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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.12.2021

Delivered on : 31.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.21446 of 2018

and

Crl.M.P.(MD)Nos.9934 of 2018 & 499 of 2019

1.Arunachalam Gandhi

2.Renuga

... Petitioners/Accused Nos.13 & 14

vs.

The State through
The Inspector of Police,
E.O.W-II Police Station,
Nagarcoil,
Kanyakumari District.

... Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records and set aside the order dated 03.11.2018 passed in Cr.M.P.No.4447 of 2018 in C.C.No.25 of 2017 dated 03.11.2018 on the file of the Special Court under the Tamil Nadu Protection of Interest of Depositor (in Financial Establishment) Act, 1997, Madurai.

For Petitioners : Mr.V.M.Balamohan Thampi
For Respondent : Mr.B.Thanga Aravindh
Government Advocate (Crl. side)

ORDER

This Criminal Original Petition is directed against the order passed in Cr.M.P.No.4447 of 2018 in C.C.No.25 of 2017 dated 03.11.2018 on the file of the Special Court under the Tamil Nadu Protection of Interest of Depositors (in Financial Establishment) Act Cases, Madurai.

2.The petitioners are the accused Nos.13 and 14 in C.C.No.25 of 2017 on the file of the Special Court under TNPID Act Cases, Madurai.

3.On the basis of the complaint lodged by the defacto complainant, FIR came to be registered in Crime No.1 of 2016 on the file of the respondent police for the alleged offences under Sections 406, 420, 120(b) IPC and Section 5 of TNPID Act against 8 named accused.

4.It is not in dispute that after investigation, the respondent has laid a final report against 14 accused arraying the petitioners

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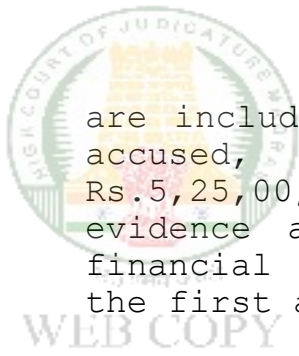
as accused Nos.13 and 14 for the alleged offences under Sections 406, 420, 120(b) IPC and Section 5 of TNPID Act.

5.It is also not in dispute that on the basis of the confession statement of the first accused, the ninth accused Abranantham was added and subsequently on the basis of the confession statement of the ninth accused, the petitioners were added as accused Nos.13 and 14.

6.It is evident from the impugned order that the petitioners have entered into appearance through their counsels, that they have appeared for the hearing on 11.01.2018 and they remained absent for the other hearings held on 24.01.2018, 06.02.2018 and 20.02.2018 and their absence was condoned vide orders passed in the petitions filed under Section 317 Cr.P.C., that when the case was taken up on 03.03.2018, since the petitioners were absent and there was no representation, NBW was ordered to be issued, that on 12.03.2018 the petitioners have surrendered before the Court and at their instance, warrants were ordered to be recalled, that the copies were furnished under Section 207 Cr.P.C. on the same day and that the charges were framed on 22.03.2018. It is further evident that both the petitioners have filed a petition in Cr.M.P.No.1724 of 2018 under Section 239 Cr.P.C. seeking discharge and the said petition was ordered to be dismissed by the Court on 25.07.2018.

7.It is not in dispute that on 12.10.2018 since the petitioners were absent and there was no representation, NBW was ordered to be issued again and that the petitioners have filed the above petition under Section 70(2) Cr.P.C. in Cr.M.P.No.4447 of 2018 to recall the warrant pending against them. The learned trial Judge, after perusing the records and on hearing the arguments of both the sides, has passed the impugned order dated 03.11.2018 accepting the surrender of the petitioners and ordered to recall the warrant on the condition that both the petitioners are to deposit a sum of Rs.5,00,000/- each, into Court and on further condition that both of them are to appear before the trial Court for every hearing. The accused 13 and 14, aggrieved by the imposition of the condition directing them to deposit a sum of Rs.5,00,000/- each, have come forward with the present criminal original petition, by invoking under Section 482 Cr.P.C. seeking orders to call for the records in Cr.M.P.No.4447 of 2018 in C.C.No.25 of 2017 dated 03.11.2018 on the file of the Special Court under TNPID Act Cases, Madurai and set aside the same.

