



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:30.01.2023

PRESENT

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P (MD)No.937 of 2023

WEB COPY

1.Mercy

2.Sony Alex

...Petitioners/Accused 2 & 3

-vs-

1.The State of Tamilnadu

Represented by the Inspector of Police,

District Crime Branch,

Nagercoil,

Kanyakumari District.

(Cr.No.78 of 2022)

...Respondent

2.P.Sivakala

... Petitioner/Intervener/

Defacto complainant

in CRL MP(MD)No.1583 of 2023

PRAYER: Criminal Original Petition filed under Section 438 of Cr.P.C, praying to enlarge the petitioners on bail in the event of their arrest in connection with Cr.No.78 of 2022 on the file of the respondent Police.

For Petitioners : Mr.B.Fazil Kirmani, Advocate

For Respondent : Mr.K.Sanjay Gandhi
Government Advocate (Crl.side)

For Intervenor : Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu, Advocate

O R D E R

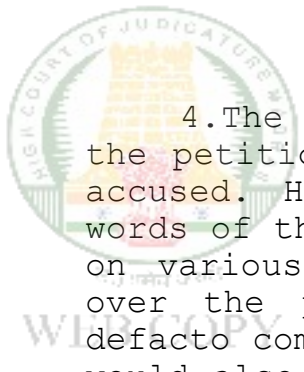
The petitioners, who apprehend arrest at the hands of the respondent Police for the offences punishable under Sections 406 and 420 IPC in Crime No. 78 of 2022 on the file of the respondent Police, seek anticipatory bail.

2.The case of the prosecution as per the de-facto complainant Sivakala is that she and the accused are family friends and the first accused was running a Furniture Industry in the name of Jeshco Wood Industry. The accused, coming to know that the defacto complainant's husband is working in Oman and she is having several



crores of money in her account, with an intention to cheat on 01.09.2016 represented that her son/A3 is going to study Medicine in England and demanded Rs.20 lakhs as loan and believing the same the defacto complainant had transferred the amount to the State Bank of India account of the first accused and thereafter on 16.02.2017 the accused 1 and 2 had requested to give money for their business purpose and the defacto complainant had totally paid Rs.3,02,47,000/- and they have also received 204 sovereigns of gold jewels from the defacto complainant and later they have cheated her. Hence, the complaint.

3.The learned Counsel for the Petitioners would submit that the petitioners are respectively the wife and the son of the first accused and they are arrayed as the accused 2 and 3 in this case. He would further submit that the defacto complainant and the first accused are known to each other having several earlier financial dealings and the first accused was running a proprietary concern and the defacto complainant had affair with the first accused and thereby crores of money from the account of the first accused was transferred to the account of the defacto complainant and since the defacto complainant had cheated the first accused, the first accused has given a complaint to the Superintendent of Police, Kanyakumari District and however, after conducting enquiry the petition was closed by the Marthandam Police stating that the dispute is a financial dispute of civil nature. The learned counsel for the petitioners also submits that only as a counter blast, a false complaint has been given now. He would also submit that the entire financial transaction is between the first accused and the defacto complainant and the petitioners, who are the wife and the son of the first accused, who are no way connected with the financial transaction, are unnecessarily roped in. He would further submit that the first petitioner, who is the wife of A1 and the second petitioner/son of A1, who is studying in United Kingdom are being harassed and only by police action the defacto complainant is attempting to arm twist and settle the civil dispute under the threat of arrest. It is his further submission that on an earlier occasion, the defaco complainant had given a complaint and petition enquiry was conducted in C.No.P2/1654/SP/GP/100/2022 and the same was closed. Thereafter, on a complaint filed before the learned Magistrate under Section 156(3) Cr.P.C the matter was referred for investigation and the case has been registered. He added that the defacto complainant has also filed a suit in O.S.No.124 of 2022 before the learned Additional District Court, Kulithurai. In that suit, I.A.NO.2 of 2022 has been filed for attaching the properties and vide order dated 19.12.2022, the properties worth several crores belonging to the first petitioner have been attached. He would reiterate that the petitioners who are the mother and the son have nothing to do with the financial transaction of the first accused with the defacto complainant. He would pray for grant of anticipatory bail to the petitioners.



4.The learned Government Advocate (crl.side) would submit that the petitioners are respectively the wife and the son of the first accused. He would also submit that the defacto complainant on believing the words of the first accused has sent money to the tune of Rs.3 crores on various occasions and the defacto complainant has also handed over the jewels to the first accused and later he cheated the defacto complainant. The petitioners have also abetted the crime. He would also submit that the case has been registered on the basis of the direction issued under Section 156(3) Cr.P.C by the learned Magistrate. He prays for dismissal of this application.

5. Mr.Kathirvelu, learned Senior Counsel appearing for the learned counsel for the intervenor on record, would submit that this is a case where a lady whose husband was working in Oman was induced by the first accused and the petitioners herein are the wife and the son of the first accused and believing their representation, the defacto complainant had sent money to the tune of Rs.3 crores during the period 01.09.2016 to 2017. He would submit that there are also specific allegations as against the petitioners/A2 and A3, who are the wife and the son of the first accused. He would strongly oppose for grant of anticipatory bail to the petitioners.

6.Heard and perused the materials available on record. Taking into consideration the facts and circumstances of the case and more over, it is also submitted that the property worth of several crores belonging to the accused have been attached, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

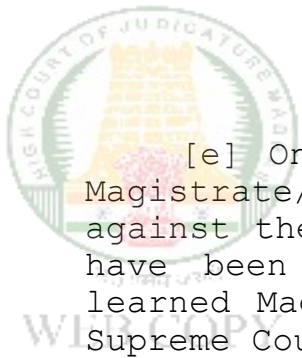
7.Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on their appearance, within a period of fifteen days from the date on which the order copy made ready, before the learned Judicial Magistrate No.II, Kulithurai, on condition that the petitioners shall execute 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 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 everyday at 10.30 a.m and thereafter every Saturday at 10.30 a.m until further orders.

[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.

sd/-

30/01/2023

/ TRUE COPY /

/02/2023

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

TO

1.THE JUDICIAL MAGISTRATE NO.II, KULITHURAI.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMAR DISTRICT @ NAGERCOIL.

3 THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
NAGERCOIL,
KANYAKUMARI DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.FAZILLAINMANI, Advocate (SR-1458[I] dated 31/01/2023)

ORDER

IN

CRL OP(MD) No.937 of 2023

Date :30/01/2023

RK/VR/SAR-3 (13/02/2023) 4P/6C