BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Dated: 02/09/2022

PRESENT

The Hon'ble Mr.Justice G.ILANGOVAN

Crl.OP(MD)No.15079 of 2022

Musthafa ... Petitioner/Accused No.1

Vs.

State rep. By its
Inspector of Police,
District Crime Branch,
Thanjavur.
(Crime No.21 of 2022) ... Respondent/Complainant

Safiullah ... Intervening Petitioner/Proposed Respondent /Defacto Complainant in Crl MP(MD).9953/2022 in Crl OP(MD).15079/2022

For Petitioner : Mr.N.Mohideen Basha, Advocate
For Respondent : Mr.R.M.Anbunithi
Additional Public Prosecutor
For Intervenor : Mr.R.L.Dhilipan Pandian, Advocate

PETITION FOR BAIL under Sec.439 of Cr.P.C

PRAYER :-
For Bail in Crime No.21 of 2022 on the file of the Respondent Police.

ORDER:- The Court made the following order:-

The petitioner, who is arrayed as A1 was arrested and remanded to judicial custody, on 01/08/2022 for the offences under sections 120(B), 406 and 420 IPC, in crime No.21 of 2022 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that the de-facto complainant lodged a complaint stating that on the basis of the promise, that was made by A1, he invested Rs.1 crore of rupees in the transport business that was conducted by A1 and he promised to pay the profit of income. So toward settlement of the repayment of amount and profit, he executed a consent deed in respect of the property in survey No.451/3 and he also handed over the original title deed regarding the above said property. Apart from that, he has also issued 4 cheques bearing 25 lakhs as amount. But later, he [illegible] to pay the profit. On enquiry, he told that because of the pandemic situation, there was slow down in the income. Later, the above said cheques were presented for payment and those cheques were returned stating Insufficient Funds. In the meantime, he also filed Insolvency Petition No.2 of 2022 before the Principal Sub Judge, Thanjavur. Further enquiry reveals that the above said office itself was closed. By cheating the de-facto complainant, security document and security property was settled in favour of his brother, on 01/02/2022. On the basis of the above said complaint, the case was registered and he was arrested and remanded to judicial custody, on 01/08/2022.

3.Seeking bail, this petition came to be filed by the petitioner/A1 on the ground that on the similar set of circumstances, a complaint was registered in Crime No.11 of 2022 on the basis of the complaint given by one Firojin Nisha before the District Crime Branch, Thanjavur and only on the basis of the above said complaint, the case was registered and he was arrested and remanded to judicial custody, later, released on statutory bail by the Judicial Magistrate No.III, Thanjavur, in Crl.MP No.1806 of 2022, dated 14/07/2022. Now on the very same set of facts, the present complaint has also been registered and now, he has been remanded to judicial custody. According to the learned counsel appearing for the petitioner, for the very same offence, no second FIR is permissible.

4.The intervenor is also heard and he would submit that this transaction is totally unconnected with the transaction that was undertaken by the petitioner over the above said one Firojin Nisha; But during the course of investigation, it has been revealed that for the purpose of running a transport business, A1 started business called 'ATR Logistics Company Limited' and he received deposit amount from various persons by making similar promises; So far as A5 is concerned, he is the complainant in Crime No.11 of 2021. No security document, except an undertaking document or any other single document as security was executed; So far as this transaction is concerned, even admitted by the petitioner/A1 to the effect he executed a document of deed, by which, he undertook to sell the property to the de-facto complainant and he also issued cheques as security and those cheques were presented for payment, later they dishonoured due to insufficient funds. So according to the intervener, both transactions are entirely different.

5.But the learned Additional Public Prosecutor would submit that now the investigation is going to be undertaken by the Economic Offence Wing, because of more than one lakh depositors have been cheated by the petitioner/A1 on the similar facts and circumstances.

6.Now whatever it may be, it is seen that in order to up the lability and discharging the loan, the petitioner engaged not only to settle the property, but also executed a settlement deed in favour of his brother with a view to file insolvency petition before the Principal Sub Judge, Thanjavur. So this according to the learned counsel appearing for the intervener it shows a clear case of cheating and to show the same, they have also filed a certified xerox copy of the settlement deed.

7.No doubt that a number of persons have been cheated by like this manner by the petitioner. How many persons have been cheated, is a matter for investigation after, it has been transferred to the Economic Offences Wing. The investigation is in the preliminary stagey. If the petitioner is released on bail, there is every likelihood of hampering the investigating process. It is also seen that the amount that has been cheated has not been recovered so far. So I find no merit in this petition.

8.In the result, criminal original petition is **dismissed.**

sd/-
02/09/2022

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/09/2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

To

1.The Inspector of Police,
District Crime Branch,
Thanjavur.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER
IN
CRL OP(MD) No.15079 of 2022
Date :02/09/2022

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RS/VRS/SAR.1 (16.09.2022) 3P-3C