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CRL OP(MD).



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Date : 20/02/2023

PRESENT

The Hon`ble Mr.Justice A.D.JAGADISH CHANDIRA

CRL OP(MD) . No.2741 of 2023

N.Raja Mohammed

... Petitioner/Accused No.1

Vs

The Inspector of Police,
CCB Trichy
Crime No.15 of 2020.

... Respondent/Complainant

For Petitioner : Mr.S.Vijayakumar
Senior Counsel
Mr.G.Santhoshkumar
Advocate.

For Respondent : Mr.K.Sanjai Gandhi,
Government Advocate (Crl.Side)

PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

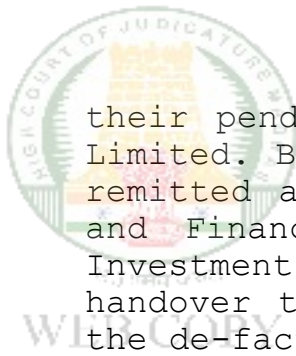
PRAYER :-

For Anticipatory Bail in Crime No.15 of 2020 on the file of the Respondent Police.

ORDER : The Court made the following order :-

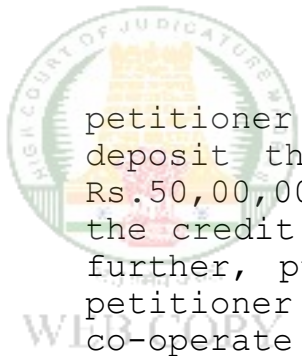
The petitioner/A1, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 406, 420, 421, 422 and 424 of I.P.C., in Crime No.15 of 2020 on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution, as per the de-facto complainant Manikandan, is that the accused 1 and 2 are husband and wife and they have purchased a property at Thillai Nagar and mortgaged the property in Cholamandalam Investment and Finance Company Limited and subsequently, in order to redeem the mortgage, the accused persons have approached the de-facto complainant's Axis Bank and demanded financial assistance to the tune of Rs.1,46,50,000/- for settling



their pending loan in Cholamandalam Investment and Finance Company Limited. Believing the same, the de-facto complainant/Axis Bank had remitted a sum of Rs.1,44,86,618/- to the Cholamandalam Investment and Finance Company Limited and the officials of Cholamandalam Investment and Finance Company Limited assured to release and handover the original documents, which were mortgaged with them to the de-facto complainant. The further averment is that A1 and A2 had to pay a balance amount of Rs.41,00,923/- and for the balance amount, the first accused/Raja Mohamed issued a cheque and the said cheque was returned as insufficient funds and the said Raja Mohamed had not returned the original documents after redeeming the same from Cholamandalam Investment and Finance Company Limited to the de-facto complainant. Later, the accused 1 and 2 in collusion with the Cholamandalam Investment and Finance Company Limited, had sold the property to third parties, thereby, cheated the de-facto complainant to the tune of Rs.1,44,86,618/-. Hence, the case.

3.The learned Senior Counsel for the petitioner would submit that this is the second application for anticipatory bail and the earlier application for anticipatory bail in Crl.O.P.(MD)No.529 of 2023 was dismissed on 10.01.2023 and subsequently, the respondent police has issued a notice under Section 41-A of Cr.P.C calling upon the petitioner to appear for enquiry, which is a change of circumstance. He would further submit that the fact remains that the petitioner is an innocent and he has not committed any offence as alleged by the prosecution. He would also submit that the petitioner has only taken a personal loan for redeeming the property from the earlier financier, Cholamandalam Investment and Finance Company Limited and the de-facto complainant had directly sent the amount to the Cholamandalam Investment and Finance Company Limited and thereafter, as per the banking procedures, the documents were released by the Manager of Cholamandalam Investment and Finance Company Limited to the petitioner. The proceedings happened during the year 2016. Subsequently, the de-facto complainant has also filed O.A.No.680 of 2016 before the Debts Recovery Tribunal, Madurai, in which, they have stated that it is only an unsecured debt and that the relief sought for is only in respect of recovery of money. This was also not brought to the knowledge of the Court during the earlier hearing. He would further submit that the petitioner's wife has been granted bail by this Court in Crl.O.P.(MD)No.21083 of 2022, dated 05.12.2022 on condition that the petitioner's brother-in-law had offered to give his property worth of Rs.60,00,000/- as security. He would further submit that pursuant to the same, the petitioner's brother-in-law has also appeared before the de-facto complainant and executed a mortgage by deposit of title deeds dated 12.01.2023, wherein, he had given guarantee to the tune of Rs.73,00,000/-. Apart from that, the petitioner has also repaid the loan to the tune of Rs.9,50,000/- and taking into consideration Rs.73,00,000/- given as security and that the balance amount will be paid, so far Rs.91,00,000/- and the entire case of the prosecution is set out by documents. He would also submit that the



petitioner to show his *bona fide*, is also ready and willing to deposit the original title deeds of immovable property worth of Rs.50,00,000/-, either belonging to himself, friends or relatives to the credit of Crime No.15 of 2020 before the learned Magistrate and further, pursuant to the notice under Section 41-A of Cr.P.C, the petitioner is also ready to appear before the respondent police and co-operate with the investigation.

4.The learned Government Advocate (Crl. side) would submit that the case of the prosecution is that the petitioner, in collusion with the Manager of Cholamandalam Investment and Finance Company Limited, had cheated the de-facto complainant to the tune of Rs.1,44,86,618/-. He would further submit that the petitioner has been issued notice under Section 41-A of Cr.P.C and the custodial interrogation of the petitioner is not required.

5.Heard. Perused the materials available on record including the First Information Report.

6.Taking into consideration the facts and the submissions and that subsequent to the dismissal of the earlier application for anticipatory bail, the brother-in-law of the petitioner had deposited title deeds to the tune of Rs.73,00,000/- and had created a mortgage with the de-facto complainant and further, the petitioner has also offered to deposit original title deeds of immovable property worth of Rs.50,00,000/-, either belonging to himself, friends or relatives to the credit of Crime No.15 of 2020 before the learned Magistrate, this court is inclined to grant anticipatory bail to the petitioner with certain conditions:

7.Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of four weeks from the date on which the order copy made ready, before the learned Judicial Magistrate No.I, Trichirapalli, 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 their Aadhar card or Bank Pass Book to ensure their identity.

[b]the petitioner shall deposit the original title deeds of immovable property worth of Rs.50,00,000/- (Rupees Fifty Lakhs Only) either belonging to himself, friends or relatives to the credit of Crime No.15 of 2020 before the learned Judicial Magistrate No.I, Trichirapalli, at the time of furnishing sureties.



[c] the petitioner shall report before the respondent Police, daily at 10.30 a.m., until further orders; and further the petitioner shall comply with the notice under Section 41-A of Cr.P.C. by appearing for investigation;

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

[e] the petitioner shall not abscond either during investigation or trial.

[f] 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].

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

sd/-
20/02/2023

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/03/2023

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

SJI

TO

1. The Judicial Magistrate No.I, Trichirapalli.
2. Do-Through The Chief Judicial Magistrate, Trichy District.
3. The Inspector of Police, CCB Trichy.
4. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

+2 CC to M/s.M.KUMAR, Advocate (SR-2547[I] dated 21/02/2023)

ORDER

IN

CRL OP(MD) No.2741 of 2023

Date : 20/02/2023