8.The learned counsel for the petitioners would submit that the trial Court is not empowered to impose such a condition directing the petitioners to deposit a sum of Rs.5,00,000/- each and that the trial Court has failed to exercise its power vested under Section 70 (2) Cr.P.C. properly and ought to have recalled the warrant as the same is essential for the fair trial of the case. He would further submit that the trial Court has failed to see that the petitioners

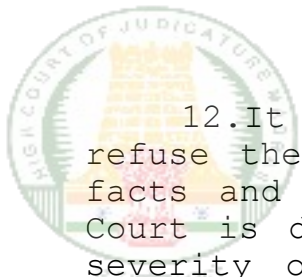


are included in the charge sheet as per the confession of the co-accused, that the petitioners are no way responsible for Rs.5,25,00,000/- as alleged by the prosecution, without any material evidence and that the petitioners are not the partners of the financial institution and they are not having any connection with the first accused financial institution.

9.The petitioners have also taken a stand that the trial Court has passed the impugned order as if the complainant was the Inspector of Police, E.O.W.-II Police Station, Nagarcoil, Kanyakumari District but actually the complainant is the Inspector of Police, E.O.W.-II Police Station, Virudhunagar.

10.No doubt, as rightly pointed out by the learned counsel for the petitioners, in the impugned order, the State through the Inspector of Police, E.O.W.-II Police Station, Nagarcoil, is shown as the respondent/complainant but admittedly, the Inspector of Police, E.O.W.-II Police Station, Virudhunagar is the complainant, who registered the case and proceeded with the investigation. In the counter affidavit filed by the Inspector of Police, E.O.W.-II Police Station, Virudhunagar has specifically stated that the learned Additional Public Prosecutor representing for the State before the trial Court while endorsing his objection had inadvertently endorsed that it is an objection of the E.O.W.-II, Nagarcoil instead of E.O.W.-II, Virudhunagar and that the same Public Prosecutor was also representing the E.O.W.-II, Nagarcoil and that the said endorsement was only by mistake committed by oversight. Considering the above, the mistake which occurred inadvertently cannot be taken advantage of by the petitioners and as such, the said objection is liable to be rejected instantly.

11.Now turning to the main and important contention of the petitioners that the learned trial Judge has exceeded his jurisdiction by imposing onerous condition, the learned counsel for the petitioners has relied on the decision of the Hon'ble Supreme Court in ***Amarjit Singh vs. State of NCT of Delhi*** reported in ***JT 2002 (1) SC 291*** wherein, the Hon'ble Apex Court, while considering the condition imposed to deposit Rs.15 lakhs in FDR in favour of the trial Court for getting bail, has specifically held that such a condition is an unreasonable condition and set aside the said condition as a condition precedent for granting anticipatory bail to the accused/appellant. The Hon'ble Supreme Court recently in ***Mithun Chatterjee vs. State of Odisha (petition for Special Leave to Appeal (Crl.) No.4705 of 2021 dated 12.11.2021)*** while considering imposition of bail condition directing the accused to deposit a cash of Rs.20 Lakhs and providing security of immovable property to the tune of Rs.20 lakhs, has held that the imposition of onerous condition for grant of bail tantamount to denial of bail and by holding so, set aside the impugned condition.



12.It is settled law that the bail Courts are to grant or refuse the prayer for bail or anticipatory bail depending on the facts and circumstances of the particular case and that the bail Court is duty bound to consider the nature of accusation and the severity of punishment in case of conviction and the nature of material evidence placed by the prosecution, reasonable apprehension of tampering of the witness or apprehension of threat to the complainant or the witnesses, the character, behavior and standing of the accused and the circumstances which are peculiar to the accused and the larger interests of the public or the state and one another fact to be considered is reasonable possibility of securing the presence of accused at the time of trial or the likelihood of his absconding.

13.In the case on hand, the petition is not for bail or anticipatory bail but under Section 70(2) Cr.P.C. to recall the NBW pending against the petitioners.

