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Crl.O.P.Nos.15666, 15262, 15218, 17123, 17985, 15537,
15535, 15192 and 15223 of 2023

C.V.KARTHIKEYAN, J.

The petitioners / A14, A6, A22, A9, A18, A20, A21, A11, A8, A5, A4, A3 who apprehend arrest at the hands of the respondent police for the offence punishable under Sections 34, 120(B), 420, 465, 468 and 471 of IPC in Crime No.5 of 2023, seek anticipatory bail.

2.All these petitions have been filed by the accused in Crime No.5 of 2023 registered by the respondent under Sections 34, 120(B), 420, 465, 468 and 471 of IPC.

3.The 1st accused was the Assistant Manager of State Bank of India at Kotagiri Branch and the 2nd accused was the Manager of the very same branch. It is stated that the 1st and 2nd accused had entered into a conspiracy with all the other accused, primarily with the 3rd and 4th accused and had advanced amounts of the bank towards loan sought purportedly for mushroom farming either without any documents being placed or with documents falsely certifying that the accused are mushroom farmers.

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4.The entire case can be divided into two aspects. The first one is the loan obtained on the basis of the property mortgaged to an extent of 1.32 acres of land at Kotagiri belonging to A5 and in which A3 and A4 had entered into a Memorandum of Understanding with A5, with respect to return of loan amount. That loan amount was Rs.85,00,000/-. The second one is that the other accused have held out that they are small time farmers with experience in mushroom farming and on that basis, A1 and A2 either together or individually or acting separately or acting jointly had advanced loan, according to the learned counsel for the Intervenor / State Bank of India, without any documents. The accused were beneficiaries of loan amount ranging to around Rs.12,50,000/- each.

5.Having realized that loans had been advanced either with documents, which were of inadequate security or on the basis of documents, which were false so far as certifying the accused as mushroom farmers are concerned and loans were also advanced to the farmers who had not produced any documents as collateral security, a complaint was lodged by the State Bank of India before the respondent.

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6.There are two worrying aspects in the entire issue. The first issue is that the 1st accused had been taken into custody and had been released on bail under Section 167(2) of Cr.P.C., owing to investigation not being completed and final report not being filed. That could be to a little extent understandable, since the issue involves complicated facts and various documents will have to be deciphered and examined by the Investigating Officer.

7.But the second issue which has to be examined is about the absconding of A2 / Manager. The learned counsel for the Intervenor expressed wonderment that actually A2 is absconding. He claims that the information is new to him. It is also not known as to why the bank had not insisted on securing A2 since he has been placed under suspension and he is still one of the employees of the bank. Even if he had been dismissed from service by this time, still his service records would have been available with the bank. They have not been assisted the prosecution to secure the 2nd accused.

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8.Serious objections are now raised with respect to grant of anticipatory bail to the other accused.

9.As stated, the issue has to be divided into two separate issues. One with respect to A3, A4 and A5 and the other with respect to, all the other accused. There are totally 24 accused. Out of the 24 accused, I am informed that the learned Judicial Magistrate, Kotagiri, on examining the facts and available records had granted bail to A1, A15, A16, A17 and A24 by order dated 22.08.2023. The learned District and Sessions Judge, Ooty, had granted similar orders to A7, A10, A12, A13 and A19 with a condition that they should each deposit a sum of Rs.2,00,000/-. This was by orders dated 25.07.2023, 28.07.2023, and 31.07.2023.

10.It is thus seen that those accused who fell under the second category, quite apart from A3, A4 and A5 had been granted bail after they had been secured. The only condition imposed was that they should deposit a sum of Rs.2,00,000/-. The 6th to 24th accused fall under one group.

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11.Let me take up the case of A3, A4 and A5. It is stated that on the basis of the documents available with A5, which had been offered to the bank as collateral security, a sum of Rs.85,00,000/- had been advanced as loan to A3. Thereafter, A3 and A4 had entered into an agreement with A5. The 5th accused had no intention of returning back the loan and therefore under the agreement, A3 had agreed that the responsibility of returning back a sum of Rs.60,00,000/- would be taken up by him, and A4 had agreed to repay a sum of Rs.25,00,000/-. However, there were only sporadic repayments and the entire loan was not repaid. I am also informed that the bank had also initiated SARFAESI proceedings for recovery of the amount.

12.The learned counsel for the intervenor stated that it would be highly impossible to recover the amount from the other accused namely, A6 to A24 since the loans were advanced practically without any document.

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13.But those aspects have to be examined only by the Court concerned, where the SARFAESI proceedings had been initiated. This Court cannot convert itself as a extortion Court or a collection Court on behalf of the Intervenor / State Bank of India. Having advanced loan it is their own responsibility to recover the same.

14.In view of that particular fact, even though I have taken up the issue of A3, A4 and A5, let me straight away grant anticipatory bail to the other accused namely, A8, A14, A11, A9, A20, A18, A21, A22, A6 on condition that they should each deposit of a sum of Rs.2,00,000/- to the credit of Crime No.5 of 2023.

15.With respect to A3, A4 and A5, the case stands on a different footing, since the bank have in their possession document of about 1.32 acres of land at Kotagiri. The bank has already initiated SARFAESI proceedings. This only a parallel proceedings and it is clear that, since the bank had not taken any steps to secure or to give information about A2, there is a strong attempt to use this Court as a lever to recover back the loan amount.

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16.The loan has to be recovered back only through proceedings already initiated namely, before the Debt Recovery Tribunal under SARFAESI Act. It is a fact that about Rs.60,00,000/- had come into the account of A3 and Rs.25,00,000/- had come into the account of A4. It is also seen that the property of A5 is available with the bank.

17.The learned counsel for the intervenor / bank disclaimed knowledge of the value of the said property but stated it would probably be around Rs.60 to 65 Lakhs. If that be the case, even if no amount had been returned back, then the outstanding to the bank would be only around Rs.20 Lakhs. But again, this Court cannot place that as pre-condition to grant anticipatory bail, but as form of security to force A3 and A4 to co-operate with investigation, anticipatory bail is granted to A3 and A4, on condition that they should each deposit a sum of Rs.5,00,000/- to the credit of Crime No.5 of 2023.

18.So far as A5 is concerned, the documents of the lands of A5 had been pledged with the bank and if at all the loan is not recovered

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through judicial process, the property would be brought to auction. That is an entire separate issue. Therefore, I would place A5 on the same footing of the other accused and grant anticipatory bail, on condition that he should deposit a sum of Rs.2,00,000/- to the credit of Crime No.5 of 2023.

19.The amount deposited by the petitioners shall remain to the credit of crime number and if ultimately they are acquitted, it can be returned back to them, but if they are convicted, it can be handed over to the bank.

20.A primary condition is made that all the accused should co-operate during investigation and if any one of them do not, the respondent is at liberty to file an application seeking to cancel this particular order.

21.In the result, the petitioners herein are granted anticipatory bail with certain conditions.

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22.Accordingly, each one of the petitioner are directed to deposit the amount as aforesaid to the credit of Crime No.5 of 2023, within a period of two weeks from the date of receipt of a copy of this order and on such deposit the petitioners are ordered to be released on bail in the event of arrest or on their appearance, within a period of fifteen days from the date on which the order copy made ready, before the learned District Munsif -cum- Judicial Magistrate, Kotagiri, on condition that each one of the petitioner shall execute a separate 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 petitioners and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioners shall report before the respondent police daily at 10.30 a.m., until further orders.

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[c] the petitioners shall not tamper with 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].**

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

17.10.2023

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