BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)
Dated: 05/01/2022

PRESENT
The Hon'ble Mr.Justice G.ILANGOVAN

Crl.OP(MD)No.16570 of 2021

K.N.Rajesh ... Petitioner/Accused No.1

Vs.

State rep. By
The Inspector of Police,
District Crime Branch,
Thoothukudi District.
(Crime No.10 of 2021) ... Respondent/Complainant

Sudha Padmakumar ... Petitioner/Defacto Complainant
(in Crl.MP(MD)No.10323/2021)

For Petitioner : M/s.M.Jeyaprakash, Advocate

For Respondent : M/s.SS.Madhavan
Government Advocate(Crl. side)

For Intervener : M/s.R.Shankar Ganesh, Advocate

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

PRAYER :-

For Anticipatory Bail in Crime No.10 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order:-

The petitioner, who is arrayed as A1 apprehending arrest at the hands of the respondent police for the offences punishable under sections 406, 465, 467, 468, 471, 472, 420 and 120(B)IPC, in Crime No.10 of 2021 on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution is that the petitioner is A1 in the above said crime. As per the allegation of the de-facto complainant, this petitioner gave assurance to her that he is capable of holding shipment customs clearing and forwarding business in Thoothukudi and Chennai. So believing the words of this petitioner, he was appointed as 'Sales Representative in the company of the de-facto complainant, which is named as 'Flomic Global Services Limited' and the de-facto complainant is operating in Mumbai and this petitioner appears to have contacted the de-facto complainant through web-site by submitting his bio-data. So on the ground, he joined duty as a Regional Sales Manager, on 31/08/2020 and joined duty on 01/09/2020. Later this petitioner introduced A2 stating that he was working in M/s.Hi Tech Fly Ash India Private Limited. Later A1 and A2 introduced A3 stating that he is a close friend and working in M/s.Orient Container Lines Company, which is located in Thoothukudi and Chennai and doing the very same logistic business. This petitioner appears to have helped that A2 and A3 will do all sorts of help in clearing and forwarding business. In pursuance of the above said agreement, appointment and introduction, the documents were called for between them, the companies, which are mentioned by the accused persons. Later, genuinely the de-facto complainant, started doing business. Totally, 26 shipments were made from 15/06/2020 to 21/11/2020. The company paid Rs.2,69,50,236/- through on-line payment. The amount was transferred to the 4th accused account. From that account only, the amount has been transferred to the account of A1 to A3. They have also withdrawn the same. Subsequently, A1 to A3 repaid a sum of Rs.1,24,83,300/-. On the demand of balance amount of Rs.1,44,66,936/-, A1 to A3 told that due to Diwali period, they were not able to return back the amount. When the matter was dragged on, enquiry was undertaken. During the enquiry, it was found that the companies, which were mentioned by the accused persons were not real in existence in the name of the persons mentioned by the accused persons. The companies, which were mentioned by the accused persons belongs to one John Vasikumar. Further, A1 to A3 did not contact the de-facto complainant. So the investigation was undertaken and during the course of investigation, totally 6 persons involved in the above said offence, among which, A4 was arrested and later, released on bail.

3.This petitioner moved anticipatory bail petition in Crl.MP No.45575 of 2021 before the Principal Sessions Judge, Thoothukudi and that was dismissed on 08/10/2021 stating that Rs.1,44,66,936/- remains to be paid by the accused persons and that amount has been misappropriated and if the petitioner is released on anticipatory bail, there is no possibility of recovering the above said amount. Subsequent to the dismissal, this petition came to be filed on the ground that he joined duty on 01/09/2020 and during the course joining, the alleged amount was misappropriated and later, he was forced to resign the job on 11/01/2020. According to him, he joined duty in the midway and no way responsible for the above said misappropriation, since he was forced to resign the job from the post of Regional Sales Manager and no criminal liability can be imposed upon him.

4.For the purpose of showing the above correspondences with regard to the above said appointment and resignation of the job, the typed set contains the documents were filed. No doubt that he was forced to resign the job observing that his performance is not satisfactory. The order of termination is, dated 11/11/2020. The case was registered, on 12/02/2021. The period of occurrence is stated to be 15/06/2020. The date of appointment of this petitioner, is dated 31/08/2020. As mentioned earlier, he joined duty, on 01/09/2020. The date of termination is 11/11/2020. So after a lapse of three months, this complaint appears to have been given. No doubt that this petitioner joined duty in the midway and also been terminated in the midway.

5.A reading of the FIR as well as going through the CD file, this petitioner played a role in the whole affair of serious allegation of creating fictitious person and the companies have been alleged. It is also alleged that the company seals and documents have been fabricated. Since such sort of serious allegation has been made, it is the duty of the petitioner to cooperate with the enquiry officer. In fact, this court, by order, dated 28/10/2021 directed this petitioner to appear before the respondent police and co-operate with him to complete the investigation process.

6.A report has been filed by the respondent stating that as per the orders of this court, dated 29/10/2021 and 30/11/2021, this petitioner did not appear before the Investigating Officer. So this is the first known circumstance on the part of the petitioner.

7.Now coming back to the issue, as per the averments made in the FIR, totally Rs.1,44,66,936/- remains to be paid. As mentioned earlier, this petitioner has withdrawn the amount and at whose hands, this amount are lying is a matter for investigation. So granting of anticipatory bail to the co-accused and released on bail may not be interest in the fair investigation. Since huge amount is involved in this issue and the allegation of forgery has also been made, the discretionary relief of anticipatory bail cannot be extended to this petitioner. So, I absolutely find no merit in this petition.

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

Sd/-
05/01/2022

/ TRUE COPY /

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

ER

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

ORDER
IN
CRL OP(MD) No.16570 of 2021
Date :05/01/2022

SP/VR/SAR IV/19/01/2022/4P/3C