14.As rightly pointed out by the learned trial judge, the NBW sought to be recalled in the present petition was not issued for the first time and admittedly, it is the second time. Moreover, as already pointed out, the trial Court has specifically observed that the petitioners were not attending the courts regularly and they have been filing petitions under Section 317 Cr.P.C before the trial court and they have been absenting continuously.

15.It is evident from the impugned order though the case was posted for furnishing the copies under Section 207 Cr.P.C., the petitioners have not turned up and hence, NBW was ordered to be issued and subsequently on the basis of the petition filed by the petitioners, NBW was ordered to be recalled and thereafter, copies have been furnished to the accused including the petitioners.

16.It is also not in dispute that subsequently charges were framed on 22.03.2018 and the case is pending for trial. It is also not in dispute that the petitioners after framing of charges, as per the usual practice, have filed a discharge petition under Section 239 Cr.P.C. in Cr.M.P.No.1724 of 2018 and that the learned trial Judge after enquiry has passed an order dated 25.07.2018 dismissing the same.

17.In the impugned order, the learned trial Judge has observed that the petitioners have not preferred any appeal or revision challenging the order passed in Cr.M.P.No.1724 of 2018 but in the memorandum of grounds filed in the present criminal original petition, the petitioners have stated that they have filed a criminal revision case against the order passed in Cr.M.P.No.1724 of 2018 and the same is pending in SR stage. Though the criminal original petition has been filed on 28.11.2018, it is not the case of the petitioners, while the above petition was taken up for service on 12.12.2021, that the criminal revision case has already



been taken on file and the same is pending on the file of this Court.

18.It is pertinent to mention that in the TNPID Act, there is a special provision under Section 5(A) for compounding the offences and in the case on hand, the accused 2 and 9 have filed a petition invoking Section 5(A) of TNPID Act and the same was ordered to be permitted. The learned trial Judge in the impugned order has mentioned the above aspects and further stated that the said accused have already settled Rs.25 lakhs so far.

19.Now coming to the contention of the petitioners that they are no way connected with the financial institution involved in the case on hand, according to the prosecution, the petitioners had received Rs.5,25,00,000/- for getting permission from Reserve Bank of India (RBI) for the financial institution involved in the present case and that the said amount was given by the investors to the said institution.

20.No doubt, as rightly pointed out by the learned counsel for the petitioners, though the petitioners were not directly connected with the business of the financial institution, they have allegedly received huge amount of Rs.5,25,00,000/- for getting permission from Reserve Bank of India (RBI) for the financial institution by illegal means.

21.As already pointed out, NBW sought to be recalled was issued for the second time. It is not uncommon that in some cases, where the accused are more in number, sensing that they would be convicted, are employing tactful game of absenting purposely and allowing the Court to issue NBW and then subsequently get it recalled and thereafter, some other accused take their turn of allowing to issue NBWs and by adopting such a tactics, protracting the trial of the case.

22.As rightly contended by the learned Government Advocate (Criminal side), since the amount involved is very huge running into several crores, the accused cannot be allowed to adopt such tactics to drag on the trial proceedings and only in order to curb or prevent that practice, the trial Judge has rightly imposed the impugned condition directing them to deposit a sum of Rs.5,00,000/- each. As rightly contended by the learned Government Advocate (Criminal side), the imposition of condition directing to deposit some amount in bail or anticipatory bail cases cannot be equated with the cases like the present one.

23.Considering the quantum of amount allegedly received by the petitioners and also the fact that NBW sought to be recalled was issued for the second time and to curb the practice of procrastination of trial proceedings, this Court is of view that the condition imposed by the trial Court cannot be found fault



with. Consequently, this Court decides that the above petition is devoid of merits and the same is liable to be dismissed.

24. In the result, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are closed.

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Assistant Registrar (A.D I)

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Sub Assistant Registrar(CS)

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,
E.O.W-II Police Station,
Nagarcoil,
Kanyakumari District.

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

+1 CC to M/s.V.M.BALAMOHAN THAMPI, Advocate (SR-3271[F] dated 01/02/2022)

Crl.O.P. (MD) No.21446 of 2018
and

Crl.M.P. (MD) Nos.9934 of 2018 & 499 of 2019
31.01.2022

RS (01.03.2022) 6P-4C