BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 01.04.2022

Delivered on : 07.04.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.5488 of 2022

Selvan Jebaraj ...Petitioner/Accused No.1

vs.

State rep.by
The Inspector of Police,
District Crime Branch,
Thoothukudi District.
(Crime No.28 of 2018) ... Respondent/Complainant

Anil Marangoly Thomas ... Petitioner/Defacto Complainant
(in Crl.MP(MD)No.4194/2022)

For Petitioner : Mr.T.Lajapathi Roy, Advocate.

For Respondent : Mr.M.Muthumanikkam,
Government Advocate (Crl. Side).

For Intervenor : Mr.R.Anand
for Mr.K.Manavalan, Advocate.

PETITION FOR BAIL Under Section 439 of Cr.P.C.

PRAYER :-

For Bail in Crime No.28 of 2018 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A.1, who was arrested and remanded to judicial custody on 04.03.2022 for the offences punishable under Sections 406 and 420 IPC, in Crime No.28 of 2018, seeks bail.

2.The case of the prosecution is that the defacto complainant lodged a complaint against the petitioner, Kuberan David Raj and Jason Thomas alleging that the petitioner got acquainted with the defacto complainant through the deceased/second accused Kuberan David Raj, that 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 and that though the petitioner has paid for three consignments, he has failed to pay the remaining consignments and thereby the petitioner and other accused had misappropriated the goods sent by the defacto complainant and cheated him.

3.The case of the petitioner is that the petitioner purchased scrap iron from the defacto complainant on 27.03.2018, 17.04.2018 and 15.05.2018, that the petitioner paid the agreed amount for receiving those three consignments through bank transactions, that the petitioner has received three consignments from the defacto complainant's company, but the defacto complainant has stated as if nine consignments were sent which is false and that since the petitioner has already paid the agreed amount for the three consignments received, they are not liable to pay any other amount for the other consignments which are not at all received by them.

4.It is the further case of the petitioner that the defacto complainant fully knowing about the nature of the business of the petitioner's company, in order to extort money from him lodged a false complaint, that the petitioner had attended all the enquiry conducted by the respondent police and produced all the necessary documents required to prove his case, that the respondent police had accepted the petitioner's view and the documentary evidences produced by him, but never enquired the defacto complainant regarding the same and that when the petition for anticipatory bail was pending, the petitioner was arrested on 04.03.2022 and remanded to judicial custody.

5.It is not in dispute that the petitioner's earlier application for anticipatory bail in Crl.O.P.(MD)No.19720 of 2018 was dismissed on 08.02.2019 and that the petitioner has also filed a petition, in Crl.O.P.(MD)No.3285 of 2019, to quash the FIR and the same is pending before this Court.

6.The first respondent has filed a status report and wherein, it has been stated that the quash petition pending in Crl.O.P.(MD) No.3285 of 2019 was referred to mediation centre on 17.10.2019 and that since the matter was not settled before mediation, the matter was again sent back to regular Court and is pending. In the status report, it has also been stated that the second accused has also filed a petition for anticipatory bail in Crl.O.P.No.695 of 2019 before the Principal Sessions Court, Thoothukudi, after the dismissal of the earlier petition by this Court and the same was dismissed on 13.02.2019, that thereafter the second accused has also filed another petition before this Court in Crl.O.P.(MD)No.2963 of

2019 and the same was dismissed on 19.02.2019 and that the petition for anticipatory bail filed by the accused 4 and 5 in Crl.O.P.(MD) No.20997 of 2021 was also dismissed on 29.12.2021.

7.The learned Government Advocate (Criminal Side) would submit that the petitioner/first accused was summoned as per Section 41A Cr.P.C., on 22.10.2021, 22.12.2021 and 29.12.2021 and the petitioner did not come forward to co-operate for investigation and that thereafter he was arrested on 04.03.2022 and was remanded to judicial custody.

8.It is not in dispute that the second accused Kuberan David Raj was reported dead on 05.07.2020.

9.The learned counsel for the intervenor would submit that the petitioner even at the very beginning had agreed that the defacto complainant would buy the scrap material by paying cash and thereafter the petitioner would pay within 30 days against the invoice raised by the defacto complainant and that the defacto complainant has purchased the scrap materials by paying the amounts thereof and exported to TABGHA Rolling Mills Private Limited.

10.In the intervening petition, the defacto complainant has listed out the particulars of the nine consignments and the value thereof and he has also included LC processing charges paid to Axios Bank for LC processed on behalf of TABGHA company invoices at Rs.7,15,660/- on 28.02.2018.

11.The learned counsel for the intervenor would submit that the petitioner has 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/-.

12.The learned counsel for the intervenor would further submit that since the petitioner has dishonestly misappropriated the huge amount, the defacto complainant had immediately stopped buying materials for the petitioner, that all the accused conspired and fraudulently induced the defacto complainant to deliver a large quantity of scrap iron and after taking delivery of the same, they had misappropriated the same and that the accused themselves had made two false bogus forgery commercial invoices in the name of the defacto complainant's MEM Projects Private Limited and the same would show that the accused had dishonest intention to cheat the defacto complainant even at the beginning itself.

13.The learned Government Advocate (Criminal Side) would submit that after initial investigation, they came to know that total of 488 Metric Tonnes steel scrap was imported by the accused's company from Middle East Traders FZE, Anar Marketing Services Private Limited, which are, Singapore based companies and from Catalyst Trade Service Private Limited for the value of Rs.1,64,90,406/- and that since the petitioner 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. He would further submit that after coming to know about the involvement of two other persons S.Vanitha Jose and Sophia Rochal, they were added as accused 4 and 5 and that they have also deleted the third accused Jason Thomas from the case.

14.The learned Government Advocate (Criminal Side) would also submit that in the confession statement given by the petitioner herein, he has admitted the import of 413.90 Metric Tonnes of scrap iron through 6 bill of ladings, 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.

15.The learned counsel for the intervenor would submit that in the earlier petitions for anticipatory bail, the petitioner has taken a stand that by acting as a broker, he has got certain properties purchased for and in the name of the defacto complainant, for which, the agreed broker commission has not been paid and only in order to avoid the same, the present FIR came to be registered, but whereas, in the present application for anticipatory bail, the petitioner has specifically admitted that he had business transactions with the defacto complainant only in three occasions and disputed the receipt of the remaining consignments.

16.The learned counsel for the intervenor would further submit that the petitioner has forged the tax invoices and produced the same for releasing the goods.

17.Considering the above facts and circumstances and also the seriousness and gravity of the offence alleged against the petitioner and quantum of amount involved and also taking note of the objection that the petitioner has produced forged tax invoices for releasing the goods and the same is required to be investigated as stated by the learned Government Advocate (Criminal Side), this Court is not inclined to grant bail to the petitioner.

18.In the result, this Criminal Original Petition is dismissed.

Sd/-
07/04/2022

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/ /2022
Sub-Assistant Registrar (C.S.I)
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 INSPECTOR OF POLICE,
   DISTRICT CRIME BRANCH,
   THOOTHUKUDI DISTRICT.

2. THE OFFICER INCHARGE,
   PERURANI JAIL,
   THOOTHUKUDI DISTRICT.

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

+1. CC to M/S.LAJAPATHI ROY.T. Advocate SR.No.3213

ORDER
IN
CRL OP(MD) No.5488 of 2022
Date :07/04/2022

SP/JM/SAR I/12/04/2022/5P/5C