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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 23/02/2022

PRONOUNCED ON: 25/02/2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP (MD) . No.12397 of 2021

1. Shopiya Dhayana	...Petitioner No.1/Accused No.1
2. Susairaj	...Petitioner No.2/Accused No.2
3. Janifer	...Petitioner No.3/Accused No.3
4. Sevir	...Petitioner No.4/Accused No.4
5. Roselin	...Petitioner No.5/Accused No.5

Vs

State rep.by
The Inspector of Police,
District Crime Branch,
Trichy District.
(Crime No.11 of 2019).

... Respondent/Complainant

For Petitioner : M/s.Alagumani R, Advocate.

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

For Intervenor : M/s.M.Rajarajan, Advocate

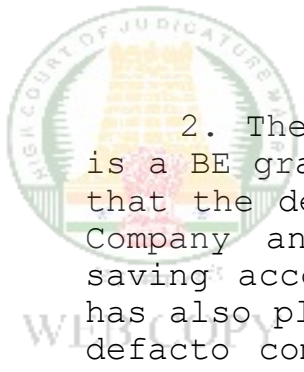
PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

PRAYER :-

For Anticipatory Bail in Crime No.11 of 2019 on the file of the respondent Police.

ORDER : The Court made the following order :-

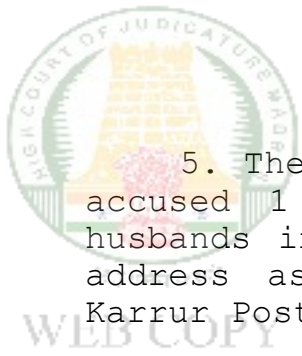
The petitioners/accused Nos.1 to 4 and 6, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 406, 420, 465, 467, 468, 471 and 120B I.P.C., in Cr.No.11 of 2019, seek anticipatory bail.



2. The case of the prosecution is that the defacto complainant is a BE graduate and has been working abroad in Singapore and Dubai, that the defacto complainant's father - accused No.5 worked in BHEL Company and retired, that the defacto complainant has opened a saving account in State Bank of India at Thiruverumbur branch and has also placed all the ATM and other documents, that thereafter the defacto complainant's sister had misused the ATM card and the pin number, that the accused persons have withdrawn Rs.40,000/- two times and the transferred the said amount to the second accused's bank account, that subsequently have withdrawn the amount from the defacto complainant's account and bought a land property and a car, that the defacto complainant came to know that the accused persons have transferred Rs.70,00,000/- from his account, that when the same was questioned, the accused had threatened the defacto complainant. Hence, the present complaint.

3. The petitioners' case is that the accused No.5 had suffered a paralysis attack and was not able to use his left hand and left leg, that the accused No.5 had spent about Rupees four lakhs for the education of the defacto complainant and bought him a two wheeler worth about Rs.60,000/-, that he also spent about Rs.1,35,000/- to send the defacto complainant abroad for training and has given Rs.3,65,000/- for his expenses, that the defacto complainant fell in love with a girl and the accused No.5 has performed their marriage by spending Rs.1.5Lakhs and by giving 6 gold rings, that the accused No.5 gave Rs.2,00,000/- in the year 2018 for the family expenses of the defacto complainant, that accused No.5 had brought property in the name of the defacto complainant by spending his amount of Rs.3,00,000/- and Rs.2,00,000/- given by the defacto complainant, that the defacto complainant borrowed Rs.15,00,000/- from the accused No.5 for getting citizenship in Singapore, that thereafter the accused No.5 has pledged his 32 sovereigns of gold jewels and gave the entire amount to the defacto complainant, that the defacto complainant and his wife have demanded the accused No.5 to register the dwelling house of the accused No.5 in favour of the defacto complainant, that since the accused No.5 has refused to accept the said demand, the defacto complainant gave a false complaint before the All Women Police Station, Thiruverumbur, that the accused No.5 has given a complaint to the Inspector of Police, Thiruverumbur against the defacto complainant and his wife and CSR No.96 of 2019 was registered, that the accused 1, 3 and 6 have filed a suit for partition and the same is pending and that the defacto complainant with sole intention to harass the family members, has given the above complaint falsely implicating the aged mother and the other accused.

4. Admittedly, the accused 1 and 3 are the sisters; the accused 2 and 4 are the husbands of the accused 1 and 3; the accused No.5 is the father and the accused No.6 is the mother of the defacto complainant. It is not in dispute that the accused No.5 - father had already died.



5. The learned Counsel for the intervenor would submit that the accused 1 and 3, after their marriage, are living with their husbands in their respective houses, but they have furnished their address as Door No.2/238, 2nd street, Annasalai, Kailash nagar, Karrur Post, Thiruverumbur, Trichy, which is false and untenable.

6. As rightly pointed out by the learned Counsel for the intervenor, the petitioners have produced the copies of the smart card and family cards, whereunder it is evident that the same was issued to their father Jesuraj, that the age of the petitioners 1 and 3 are shown as 15 and 8 respectively and the age of the defacto complainant is shown as 9 and in the other family card found in page No.3 of the typed set, the age of the defacto complainant, the petitioners 1 and 3 are shown as 16, 22 and 15 respectively. The learned Counsel would further submit that they have purposely and wantonly produced the copies of the family cards as if they are residing in the address shown in their petition, but that was the address where they were living with their parents before their marriage.

