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

DATE : 22.04.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.7307 of 2022

Selvan Jebaraj ... Petitioner/Accused No.1

vs.

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

2. Anil Marangoly Thomas ... Intervening Petitioner/ Respondent/Defacto Complainant

For Petitioner : Mr.T.Lajapathi Roy, Advocate.
For Respondent : Mr.E.Antony Sahaya Prabahar, Additional Public Prosecutor
For Intervenor : Mr.R.Anand, 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.At this juncture, the learned counsel for the petitioner, on instructions, would submit that the petitioner is ready and willing to deposit 50 % of amount before the concerned Court.

16.The learned counsel for the intervenor would submit that on such deposit, the intervenor may be permitted to taken the entire amount deposited by the petitioner and for which, the petitioner's counsel has raised objections.

17.Considering the above facts and circumstances and also taking note of the submission made by the learned counsel for the petitioner that the petitioner is ready to deposit 50% of the amount before the jurisdictional Court, this Court is inclined to grant bail to the petitioner subject to the following conditions:

18.Accordingly, the petitioner is directed to deposit the 50% of the alleged amount of Rs.1.16 Crores before the learned Judicial Magistrate No.IV, Thoothukudi District, to the credit of Crime No.28 of 2018 without prejudice to his rights and contentions.

19.On such deposit, the petitioner is ordered to be released on bail on his executing 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.IV, Thoothukudi District. On such deposit, the intervenor/defacto complainant is permitted to withdraw 50% of the deposited amount, on filing an affidavit undertaking to return the amount as and when directed by the Court.

(i)the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate/concerned court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity;

(ii)the petitioner shall report before the respondent police daily at 10.00 am., until further orders;

(iii)the petitioner shall not tamper with evidence or witness;

(iv)the petitioner shall not abscond during trial;

(v)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].

(vi)If the accused / petitioner thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

sd/-
22/04/2022

/ TRUE COPY /

22/04/2022
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 JUDICIAL MAGISTRATE NO.IV,
   THOOTHUKUDI DISTRICT.

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

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

4. THE OFFICER-INCHARGE,
   PERURANI JAIL, THOOTHUKUDI DISTRICT.

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

+1 CC to M/s.T.LAJAPATHY ROY, Advocate (SR-3713[I] dated 22/04/2022)

+1 CC to M/s.R.ANAND, Advocate (SR-3740[I] dated 22/04/2022)

ORDER
IN
CRL OP(MD) No.7307 of 2022
Date :22/04/2022

das
USK/PN/SAR-II/22.04.2022/5P/8C