



WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 29.09.2023

Orders pronounced on : 06.10.2023

CORAM

THE HON'BLE MR. JUSTICE **RMT.TEEKAA RAMAN**

Crl.O.P.No.21391 of 2023

Kumudam Publications Pvt.Ltd.
Rep.by its Sales Manager, Gurusamy
New No.306 (Old No.151),
Purusawalkam High Road,
Chennai - 600 010.

....Petitioner

Vs.

1. Syed Basheer

.....1st Respondent

2. State rep.by

The Inspector of Police,
Mettupalayam Police Station,
Crime No.452 of 2023,
Coimbatore District.

...2nd Respondents

PRAYER: Criminal Original Petition filed under Section 438 of Cr.P.C., pleaded to cancel the anticipatory bail order dated 08.08.2023 made in Crl.M.P.No.3609 of 2023 passed by the learned Special Judge, Special Court under TNPID Act (Learned Principal Sessions Judge (FAC), Coimbatore.

For Petitioner : Mr.N.Manoharan

For R1 : Mr.Sam Jayaraj Houston

M/s.Sarvabhauman Associates

For R2 : Mr.Leonard Arul Joseph Selvam

Government Advocate (Crl.Side)



ORDER

It is the case of the alleged offence of criminal breach of trust and cheating.

WEB COPY

2. The de-facto complainant is the petitioner herein.

3. The respondent/accused, who apprehended arrest at the hands of the respondent police for the alleged offences under **Sections 406 and 420 of I.P.C.**, on the file of the respondent police, filed anticipatory bail before the learned Sessions Judge, Coimbatore.

4. The case of the prosecution is that on 16.06.2023, the de-facto complainant registered a case in Crime No.452 of 2023 against the 1st respondent, on the basis of a complaint given by the petitioner herein stating that the 1st respondent has committed the offence of criminal breach of trust and cheating to the tune of Rs.1,78,628/-. Hence, the complaint.



5. The learned counsel for the petitioner/defacto complainant submitted that the petitioner had approached the complainant with a request to appoint him as their distributor for Paraliayaru and Mettupalayam areas stating that he has previous experience in the field. The petitioner company had believed the misrepresentation made by the accused and appointed him as their distributor for the said areas and also provided a Computer Code (DM 351).

6. He further averred that an agreement was entered in dated 08.04.2004 with the accused and started sending its publications to him for the period between 08.04.2004 and 01.09.2021. Accused was paying the outstanding dues with deficit. In fact, the dues mounted to the tune of Rs.3,15,955/-. Whereupon, after repeated requests and reminders, he had paid certain amounts and still he is liable to pay Rs.1,78,628/-. Later, regal notice has been issued and hence after issuance of legal notice, the above complaint has been lodged.

7. The respondent/accused herein moved CrI.M.P.No.3609 of 2023 before the Special Court for TNPID (holding full additional charge of the learned Principal District



Judge) Coimbatore. Interim anticipatory bail was granted on 04.07.2023 and the matter was referred to mediation and the mediation failed. On return to the Court, the learned Judge has passed an order granting making the interim anticipatory bail has regular one and hence, the present Criminal Original Petition was filed for cancellation of the pre-arrest bail.

8. The learned counsel for the petitioner/de-facto complainant relied upon the decision of Hon'ble Supreme Court reported in Dolat Ram Vs.State of Haryana (1995 (1) SCC 349) laid down the grounds for cancellation of bail, which are:

- (i) interference or attempt to interfere with the due course of administration of Justice
- (ii) evasion or attempt to evade the due course of justice
- (iii) abuse of the concession granted to the accused in any manner
- (iv) Possibility of accused absconding
- (v) Likelihood of /actual misuse of bail
- (vi) Likelihood of the accused tampering with the evidence or threatening witnesses.

The petitioner herein was served and entered appearance through Advocate Sarvobhauman Associates.

9.Heard the learned counsel for the respondent/accused, has made submissions in support of lower Court order.



10.The learned Government Advocate (Crl.Side) submits that it is a clear case of cheating and criminal breach of trust. Hence, he vehemently opposed to grant anticipatory bail to the accused and sought the cancellation of anticipatory bail granted by the learned Sessions Judge.

11.After going through the records and also rival submissions made by the respective parties, it appears that the observation made by the learned Sessions Judge is improper. Since there is a relationship of principal and agent, based upon the said Memorandum of Understanding of principal and the agent, it appears that the de-facto complainant has supplied material and magazines that has been sold. However, amount was not returned. The total amount said to be Rs.3,15,955/-. The caution amount is said to be deposited Rs.1,80,000/-.

12.The trust has been created between the parties by virtue of the agreement of principal and agent. Based upon, such an trust the books, journals, magazines has been supplied to him for the sales, as an agent and hence, prima facie, the offence under Section 406 of I.P.C is made out. Further amount was not paid and hence Section 420 offence is made out and hence the finding rendered by



the learned Sessions Judge at Para No.9 of the order dated 08.08.2023 is liable to be vacated.

WEB COPY

13.Admittedly Rs.1,80,000/- is pending after deducting of pre condition deposit made by the accused. The balance amount mentioned in the complaint has to be given namely Rs.1,78,628/- .

14.After perusing the order, I find that the order needs modification and accordingly, I am inclined to modify the anticipatory bail and pass the following order:-

15.The order of anticipatory bail granted by the learned Sessions Court in the above CrI.M.P.No.3609 of 2023, dated 08.08.2023, is hereby confirmed as under. The anticipatory bail granted by the Sessions Court shall stand modified on condition that the accused shall deposit a sum of Rs.1,10,000/- within a period of three weeks from the date of receipt of a copy of this order, being paid to the credit of the crime No.452 of 2023, failing which, the anticipatory bail granted by the trial Court shall stand vacated.

15.(A).Since the bail bond has already been executed and the conditions contained in the interim anticipatory bail that was confirmed in the impugned order, now stands modified shall continue to operate.



16.In the result, the Criminal Original Petition is partly-allowed to the extent indicated above, namely, the anticipatory bail granted by the learned Sessions Judge is modified on condition that the accused shall deposit a sum of Rs.1,10,000/- (Rupees One Lakh and Ten Thousand only) within the stipulated time as stated *supra* and on non-payment of the said amount within the stipulated time, the anticipatory bail shall stand dismissed.

06.10.2023

nvi



WEB COPY

Crl.O.P.No21391 of 2023



RMT.TEEKAA RAMAN, J.

nvi

Order in
Crl.O.P.No.21391 of 2023

06.10.2023