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.5161 of 2023

Roshini ... Petitioner/ 2nd Accused

Vs.

State through
The Sub Inspector of Police,
District Crime Branch,
Sivagangai District. ... Respondent/Defacto 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/A2, 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 wife and the fifth accused is the brother of the first accused and that the accused 3 and 4 are the parents of the accused 1 and 5.

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 and Mangai Pickle, from various persons with the promise that the investor

would be paid appropriate lump sum returns, that based on [illegible]id 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 she is no way connected with the business run by the first accused Dinesh kumar, that except the relationship as wife, she 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 her 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 she 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 order, dated 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 fifth 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, that the petitioner is 35 years old and is taking treatment for diabetics and that since the petitioner has nothing to do with the business of the first accused and the defacto complainant, she may be enlarged on bail.

10. The learned Additional Public Prosecutor appearing for the respondent would submit that the bank account of the petitioner available in Karur Vysya Bank has been credited with Rs.1,04,700/- from the first accused HDFC bank account in a series of 21 different transactions during the period from 01.07.2019 to 01.02.2021, that the first accused has transferred a sum of Rs.11,500/- from his HDFC bank account to the petitioner during the period from 11.04.2021 to 19.05.2021, that totally a sum of Rs.1,16,200/- was transferred from the first accused's bank account to the petitioner's bank account and that the first accused in his confession statement has specifically stated that he has purchased movable and immovable properties in the names of his family members including the petitioner.

11. As rightly pointed out by the learned counsel appearing for the petitioner, even according to the prosecution, the accused

persons had allegedly cheated many persons to the [illegible] of Rs.10,70,00,000/- but the prosecution has now been alleging that sum of Rs.1,16,200/- alone was transferred from the bank account of the first accused to the petitioner's bank account.

12. As rightly contended by the learned counsel appearing for the petitioner, though the prosecution has alleged that the first accused had confessed that he had purchased movable and immovable properties in the names of his family members including his wife/ petitioner herein, they have not traced out any of the property purchased in the name of the petitioner. Moreover, as rightly pointed out by the learned counsel appearing for the petitioner, Rs.1,16,200/- was allegedly transferred from the first accused's bank account during the period from 01.07.2019 to 01.02.2021 and thereafter from 11.04.2021 to 19.05.2021.

13. Moreover, it is pertinent to note that the defacto complainant, in the earlier applications for anticipatory bail filed by the accused including the petitioner herein, has raised serious objections by filing intervening petitions and subsequently, according to the prosecution, investigation revealed that the defacto complainant was very much involved in the alleged offence and he was also arrested.

14. Except the above amount of Rs.1,16,200/- allegedly transferred to the bank account of the petitioner, the prosecution has not produced any iota of materials to connect the petitioner with the alleged offences.

15. Considering the above facts and circumstances and also the fact that the accused 1 and 3 were already granted bail and the fourth accused was granted anticipatory bail by this Court and also taking note of the fact that the petitioner is not having any bad antecedents, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

16. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on her appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate No.II, Sivagangai, on condition that the petitioner shall execute a bond for a sum of **Rs.25,000/-(Rupees Twenty Five Thousand only)** with two sureties each for a like sum to the satisfaction of the learned Magistrate concerned and on further conditions 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 Aadhaar card or bank pass book to ensure their identity.

[b]the petitioner shall report before the responden ce daily at 10.30 a.m., until further orders.

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

[d]the petitioner 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 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].***

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

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 JUDICIAL MAGISTRATE NO.II
SIVAGANGAI.

2 DO THROUGH:
THE CHIEF JUDICIAL MAGISTRATE,
SIVAGANGAI DISTRICT.

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

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

+1. CC to J.GUNASEELAN MUTHIAH Advocate SR.No.24729(F)

ORDER
IN
CRL OP(MD) No.5161 of 2023
Date :28/04/2023

PKP/VR/SAR-4/03.05.2023/ **5P/6C**