



Crl.O.P.No.24595 of 2023

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C.V.KARTHIKEYAN, J.

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The petitioners, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 406 and 420 of Indian Penal Code in Crime No. 458 of 2022, seek anticipatory bail.

2. It is stated that the first petitioner had entered into an agreement with the defacto complainant to open a hotel business together and the defacto complainant had paid a sum of Rs.40,60,000/-.

3. It is the case of the prosecution that the petitioner herein had however cheated the defacto complainant of the said amount and had diverted the said amount to another business in Bangalore and thereafter stating that owing to Covid-19 pandemic, the said business had run into loss and had stated inability to repay the said amount. In effect, neither the defacto complainant received back the said amount so invested nor he received equity as promised neither any profit of 19.1% as agreed.

4. The learned counsel for the petitioners states that there were a memorandum of understanding entered into between the defacto complainant and the petitioners herein with respect to such investment and among various terms, it had been stated that for liability or for breach, the matter can be referred to arbitration.



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5. It is the grievance of the learned counsel for the petitioner that however the defacto complainant had lodged a complaint leading to registration of First Information Report. It is also contended that the petitioners had participated in the enquiry when notices were issued under Section 41-A Cr.P.C. Though all these agreements have been produced before this Court, no document has been produced to show that the manner in which the amounts forwarded by the defacto complainant had been invested. There is also no document to show that such diversion of the amount was with the consent of the defacto complainant.

6. The learned counsel further stated that the second and third petitioners herein have no direct nexus with the said business transaction.

7. It is the case of the respondent that believing the words of the petitioners herein, who are A-1 to A-3, the defacto complainant had invested a sum of Rs.40,00,000/-. He was promised that a return of 19.2 % would be given. On the other hand, the first petitioner herein had diverted the said investment to another business started by him and later claimed that the said business actually suffered a loss and therefore, he could not return back the investment made by the defacto complainant.

8. In view of these facts, owing to direct involvement of the first accused/ first petitioner, **this Criminal Original Petition stands dismissed in so far as the first petitioner is concerned.**



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9. In so far as the second and third petitioners are concerned, the case of the prosecution is that they had also been involved in the entire offence. The agreement is only between the first petitioner and the defacto complainant. This Court is inclined to grant anticipatory bail to the second and third petitioners with certain conditions.

7. Accordingly, the second and third 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 Judicial Magistrate No.I, Chengelpattu, on condition that the petitioners shall execute a separate bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each 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 this Court 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 second petitioner shall appear before the respondent police daily at 10.30 a.m., for a period of two weeks and thereafter, as and when required for interrogation and she must co-operate with the respondents producing the books of accounts according to which the first



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petitioner had suffered a loss and the third petitioner shall appear before the respondent police once in a week i.e., on every Monday at 10.30 a.m., for a period of two weeks and thereafter as and when required for interrogation.

[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.

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