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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Date : 10/06/2022

PRESENT

The Hon`ble Mrs.Justice S.ANANTHI

CRL OP(MD).No.5383 of 2022

1. S.Vanitha Jose
2. S.Sophiya Rachel ... Petitioners/Accused Rank Not Known

Vs.

The State Rep. By,
The Inspector of Police,
District Crime Branch,
Thoothukudi District.
Crime No.28 of 2018. ... Respondent/Complainant

For Petitioners : Mr.T.Lajapathi Roy, Advocate.
For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor
For Intervenor : Mr.K.Anand, Advocate
for Mr.K.Manavalan, Advocate

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

PRAYER :-
For the Anticipatory Bail in Crime No.28 of 2018 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioners apprehending arrest at the hands of the respondent police for the alleged offence punishable under Sections 406 and 420 of IPC, on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution is that the defacto complainant lodged a complaint against the three accused, in which, the first petitioner's husband got acquainted with the defacto complainant through the deceased/second accused, namely Kuberan David Raj. Out of such acquaintance, the defacto complainant has purchased scrap iron on behalf of TABGHA Rolling mills and sent the same in nine consignments between March 2018 and July 2018. The accused had paid for three consignments, but failed to pay remaining consignments and thereby, the accused had misappropriated the goods sent by the defacto complainant and cheated him. Hence, the complaint.

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3.The case of the petitioners is that the petitioners are the Directors of the Company. After investigation, their names were included as accused. They have paid the agreed amount for receiving three consignments from the defacto complainant through bank transactions. But the defacto complainant has stated that nine consignments were sent, which is false. Since the petitioners have already paid the agreed amount for the three consignments received, they are not liable to pay any other amount for the other consignments. Further they have stated that in Crl.OP(MD) No.7307 of 2022, A1 has deposited a sum of Rs.58,00,000/- as per the order of this Court dated 22.04.2022.

4.The learned counsel for the intervenor would submit that the defacto complainant has listed out the particulars of the nine consignments and the value thereof and he has also included LC processing charges. He further submitted that the petitioners have paid only for two shipments at Rs.35,61,900/- and they have failed to pay for the remaining seven shipments total worth about Rs.1,46,06,486.40/-.

5.The learned Government Advocate (Criminal Side) would submit that the defacto complainant lodged the complaint against three accused, in which, second accused died and name of the third accused was deleted from the FIR, after investigation. After initial investigation, they came to know that 488 Metric Tonnes steel scrap was imported by the accused for the value of Rs.1,64,90,406/- and the accused had paid only amount of Rs.18,83,920.40/-. The balance due is Rs.1,46,06,485.60/- to be paid to the defacto complainant. In the confession statement given by the first accused, he has admitted that he has to pay the amount of Rs.1,15,82,665/- to the defacto complainant and that he had also sent messages through Whatsapp agreeing to pay the amount within 30 days, but he has not repaid the same. A1 has also deposited a sum of Rs.58 Lakhs, as per the order of this Court dated 22.04.2022 passed in Crl.O.P(MD) No.7307 of 2022. After investigation, the petitioners, who are the Directors of the Company, are arrayed as accused and during investigation, it reveals that the accused had fabricated the documents and presented the same before the Customs Authorities. So, Section 120(b) of IPC for the offence of forgery was also added.

6.Considering the fact that there is no serious allegation levelled against the petitioners and also the facts that the petitioners are the Directors of the Company and 50% of the alleged amount has already been deposited by the first accused and the investigation is almost over, this Court feels that the custodial interrogation of the petitioners is not necessary. Further, as the petitioners are the Directors of the company and the amount to be paid by the accused is admitted by A1 in his confession statements, the petitioners have to deposit a sum of Rs.10,00,000/-each before the learned Judicial Magistrate No.III, Thoothukudi District.

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7.Accordingly, this Court is inclined to grant anticipatory bail to the petitioners and the petitioners are directed to deposit a sum of Rs.10,00,000/- (Rupees ten lakhs only) each, before the learned Judicial Magistrate No.III, Thoothukudi District, to the credit of Crime No.28 of 2018 without prejudice to their rights and contentions.

8.On such deposit, the petitioners are ordered to be released on bail in the event of arrest or on their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate No.III, Thoothukudi District, on condition that the petitioners 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 Magistrate concerned and on further conditions that:

[a]the petitioners 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 petitioners shall report before the respondent police daily at 10.30 a.m., until further orders

[c]the petitioners shall not tamper with the evidence or witness either during investigation or trial.

[d]the petitioners 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/-
10/06/2022

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

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TO

1. THE JUDICIAL MAGISTRATE NO.III,
   THOOTHUKUDI DISTRICT.

2. DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE,
   THOOTHUKUDI DISTRICT.

3. THE INSPECTOR OF POLICE,
   DISTRICT CRIME BRANCH,
   THOOTHUKUDI DISTRICT.

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

+2 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-5417[I] dated 13/06/2022 & SR-5478[I] dated 14/06/2022)

ORDER
IN
CRL OP(MD) No.5383 of 2022
Date :10/06/2022

CP
USK/VR/SAR- /15.06.2022/4P/7C

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