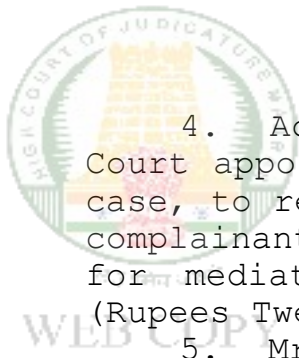
7. Moreover, as rightly pointed out by the learned Counsel for the intervenor, he has produced the accounts statement and also the copy of the Insurance Company allegedly taken in the name of the petitioner. Moreover, the defacto complainant has also produced the undertaking letters given by the accused No.6 - mother of the defacto complainant and the first petitioner, wherein the accused No.6 - the mother has specifically stated that she is ready to settle the house property and also another land in Thuvakudi in favour of the defacto complainant and also a share in the property situated at their native place.

8. It is evident from the records that when the matter was taken up on 07.09.2021, while granting interim protection for the petitioners, the learned Predecessor has observed thus:

"This is an unfortunate case, where the defacto complainant, who was working in Singapore, deposited his earnings in his Bank Account and also handed over the debit Card to his family members/petitioners herein for enabling them to meet out their expenses and also the expenses of his child, who was suffering from paralysis. Taking advantage of the same, the petitioners took out a sum of Rs.70 lakh from the account of the defacto complainant by using his debit Card.

2. Mr.M.Rajarajan, learned counsel for the defacto complainant submits that the health condition of the defacto complainant's child is very pathetic. Despite the same, the petitioners have not come forward to return the money, which they have swindled from the defacto complainant's account. Hence, the complainant.

3. Since the dispute is only between the family members of the defacto complainant, it can be sorted out if the matter is referred for mediation.



4. Accordingly, the matter is referred to the Mediation. This Court appoints Mr.K.Samidurai, learned counsel, as Mediator in this case, to resolve the dispute between the petitioners and the defacto complainant. Both the parties shall appear before Mr.K.Samidurai, for mediation. The petitioners shall pay a sum of Rs.20,000/- (Rupees Twenty Thousand only) to the Mediator.

5. Mr.K.Samidurai, learned counsel, who is appointed as Mediator, shall file a report before this Court on 21.09.2021.

6. The Registry is directed to print the name of learned counsel Mr.K.Samidurai as Mediator and post the matter on 21.09.2021. Till such time, the petitioners shall not be arrested."

9. The learned Counsel for the intervenor would submit that despite the best efforts of the mediator, the matter could not be settled as the petitioners have not chosen to pay any amount even for the treatment of the defacto complainant's son who is suffering from cerebral palsy.

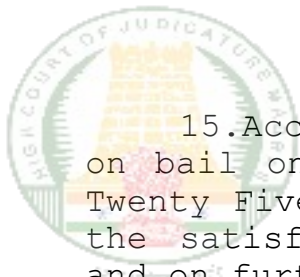
10. The learned Counsel for the intervenor would further submit that though they have produced all the records and the case was registered in the year 2019, the respondent police has not taken necessary action / steps.

11. The learned Counsel for the petitioners would submit that the accused 1, 3 and 6 have filed the suit for partition in O.S.No.253 of 2021 and the same is pending on the file of II Additional District Court, Trichy. As rightly contended by the learned Counsel for the intervenor, the suit was filed in the year 2021, after the registration of the FIR in the year 2019. The learned Counsel would further submit that only in order to give criminal case, a civil colour, the above suit came to be filed.

12. The learned Government Advocate (Crl.Side) appearing for the State would submit as usual, that the investigation is pending.

13. It is the specific contention of the defacto complainant that a sum of Rs.70,00,000/- had been taken by the petitioners and thereby cheated the defacto complainant and that though the accused No.5 - father had asked for some time to settle the amount, he refused to return the money allegedly swindled by them and the petitioners have also not chosen to pay any amount.

14. Considering the age of the fifth petitioner - mother of the defacto complainant and her husband, against whom serious allegations are made, is no more, this Court is inclined to grant anticipatory bail to the fifth petitioner/Accused No.6 with certain conditions. But at the same time, considering the seriousness and gravity of the offence alleged, also considering the quantum of the amount allegedly involved and that the investigation is pending, this Court is not inclined to grant anticipatory bail to the petitioners 1 to 4.



15. Accordingly, the fifth petitioner is ordered to be released on bail on her 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.6, Trichy and on further conditions that;

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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 fifth petitioner shall report before the respondent Police daily as and when required for interrogation;

iii) the fifth petitioner shall not tamper with evidence or witness.

iv) the fifth 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 fifth petitioner in accordance with law as if the conditions have been imposed and the fifth 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 thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

16. Insofar as the petitioners 1 to 4 are concerned, this Criminal Original Petition is dismissed.

Sd/-
25/02/2022

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

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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.6,
TRICHY.
2. -DO- THROUGH
THE CHIEF JUDICIAL MAGISTRATE,
TRICHY DISTRICT.
3. THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
TRICHY DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL OP(MD) No.12397 of 2021
Date :25/02/2022

SP/VR/SAR I/03/03/2022/6P/5C