



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 07/03/2022

Pronounced on : 16/03/2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD).Nos.17056 and 17174 of 2021

Jancy Chandrakanda Gnanbai

...Petitioner/Accused No.2
(in CRL.OP(MD).No.17056/2021)

Devaraj

...Petitioner/Accused No.1
(in CRL.OP(MD).No.17174/2021)

Vs.

State rep.by
The Inspector of Police,
CCIW, Thoothukudi Police Station,
Thoothukudi.
(Cr.No.2/2021).

... Respondent/Complainant
(in both petitions)

For Petitioner : Mr.S.Ram Sundar Vijayraj,
Advocate.
(in CRL.OP(MD).No.17056/2021)

Mr.T.Lenin Kumar, Advocate.
(in CRL.OP(MD).No.17174/2021)

For Respondent : Mr.R.Sivakumar,
Government Advocate (Crl.Side)
(in both petitions)

For Intervenor : MR.R.M.MAKESH KUMARAVEL, Advocate
(in CRL MP(MD)No. 270/2022)

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

COMMON PRAYER :-

For Anticipatory Bail in Crime No. 2 of 2021 on the file of the

Respondent in police case.



COMMON ORDER : The Court made the following common order :-

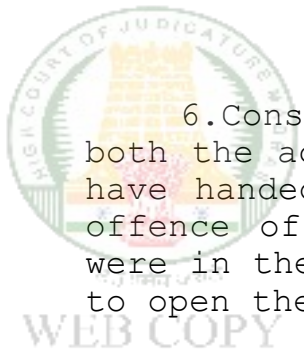
The petitioner/Accused, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 408, 409 and 120(b) IPC, in Crime No.2 of 2021, seek anticipatory bail.

2.The case of the prosecution is that the petitioner in Cr1.OP (MD)No.17056/2021 is the Assistant Secretary and the petitioner in Cr1.OP(MD)No.17174/2021 is the Secretary in the Kurumbur Primary Agricultural Credit Co-operative Society, that the Deputy Registrar of Agricultural Co-operative Societies made an inspection on 14.09.2021 and found that out of 544 gold boxes, there were only 283 gold boxes and that 261 gold boxes were found missing, that upon the preliminary enquiry, it was found that there was misappropriation to the tune of Rs.2,03,92,700/-. Hence, the complaint.

3.The case of the first accused is that he was inducted into service on 19.02.1997 and has been discharging his duty without any blemishes on record, that he is at the verge of retirement, that there is a system of using double key to open the locker and out of two keys, one was with the first accused and the second one was with the second accused, that the first accused was under the obligation to look after the all day to day affairs of the Bank, that under these stringent circumstances and work burden, the first accused by reposing confidence on the Assistant Secretary handed over his key to open the locker, that the Deputy Registrar after conducting inspection has suspended the first accused and that thereafter, the above complaint came to be lodged.

4.The case of the second accused is that she was appointed in the year 1993 and till now she has been working without any adverse remarks, that since the petitioner's husband was taking treatment for Covid, she has been on leave for the past several days in the month of May and even after sometime, she has been suffering from health ailments, that the second accused has handed over the key to the Secretary for the administrative reasons, that the innocence of the second accused has been utilized by the Secretary and that after surprise inspection of the Deputy Registrar, she was pressurised to sign in the register.

5.It is the case of the petitioners that they are innocents, that they have not committed any offence as alleged in the complaint, that after preliminary inspection, no enquiry was conducted and straightaway both of them have been suspended from service and that since both of them have been in continuous service without any adverse remarks for long time, they may be enlarged on bail.



6.Considering the rival contentions, it is clearly evident that both the accused are blaming each other and according to them, they have handed over the key to other and the other had committed the offence of misappropriation. But the facts remains that both keys were in the custody of both the accused and both keys have been used to open the lockers.

7.When the above petitions were taken up on 02.11.2021, the learned Government Advocate (Criminal Side) submitted that the accused have given a letter before the concerned Authority stating that they would return the misappropriated amount, but they have failed to return the amount and that the enquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act reveals that there was a misappropriation to the tune of Rs.7 Crores.

