BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 03/04/2023

PRONOUNCED ON: 28/04/2023

PRESENT

The Hon`ble Mr.Justice **K.MURALI SHANKAR**

CRL OP(MD). No.5163 of 2023

K.Satheeskumar ... Petitioner/5th Accused

Vs.

State through
The Sub Inspector of Police,
District Crime Branch,
Sivagangai District.
Crime No. 16 of 2021 ... Respondent/ Complainant

For Petitioner : Mr.J.Gunaseelan Muthiah,Advocate.

For Respondent : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor

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

PRAYER :-
For Anticipatory Bail in Crime No.16 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A5, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 406, 468, 471, 420 r/w 120(b) IPC, in Crime No.16 of 2021 on the file of the respondent police, seeks anticipatory bail.

2. It is not in dispute that the petitioner is the brother and the second accused is the wife of the first accused and that the accused 3 and 4 are the parents of the first accused and the petitioner.

3. The case of the prosecution is that all the five persons approached the defacto complainant for getting investment for their

business in the name of P.K.Oil Store, Dinesh Store an ai Pickle, from various persons with the promise that the investor would be paid appropriate lump sum returns, that based on the said promise, the defacto complainant gave a sum of Rs.80 Lakhs, but he was paid interest only Rs.1,50,000/- and that thereafter, the accused have refused to return back investment and on enquiry, the defacto complainant came to know that the accused had cheated many persons to the tune of Rs.10,70,00,000/-. Hence, the complaint.

4. The case of the petitioner is that he is no way connected with the business run by the first accused Dinesh kumar, that except the relationship as brother, he has nothing to do with the alleged business, that the defacto complainant has purposely included the family members of the first accused with intention to extract money, that the petitioner has alerted the first accused, when he was borrowing money from the defacto complainant for the purpose of investing in the share market business, that despite his advice, the first accused believed the defacto complainant in toto and now has got locked with the above criminal case, that the petitioner is not aware of the exact terms of business existed between the first accused and the defacto complainant, that the petitioner was informed that the defacto complainant has borrowed loan from individuals, but not given the same to the first accused and however, he has falsely represented to the creditors as if he has paid the amount to the first accused and that the transaction is purely a loan transaction and the defacto complainant has lodged the above complaint only to escape from the clutches of law and the creditors, who have given amount.

5. The learned counsel appearing for the petitioner would submit that the petitioner came to know that the first accused has already filed an insolvency petition in I.P.No.24 of 2021 and the same is pending on the file of the III Subordinate Court, Madurai, that the present case not a case of collection of deposit, but only a loan transaction for which they have obtained sufficient security for the amount and if at all any liability towards repayment of loan by the first accused, the proper remedy is only filing of suit for recovery of money, that the defacto complainant in a short cut method has lodged the complaint with the false allegations, that there is no evidence attributing any offence against the petitioner, that the defacto complainant has himself preferred the forged pamphlet as if the petitioner was also involved in the business, that the defacto complainant is the main cause for the loss of the business of the first accused and that he has not committed any offence as alleged.

6. It is evident from the records that the accused 2 to 5 including the petitioner herein have moved the Hon'ble Supreme Court with petitions for Special Leave to appeal in SLP.Nos.1045 and 1046 of 2022 and the Hon'ble Apex Court by holding that they do not find any ground to interfere with the impugned order passed by the High

Court, dismissed the Special Leave Petitions, vide orde[illegible]ed 17.02.2022.

7. It is not in dispute that after the dismissal of the Special Leave petitions, the accused 2 to 5 including the petitioner herein have filed a petition in Crl.O.P.(MD)Nos.4010 and 4150 of 2022 seeking anticipatory bail and this Court, after enquiry, dismissed the same. Subsequently, the petitioner along with the second accused has filed an another application in Crl.O.P.(MD)No.22328 of 2022 for anticipatory bail and this Court, by holding that both the accused have not shown any other change in circumstances, since the dismissal of the Special Leave Petition of the Hon'ble Supreme Court and the petitions for anticipatory bail by this Court, dismissed the petition.

8. No doubt, as rightly contended by the learned counsel appearing for the petitioner, the first accused subsequent to the dismissal of the Special Leave Petition was arrested and subsequently was released on statutory bail by the Judicial Magistrate No.II, Sivagangai, vide order, dated 13.09.2022, that the fourth accused was also arrested and remanded to judicial custody on 14.10.2022 and was subsequently granted bail by the District and Sessions Court, Sivagangai, vide order, dated 13.12.2022, that the third accused, who is the father of the first accused, had been granted anticipatory bail by this Court, vide order, dated 07.12.2022 and that the sixth accused was arrested and remanded to judicial custody on 03.03.2023 and is in judicial custody.

9. The learned counsel appearing for the petitioner would submit that the petitioner was not aware of the business allegedly conducted by the first accused along with the defacto complainant, that the defacto complainant alone had created fake pamphlets and disclosed their involvement and that since the petitioner has nothing to do with the business of the first accused and the defacto complainant, he may be enlarged on bail.

10. The learned Additional Public Prosecutor appearing for the respondent would submit that the bank account maintained by the petitioner in DBS bank has been credited with Rs.55,34,500/- from the first accused's HDFC bank account in a series of 48 different transactions during the period from 25.02.2019 to 08.02.2021, that a sum of Rs.1,97,500/- has been credited from the first accused's HDFC bank account during the period from 02.04.2021 to 09.06.2021 and that totally a sum of Rs.57,32,000/- was transferred from the first accused's bank account to the bank account of the petitioner. He would further submit that the first accused in his confession statement has specifically stated that he had purchased movable and immovable properties in the names of his family members including his brother, the petitioner herein.

11. The learned counsel appearing for the petitioner would submit that the petitioner had given more than Rs.60,00,000/- to the first accused, that the first accused had subsequently returned those amounts on different occasions to the tune of Rs.57,32,000/- as stated by the learned Additional Public Prosecutor and that therefore, the petitioner has not received any amount allegedly involved in the case on hand.

12. No doubt, the learned counsel appearing for the petitioner has produced the copies of the bank accounts of the petitioner and the prosecution has also produced the copies of the bank accounts of the first accused.

13. As rightly contended by the learned Additional Public Prosecutor, the case was registered against all the accused including the petitioner for the alleged transactions commenced from 31.01.2018 and the complaint came to be registered on 16.07.2021.

14. As rightly pointed out by the learned Additional Public Prosecutor, the amounts allegedly sent by the petitioner to the first accused was only during the case period and the learned counsel appearing for the petitioner has not shown that the petitioner was having independent source of income and that he was owning such a huge amount of more than Rs.60,00,000/- at the relevant point of time.

15. Considering the above facts and circumstances and also the seriousness and gravity of the offence alleged and also taking note of the fact that the amount is not yet recovered and also the fact that the petitioner has allegedly received more than Rs.57,00,000/- from the first accused during the relevant point of time, this Court is not inclined to grant anticipatory bail to the petitioner.

16. In the result, this Criminal Original Petition is dismissed.

sd/-
28/04/2023

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/05/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CSM

TO

1 THE SUB INSPECTOR OF POLICE
DISTRICT CRIME BRANCH,
SIVAGANGAI DISTRICT

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

+1. CC to J.GUNASEELAN MUTHIAH Advocate SR.No.24730(F)

ORDER
IN
CRL OP(MD) No.5163 of 2023
Date :28/04/2023

PKP/VR/SAR-4/03.05.2023/ **5P/4C**