, they have nothing to do with the alleged business, that the defacto complainant has purposely included the family members of the first accused with intention to extract money, that the petitioners have alerted the first accused, when he was borrowing money from the defacto complainant for the purpose of investing in the share market business, that despite their advice, A1 believed the defacto complainant in toto and now has got locked with the above criminal case, that the petitioners are not aware of the exact terms of business existed between the first accused and the defacto complainant, that the petitioners were informed that the complainant has borrowed loan from individuals, but not given the same to the first accused and however, he has falsely represented to the creditors as if he has paid the amount to the first accused and that the transaction is purely a loan transaction and the defacto complainant has lodged the above complaint only to escape from the clutches of law and the creditors, who have given amount.

5.The learned counsel for the petitioners would submit that the petitioners came to know that the first accused has already filed an insolvency petition in I.P.No.24 of 2021 and the same is pending on the file of the III Subordinate Court, Madurai, that the present case not a case of collection of deposit, but only a loan transaction for which they have obtained sufficient security for the amount and if at all any liability towards repayment of loan by the first accused, the proper remedy is only filing of suit for recovery of money, that the complainant in a short cut method has lodged the complaint with the false allegations, that there is no evidence attributing any offence against the petitioners, that the defacto complainant has himself preferred the forged pamphlet as if the petitioners were also involved in the business, that the defacto complainant is the main cause for the loss of the business of the first accused and that they have not committed any offence as alleged.

6.It is not in dispute that the accused Nos.3 and 5 have filed an application in Crl.M.P.No.2320 of 2021, seeking anticipatory bail and the learned Sessions Judge vide order, dated 07.08.2021 dismissed the said petition, that the accused Nos.2 and 4 have filed an application in Crl.M.P.No.2158 of 2021 and the learned Sessions Judge, vide order, dated 29.07.2021 has granted anticipatory bail.

7.It is also not in dispute that subsequently accused Nos.3 and 5 have filed another petition in Crl.M.P.No.2894 of 2021 and the learned Principal Sessions Judge vide order dated 13.09.2021 has granted anticipatory bail to them also.

8.The Intervenor/defacto complainant has filed two petitions in Crl.O.P.(MD)Nos.14192 and 14204 of 2021 for cancellation of anticipatory bail granted to the accused Nos.2 to 5 by the learned Principal Sessions Judge, Sivagangai and the learned Judge of this Court vide order dated 30.11.2021 allowed the petitions and cancelled the anticipatory bail granted to the accused Nos.2 to 5.

9.It is necessary to refer the last paragraph in the common order dated 30.11.2021.

> "*9.This is a case of fraud committed by the accused to an extent of Rs.10,77,50,000/- and more than 600 persons have been cheated by the respondents/accused. The amount is yet to be recovered. The case was registered only on 16.07.2021. The accused No.1 is yet to be secured by the Investigation Agency and the amounts which were collected by the accused have been transferred to various other places. The accused No.1 has also filed an Insolvency petition before the Sub-Court, Madurai. Though this Court provided an opportunity to the accused to produce the materials as to how they conducted this scheme, the accused have not produced any document in support of their contention. Further, the learned Principal Sessions Judge, who dismissed the earlier application filed by the accused Nos.3 and 5 on the ground that if the accused are released on anticipatory bail, it would affect the further course of investigation and the remedy to the investors will be hugely affected, granted anticipatory bail to the accused persons on the ground of COVID-19 third wave threat. Hence, considering the gravity of offence, the volume of fraud committed, the manner in which the anticipatory bail has been granted on the ground of COVID19 second wave threat and third wave threat , this Court is prima facie satisfied that the anticipatory bail granted by the learned Principal Sessions Judge is liable to be cancelled. Accordingly, these Criminal Original Petitions are allowed and the anticipatory bail granted to the private respondents/accused Nos.2 to 5 by the learned Principal District and Sessions Judge, Sivagangai, in Crl.M.P.Nos.2158 & 2894 of 2021 dated 29.07.2021 and 13.09.2021 stand cancelled.*"

10.Aggrieved by the order of cancelling the anticipatory bail, the petitioners have filed the petitions for Special Leave to Appeal (Criminal) Nos.1045-1046/2022 before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 17.02.2022, dismissed the Special Leave Petitions and the order of Hon'ble Apex Court is extracted hereunder:

> *"Having heard learned Senior Counsel appearing for the petitioners and on carefully perusing the material placed on record, we doe not find any ground to interfere with the impugned order passed by the High Court.*
> The Special Leave Petitions are, accordingly, dismissed."

11.After dismissal of the Special Leave Petitions, the petitioners have now come forward before this Court again seeking anticipatory bail.

12.The point for consideration is as to whether the petitioners have shown change in circumstances, since the dismissal of the Special Leave Petitions by the Hon'ble Supreme Court.

13.The petitioners in their applications have stated that they have advised the first accused to settle the issue and they have also instructed him to settle the issue amicably, so that at least they can live a peaceful life, that the petitioners have also prepared to help the first accused for settlement and that the accused Nos.2 and 4 have also prepared to give their jewels for settlement to the complainant.

14.Except the above, the petitioners have raised the points and aspects, which were already considered and decided by this Court, which was confirmed by the Hon'ble Apex Court.

15.The defacto complainant/Intervenor in his applications has specifically stated that the petitioners have purposely made a wrong statement as if they have been attempting to settle the issue.

16.The learned counsel for the Intervenor/defacto complainant would submit that inspite of cheating nearly Rs.11 Crores, the petitioners/accused are still at large even after dismissal of the Special Leave Petitions and that the respondent Police in collusion with the accused has not initiated any action for the nine months.

17.It is the case of the complainant that the petitioners/accused were the real masterminds, who created the fake records like pamphlets, false advertisements and induced the public to invest their hard earned money by making false promise, that nearly more than 600 peoples were cheated and their hard earned money were looted by the accused, that many of the complaints were not developed into FIR, because of threatening and high handed activities of the accused and that even after registration of FIR, the accused threatened some Doctors and Government servants not to initiate action against them.

18.Considering the seriousness and gravity of the offence alleged and also the fact that the amount is yet to be recovered and the investigation is pending as stated by the learned Additional Public Prosecutor and more importantly the fact that there is no change in circumstances, since the dismissal of the Special Leave Petitions by the Hon'ble Apex Court, this Court is not inclined to grant anticipatory bail to the petitioners.

19.In the result, the Criminal Original Petitions are dismissed.

sd/-
18/05/2022

/ TRUE COPY /

/ /2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

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

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC TO MR.V.MUTHUKAMATCHI, ADVOCATE (SR-4865[I] DATED 20.05.2022)
+1 CC TO MR.H.ARUMUGAM, ADVOCATE (SR-23730[F] DATED 18.05.2022)

ORDER IN
CRL OP(MD) Nos.4010 & 4150 of 2022
Date :18/05/2022

RS/SVR/SAR.4 (30.05.2022) 5P-5C