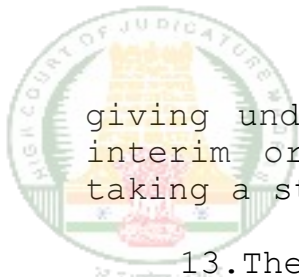
8.The learned Judge of this Court, considering the submissions made by the learned counsels for the petitioners that the petitioners were ready to co-operate with the investigation agency and pay necessary amount to the Society, without prejudice to their defence in the criminal case, has granted interim anticipatory bail and directed the petitioners to appear before the respondent Police for a period of two weeks, co-operate with the enquiry and give their mobile numbers and the respondent Police was directed to collect data from the mobile numbers of the petitioners and find out the link of the petitioners with the other accused and also directed the petitioners to make necessary payments to the Society as undertook by them.

9.When the matter was taken up again on 09.12.2021, the learned counsel for the first accused submitted that based upon the directions given by this Court earlier, he appeared before the respondent Police and gave security worth about Rs.2 Crores and also undertook to settle the whole amount within 15 days and by recording the above submission, interim order was ordered to be extended.

10.When the matter was taken up again on 11.02.2022 before this Court, the learned counsel for the first accused submitted that since the first accused has been taking treatment, his wife and son would appear before the respondent Police and pay the amount to the Society on 17.02.2022 and specifically at the request of the learned counsel for the petitioners, adjourned to 28.02.2022 for reporting payments.

11.It is pertinent to note that though the petitioners have agreed to pay the entire amount, according to the learned Government Advocate (Criminal Side), they have not paid any amount.

12.The learned counsel for the first accused has then taken a stand that his property was already ordered to be attached and hence, he was not in a position to pay any amount. As rightly contended by the learned Government Advocate (Criminal Side) by



giving undertaking to pay the amount, they have been enjoying the interim orders for the past four months and now they have been taking a stand that they are not in a position to pay the amount.

13.The learned counsel for the second accused would submit that though the second accused has attempted to pay Rs.5 lakhs through demand draft, the Society has refused to receive the same and that they may be directed to receive the demand draft. But the learned Government Advocate (Criminal Side) would submit that the second accused has not chosen to pay any amount and the alleged attempt of paying Rs.5 lakhs through demand draft is false.

14.He would further contend that when both the accused have misappropriated the amount to the tune of more than Rs.7 Crores, the amount sought to be paid at Rs.5 lakhs is very very meagre amount and that both the accused have miserably failed to abide by their undertaking.

15.It is pertinent to note that two depositors of the Society have filed the above two intervening petitions opposing the petitions for anticipatory bail and according to them, they have received the summons issued under Section 81 of the Tamil Nadu Co-operative Societies Act by the Enquiry Officer Co-operative Sub-Registrar, directing the intervenors to appear and furnish the particulars about their pledging of jewels, loans taken and savings account particulars.

16.As already pointed out, it is the specific case of the prosecution that after the completion of the enquiry, they came to know that both the accused have misappropriated the amount to the tune of Rs.7 Crores.

17.The learned counsel for the first accused would submit that the petitioner has been suffering Guillain-Barre syndrome and has been taking in-patient treatment and that he is now bedridden and he has also produced the medical records of the first accused.

18.Considering the above facts and circumstances and the seriousness and gravity of the offence alleged and also the quantum of the amount involved and also taking note of the facts that no amount was recovered so far and that the investigation is pending as stated by the learned Government Advocate (Criminal Side), this Court is not inclined to grant the reliefs claimed by the petitioners. Hence, the petitions for anticipatory bail are ordered to be dismissed.



19. In the result, the Criminal Original Petitions are dismissed. In case of any further action, the respondent Police is directed to take into account the ill health of the first accused.

sd/-

16/03/2022

WEB COPY

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/ /2022

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

DAS

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,
CCIW-CID
THOOTHUKUDI POLICE STATION,
THOOTHUKUDI
- 2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADRURAI.

+1 CC to M/s.R.M.MAKESH KUMARAVEL, Advocate (SR-2121[I]

+1 CC to M/s.S.RAMSUNDARVIJAYARAJ, Advocate (SR-2104[I]

ORDER

IN

CRL OP(MD).Nos.17056

and 17174 of 2021

Date :16/03/2022

PKP/PN/SAR-4/25.03.2022/5P/5C