



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 08/11/2022
PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL OP(MD). No.19401 of 2022

Musthafa

... Petitioner/Accused No.1

Vs

The State rep.by
The Inspector of Police,
District Crime Branch,
Tanjore District.
Crime No. 21 of 2022.

... Respondent/Complainant

For Petitioner : M/s.Lajapathi Roy.T.,

For Respondent : Mr.RMS.SETHURAMAN,
Additional Public Prosecutor

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 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 failed 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 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.

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3. This is the third bail petition filed by the petitioner, on the ground that ever since from the date of arrest, ie., 01.08.2022, the petitioner is in custody and the statutory period is also over. In the meantime, the prosecution filed a defective final report, before the trial Court and it was also taken cognizance in C.C. No.96 of 2022 on 31.10.2022. Before the date of taking cognizance, the statutory period was over and therefore, he is entitled for statutory bail. According to him, a direction may be issued to the trial Court, to consider the statutory bail application on its own merits, without being influenced by the observations made by this Court in the earlier applications.

4. Per contra, perusal of CD file shows that the final report was filed by the respondent Police before the Judicial Magistrate No.III, Thanjavur on 29.09.2022 itself and immediately, a return memo was issued by the trial Court to the respondent herein to produce the document Nos.3 to 9, as mentioned in the final report and after filing the same, the case was taken into cognizance by the trial Court. According to the learned Additional Public Prosecutor, the same will not amount to defective final report. Therefore, he is not entitled for the relief of statutory bail.

5.Arguments advanced by the respondent are accepted. It cannot be considered as a defective final report. Only considering the amount involved in the offence, the earlier applications came to be dismissed by this Court.

6. Even taken into account the contention raised by the learned counsel for the petitioner to the effect that because of his insolvency condition, he had moved I.P.No.02 of 2022, before Principal Sessions Judge Trichirappalli. He would rely upon the Judgments of **Hon'be Supreme Court** in the reputed case of **Jolly George Verghese & Another Vs Bank of Kochin** reported in **1980 AIR 470** and in **Kasi Vs State** reported in **2020 SCC Online 528**. At this stage, these two Judgments are not necessary for disposing this petition.

7. The final report also filed before the concerned Court and the petitioner can very well move bail application, before the trial Court. Therefore, only limited request is made by the learned counsel for the petitioner. The trial Court may decide the same, on its own merits, without being influenced by any of the observations made by this Court and desirability of continuation of judicial custody may also be considered by the trial Court.



8. With the above said liberty, this Criminal Original Petition stands dismissed.

sd/-
08/11/2022

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/11/2022

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

TO

- 1 THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
TANJORE DISTRICT.
- 2 THE OFFICER INCHARGE,
THANJAVUR SUB JAIL, THANJAVUR DISTRICT.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. CC to M/S. LAJAPATHI ROY.T. Advocate SR.No.12625

ORDER

IN

CRL OP(MD) No.19401 of 2022
Date :08/11/2022

PNM
SA/VR/SAR. /08.11.2022/3P/5C