Crl.O.P.No.8472 of 2023

A.D.JAGADISH CHANDIRA, J.

The petitioner, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 406 and 420 of IPC in Crime No.51 of 2023, seeks anticipatory bail.

2. The case of the prosecution as per the *de facto* complainant Asokan is that the Firm namely M/s.R.A.Holding, is the owner of the property situated at "CAREX CENTRE", Old No.713, New No.244, First Floor, Amir Zada Nagar, Anna Salai, Chennai and the petitioner is carrying on the business as facilitators of Bank Loans/Credits in the name of M/s.Elite Advisory Services and he approached the *de facto* complainant claiming himself to be the Mandate Holder of M/s.Sivaji Hi-Tek Foods Private Limited, for purchasing the above said property stating that the property would be purchased in the name of K.K.S.Karunakaran (1st Accused) who is the Director of M/s.Sivaji Hi-Tek Foods Private Limited and thereafter a Memorandum of Understanding dated 20.01.2021 was entered between K.K.S.Karunakaran(A1) and the *de facto* complainant for sale

consideration of Rs.6,50,00,000/-. It is further alleged that the petitioner facilitated advance payment to the *defacto* complainant to redeem the Title Deeds of the said property from M/s.Dhanalakshmi Bank, Anna Nagar Branch, Chennai and gave assurance to the *defacto* complainant that dues of unsecured creditors totalling to about Rs.3,00,00,000/- would be settled in six months from the date of Memorandum of Understanding by way of issuance of cheque of Rs.1,50,00,000/- each and accordingly on 21.01.2021, the *defacto* complainant along with other partners executed a Sale Deed in favour of K.K.S.Karunakaran(A1) which is registered as Doc.No.74 of 2021 in the Office of Joint Sub Registrar-II, Thousand Light, and thereafter, the petitioner had facilitated a credit facility in the name of M/s.Sivaji Hi-Tek Foods Private Limited, by mortgaging the Sale Deed, dated 21.01.2021, for a sum of Rs.7,50,00,000/- without making the balance payment of sale consideration to the *defacto* complainant. It is further alleged in the FIR that out of sale consideration of Rs.6,50,00,000/-, a sum of Rs.3,50,00,000/-was paid to the *defacto* complainant and for the balance amount of Rs.3,00,00,000/-, two cheques bearing Nos.000114 and

000115 were issued but the same got dishonoured. Thereafter, the *defacto* complainant had issued a legal notice dated 26.09.2022. Based on the allegations, an FIR was registered by the respondent police in Crime No.51 of 2021 for the alleged offences under sections 406 and 420 IPC.

3. The learned counsel for the petitioner would submit that the petitioner is an innocent person and he has been falsely roped in this case. He would submit that other than being a consultant between the first accused and the *defacto* complainant, the petitioner has not committed any offence. He would submit that even as per the complaint, the petitioner is the person, who had helped the *defacto* complainant to clear his earlier loans and also cleared the encumbrances in respect of the property. Thereafter, the *defacto* complainant entered into a Memorandum of Understanding with the first accused for sale of his property, whereby, he had agreed to receive part consideration by Demand Draft and balance amount by cheque and RTGS. He would submit that thereafter, the defacto complainant along with first accused

had gone to the Registrar's Office and executed the sale deed and the sale consideration shown in the sale deed was Rs.2,89,00,000/- and for the balance amount, the first accused stated to have issued some cheques and later the cheques issued by the first accused got bounced. The petitioner other than accompanying them to the Registrar's Office and being a witness has nothing to do with the alleged offence. Now, a false complaint has been given against the petitioner to compel the petitioner to prevail upon first accused to get the payment. He would submit that absolutely no case can be made out as against the petitioner. He would submit that the petitioner was issued with a notice under section 41(A) Cr.P.C and the petitioner is ready to appear before the respondent. He would further submit that the entire case of the prosecution is borne out by records and the first accused is the person, who was liable to pay the amount to the *defacto* complainant and thereby, he prays for grant of anticipatory bail to the petitioner.

4. The learned Government Advocate (criminal side) for the respondent would submit that the petitioner is the friend of the first

accused, he along with first accused induced the *de facto* complainant to sell his property and thereby, a Memorandum of Understanding was entered into, whereby, the first accused had agreed to purchase the property for an amount of Rs.6,50,00,000/-. Later, on a false assurance, the first accused along with the petitioner, had taken the *defacto* complainant to the Registrar's Office and after paying part sale consideration a sum of Rs.2,89,00,000/-, they got the sale deed executed in favour of first accused. Later, the first accused and the petitioner have failed to pay the balance amount as promised and thereby, cheated the *defacto* complainant. He would submit that notice under section 41(A) Cr.P.C has been issued to the accused, however, they have not appeared for enquiry and thereby, he would pray for dismissal of the anticipatory bail to the petitioner.

5. Mr.John Sathyan, learned Senior Counsel for the the intervenor/*defacto* complainant would submit that the *defacto* complainant was induced by the petitioner as a financial consultant stating that the first accused would purchase the property for an amount

of Rs.6,50,00,000/- and thereafter the Memorandum of Understanding was entered into, later, the petitioner along with first accused, lured the *defacto* complainant, stating that they will get the property registered in the first accused name and they would settle the amount and immediately believing the same, the defacto complainant also executed the sale deed in favour of the first accused, later, they have not paid the amount and after insistence, the petitioner who was the financial consultant had received two cheques from the first accused, later, when they were presented for collection, the cheques were returned as “account closed”. He would submit that subsequent incident would go to show that the the petitioner along with main accused had pre-planned and cheated the *defacto* complainant. Immediately, after the registration of sale, the first accused had mortgaged the property with ICICI Bank for a sum of Rs.7.5 Crores and later, after receiving the money, he has not repaid the loan to the bank and thereby, the property has now been attached by ICICI Bank, thereby, he would object for grant of bail.

6. In reply, Mr.M.Mohamed Riyaz, learned counsel for the petitioner would submit that there is no privity of contract between the petitioner and the *defacto* complainant. He would submit that the petitioner only acted as a financial consultant for both defacto complainant as well the first accused and without prejudice, to show his *bona fide,* the petitioner is ready and willing to deposit the original title deed of immovable property worth Rs.50.00 Lakhs to the credit of Crime number and is also ready to co-operate with respondent police for investigation.

7.Heard the learned counsel for the petitioner as well as the learned Government Advocate(Crl.Side) for the respondent and perused the entire materials available on record.

8. Considering the above facts and circumstances of the case and the submissions made by either side and also of the fact that the petitioner is volunteered to deposit the original title deed of immovable property worth Rs.50.00 Lakhs to the credit of Crime number, this Court

is inclined to grant anticipatory bail to the petitioner with certain conditions.

9. Accordingly, **the petitioner is directed to deposit the original title deeds of an immovable property not less than the value of Rs.50.00 lakhs (standing in the name of the petitioner or his relatives or his friends) to the credit of Crime No.51 of 2023,** without prejudice to his rights and contentions before the trial Court and on such deposit, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date on which the order copy made ready, before the **learned CCB & CB CID Special Court, Egmore, Chennai,** on condition that the petitioner shall execute a bond for a sum of **Rs.10,000/- (Rupees Ten Thousand Only)** with two sureties each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[a] the petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of his Aadhar card or Bank pass Book to ensure their identity.

[b] **the petitioner shall report before the respondent police every day at 10.30 a.m., for a period of four weeks and thereafter, every Saturday at 10.30 a.m., until further orders.**

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner 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 petitioner in accordance with law as if the conditions have been imposed and the petitioner 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].**

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

28.04.2023

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