BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 21/03/2022

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD). No.18765 of 2021

1. Denisha,

2. C.Saju, ... Petitioners/Accused Nos. 1 & 3

Vs

The State Rep by,
The Inspector of Police,
District Crime Branch Police Station,
Kanyakumari,
Kanyakumari District.
(Crime No. 16 of 2021). ... Respondent/Complainant

For Petitioner : Mr.G.Thalaimutharasu, Advocate.

For Respondent : Mr.P.Kottai Chamy,
Government Advocate (Crl.Side)

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

PRAYER :-

For Anticipatory Bail in Crime No. 16 of 2021 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioners/accused Nos.1 and 3 apprehending arrest at the hands of the respondent police for the alleged offence punishable under Section 420 of IPC, in Crime No.16 of 2021 on the file of the respondent police, seek anticipatory bail.

2. The case of the prosecution is that the 1st petitioner is working as Human Resource Manager and the second petitioner is working as Regional Manager in a registered Society namely SMC Co-operative Society, Kaliyankavillai Branch. The petitioners have approached the defacto complainant and intimated that the SMC Co-

operative Society is a Society functioning under the direct control of the Central Government. There are many vacancies available in the said Society and if any one make caution deposit in the respective branches of the Society, they would get appointment in the branches. While so, the defacto complainant has deposited a sum of Rs.1.70 lakhs in Takkalai Branch on 03.08.2020 and handed over a sum of Rs.2,50,000/- to the petitioner as cash on 20.08.2020. She got appointment and joined in the Society on 20.08.2020. However, the petitioners have issued a bond only for a sum of Rs.1,70,000/-. Thereafter, on enquiry, the defacto complainant came to know that the Society where she got appointment is not functioning under the Central Government. In order to grab money from the defacto complainant, the petitioners have made false statements and cheated her. Hence, the complaint.

3. The learned counsel appearing for the petitioners submits that the petitioners are innocents and they have not committed any offence as alleged in the complaint. As per the conditions of the Society, the persons for getting employment in the Society must deposit a sum of Rs.1,70,000/- in the bank as caution deposit. The defacto complainant and others, who got appointment in the Society, are not willing to continue with the service and foisted this false complaint as against the petitioners as if they have cheated them. The case in Crime No.16 of 2021 was originally registered as against three persons. The accused No.2/Secretary of the Society was granted anticipatory bail by this Court in Crl.O.P(MD).No.11647 of 2021. The petitioners were denied the anticipatory bail on the ground that they did not attend for the enquiry as directed by this Court. He further submits that as on date, the defacto complainant is working in the said Co-operative Society and the other persons mentioned in the complaint are also working in the Society. They have not prefered any complaint as against the petitioners, in this regard.

4. The learned Additional Public Prosecutor opposed for grant of bail that these petitioners are working in the Said Society and they have received money from the defacto complainant and others, and cheated to the tune of Rs.17,60,000/-. He has also produced the report filed by the respondent Police and the 161(3) statement recorded from one Atlas, Co-ordinator of Co-operative Society and one Sivakumar, Zonal Manager of the said Bank.

5. This Court considered the rival submissions made and perused the materials available on record.

6. The defacto complainant, who is an employee of the Co-operative Society, lodged a complaint that she was cheated by the petitioners. According to the defacto complainant, a sum of Rs.2,50,000/- was received by the petitioners from her. A bond was given to her for only a sum of Rs.1,70,000/-. Though the defacto complainant claim that several others were cheated like that of her, others have not preferred any complaint as against the petitioners.

7. The first petitioner is working as Human Resource Manager and the third petitioner is working as Regional Manager in the Co-operative Society. The second accused is working as the Secretary of Kaliyankavillai Branch. Considering the nature of offence and the allegations made as against the accused, this Court, by order dated 25.08.2021, granted interim anticipatory bail to the petitioners in the earlier application filed by the petitioners and the accused No.2, and directed them to appear before the respondent Police and to co-operate for the investigation. However, the second accused alone appeared and these petitioners have failed to appear before the respondent Police. Therefore, the earlier application was rejected, as far as the petitioners are concerned.

8. The learned counsel appearing for the petitioner, by filing this second application, submitted that the petitioner is ready and willing to appear before the respondent Police and co-operate for the investigation.

9. On the assurance given by the learned counsel for the petitioner, this Court once again granted interim anticipatory bail to the petitioners and directed the petitioners to appear before the respondent Police. The respondent police has also filed a report before this Court by stating that these petitioners have received a sum of Rs.2,50,000/- from the defacto complainant. However, they have issued a bond only for a sum of Rs.1,70,000/- and retained a sum of Rs.80,000/-. The investigaion reveals that in between 16.07.2020 and 18.12.2020, a sum of Rs.2,50,000/- was deposited in the account of accused No.2 and from the account of accused No.2, the amounts were transferred to the accused No.3 and the wife of accused No.3 namely Ponmoli.

10. This Court has perused the statements of Co-ordinator and the Zonal Manager of the Co-operative Society. On receipt of the complaints, the Society has taken some actions and freezed the accounts of the petitioners and their family members to the tune of Rs.16,50,000/-. The allegation in the complaint is that the petitioners have collected a sum of Rs.2,50,000/- from the defacto complainant. However, the petitioners have given only a sum of Rs.1,70,000/- to the defacto complainant. Though the defacto complainant claim that several others were also cheated like that of her, there is no other complaint from other employees. Further, the accused No.2, was also granted anticipatory bail by this Court. Hence, considering the nature of allegations levelled against the petitioners and the fact that they have deposited a part of the amount (i.e.,) Rs.1,70,000/- and that the co-accused has been granted anticipatory bail by this Court and the amount equivalent to the allegation has already been freezed, this Court is inclined to grant anticipatory bail to the petitioners with stringent conditions.

11.Accordingly, this Criminal Original Petition is allowed and the petitioners are ordered to be released on bail in the event of arrest or their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate No.II, Kulithurai, on condition that the petitioners shall execute a bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) each with two sureties each for a like sum to the satisfaction of the learned Magistrate concerned and on further conditions that:

(a)the petitioners and the sureties shall affix their photographs and left thumb impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhaar card or bank pass book to ensure their identity;

(b)the petitioners shall report before the respondent police daily at 10.30 a.m., for a period of 30 days and thereafter, as and when required for interrogation.

(c)the petitioners shall not tamper with the evidence or witness either during investigation or trial;

(d)the petitioners shall not abscond either during investigation or trial;

(e)on breach of any of the aforesaid conditions, the learned Magistrate/ Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners 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];*** and;

(f)if the accused/ petitioners thereafter abscond, a fresh FIR can be registered under Section 229-A IPC.

sd/-
21/03/2022

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

TO

1 THE JUDICIAL MAGISTRATE NO.II,
KULITHURAI.

2 DO THROUGH:
THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMARI AT NAGERCOIL.

3 THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH POLICE STATION,
KANYAKUMARI, KANYAKUMARI DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADRUAI.

+1 CC toM/s.G.THALAIMUTHARASU, Advocate(SR-2395[I]dated 23/03/2022)

ORDER
IN
CRL OP(MD) No.18765 of 2021
Date :21/03/2022

PKP/SVR/SAR-2/01.04.2022/5P/6C