BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
RESERVED ON : 26/04/2022
PRONOUNCED ON : 18/05/2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.4918 of 2022

Sowdi ... Petitioner/ Sole Accused

Vs

State represented by
The Inspector of Police,
K.Pudur Police Station,
K.Pudur,
Madurai - 625007.
(Crime No.1332 of 2021) ... Respondent/ Complainant

K.Elakkiya ... Intervener Petitioner/Defacto Complainant in CRL MP(MD) No.4445 of 2022

For Petitioner : Mr.S.Hammed Ismail, Advocate.
For Respondent : Mr.M.Muthumanikkam, Government Advocate (Crl. Side).
For Intervenor : Mr.R.Murali, Advocate

PETITION FOR ANTICIPATORY BAIL Under Section 438 of Cr.P.C.

PRAYER :-

For Anticipatory Bail in Crime No.1332 of 2021 on the file of the respondent Police.

ORDER : The Court made the following order :-

The petitioner/sole accused, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 294(b) and 506(1) IPC, Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002, and Sections 3 and 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act 2003, in Crime No.1332 of 2021, seeks anticipatory bail.

2.The case of the prosecution is that the petitioner gave a loan amount of Rs.13,00,000/- to the defacto complainant, that even after receiving the amount of Rs.58 Lakhs towards principal and interest, he has been demanding more amount, that he has charged 10% for 10 days, that the petitioner has been coming and shouting in front of home and shop and he has been forcibly entering into home at inappropriate time, that he has been calling over 50 times per day, that the petitioner had already taken Aadhar card, cheque leaves and signature in the green sheets and stamp papers and also cheque leaves of her mother and husband and that he has been torturing her continuously. Hence, the present complaint.

3.The case of the petitioner is that he is running a hotel in the name and style of Deepak Restaurant at K.Pudur, Madurai City, that on 02.02.2021, the defacto complainant has received a sum of Rs.48,00,000/- in various instalments with regard to the execution of a sale deed in respect of the property situated at Alagamanagari, Sivagangai District, that the defacto complainant thereafter has not chosen to execute the sale deed and is attempting to cheat him, that the petitioner has already given complaint to the respondent police against the defacto complainant, but the respondent has not taken any action, that the petitioner has then filed a petition under Section 156(2) Cr.P.C., before the jurisdictional Magistrate and the same is pending and that the defacto complainant, in order to escape from her liability, has lodged the above false complaint.

4.The learned Counsel for the intervenor would submit that the intervenor approached the petitioner through another friend and got a loan of Rs.13,00,000/-, that the petitioner informed the rate of interest as Rs.10 paise for 10 days and ie., 30 paise for a rupee for a month, that the defacto complainant has been paying monthly interest at Rs.1,30,000/- regularly, that the defacto complainant had repaid the interest along with the principal amount through the bank account transactions in favour of the petitioner in two bank accounts owned by him, one at State Bank of India, Alagarkovil branch and the other at Karur Vysya Bank, Anna nagar branch, that the defacto complainant has so far paid more then Rs.58,00,000/- to the petitioner towards principal and interest, that the petitioner at the time of extending loan, had taken the defacto complainant's signature over blank 100 Rupees non-judicial stamp papers and in green sheets and also collected more than 10 blank cheques, that the petitioner, even after collecting so much of amount, had been threatening the defacto complainant, that since the defacto complainant has chosen to prefer a complaint, the petitioner by utilising the signatures obtained in the blank stamp paper and in green papers, had created a sale agreement as if the defacto complainant agreed to sell her property and received Rs.48,00,000/-.

5.The learned counsel for the petitioner would submit that the defacto complainant and her mother and brother with an intention to cheat the above said huge amount of the petitioner's hard earned money have lodged the above complaint falsely implicating him, that the petitioner is not a money lender by profession, that the defacto complainant has received Rs.48,00,000/- and redeemed her property from Sriram Finance and for the purpose of executing sale deed, she handed over Aadhar card, that the petitioner's daughter and wife pledged their entire jewels and gave that amount towards sale consideration and that by suppressing the above facts, the present case has been falsely lodged.

6.No doubt, the petitioner's earlier application for anticipatory bail in Crl.O.P.(MD)No.18306 of 2021 was ordered to be dismissed by this Court on 22.02.2022.

7.In pursuance of the direction of this Court, the respondent police has filed a status report, wherein, the respondent has stated that as per the instructions of the accused, the defacto complainant paid the interest and part of the principal in the bank accounts of the petitioner and they have also listed the payments made by the defacto complainant to the petitioner through his bank accounts.

8.In the said status report, it has been further stated that the defacto complainant has paid totally Rs.6,44,400/- in the bank account of the petitioner maintained at State Bank of India and Rs.1,20,000/- in the bank account of the petitioner maintained at Karur Vysya Bank and totally Rs.7,64,400/-.

9.The respondent has further stated in the status report that apart from the said payments, the defacto complainant has also repaid the loan by way of cash to the accused on various occasions, that the defacto complainant has produced certain CCTV footages, that the investigation reveals that the accused has received more than Rs.13,00,000/- from the defacto complainant and that the accused lent money to the defacto complainant for interest and he charged exorbitant interest from the defacto complainant.

10.As rightly pointed out by the learned counsel for the petitioner, the defacto complainant, in her intervening petition, has specifically stated that she has repaid the interest along with principal amount through account transactions in favour of the petitioner in two bank accounts owned by him, one at State Bank of India, Alagarkovil Branch, bearing account No.20016496658 and other account in Karur Vysya Bank, Anna Nagar Branch, bearing Account No.1608172000003623 and that the intervenor has so far paid more than Rs.50 lakhs to the accused towards interest and principal.

11.As rightly contended by the learned counsel for the petitioner, though the respondent police, in their status report, has stated that the defacto complainant has paid more than Rs.13 lakhs, the defacto complainant, in her intervening petition, has stated that she has paid more than Rs.50 lakhs.

12.As already pointed out, the respondent police, in their status report, has listed the payments to the tune of Rs.7,64,400/- only.

13.Though it has been alleged that the defacto complainant has also made payments through cash, she has not furnished any particulars about the alleged payments.

14.As rightly contended by the learned counsel for the petitioner, it is not the case of the prosecution that the defacto complainant has paid more than Rs.50 lakhs.

15.The learned counsel for the petitioner would submit that the contention of the defacto complainant that she had paid more than Rs.50 lakhs towards interest and principal for the amount of Rs.13 lakhs allegedly received by her cannot be believed.

16.Though the respondent police has alleged that the petitioner had charged exorbitant interest from the defacto complainant, they have not elaborated anything further and they have also not produced any materials to show *prima facie* case to substantiate the same.

17.Considering the above facts and circumstances of the case and taking note of the status report filed by the respondent police and also the facts that the petitioner is not having any previous cases for similar offence or serious offence as stated by the learned Government Advocate (Criminal Side) and that investigation might have been completed by this time, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

18.Accordingly, the petitioner 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 Judicial Magistrate Court No.VI, Madurai, on condition that the petitioner 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 Magistrate concerned and on further conditions that:

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

[b]the petitioner shall report before the respondent police daily 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 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 petitioner released on bail by the learned Magistrate/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.

sd/-
18/05/2022

/ TRUE COPY /

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

CSM

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 JUDICIAL MAGISTRATE NO.VI,
MADURAI.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI.

3 THE INSPECTOR OF POLICE
K.PUDUR POLICE STATION, K.PUDUR, MADURAI-625007.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S. HAMMED ISMAIL.S. Advocate SR.No.4826

ORDER
IN
CRL OP(MD) No.4918 of 2022
Date :18/05/2022

SS/VR/SAR:IV/24.05.2022 : 5P/6C