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

Date : 21/03/2023

PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN

CRL OP(MD). No.8719 of 2022

1. Venkata Subramaniam ... Petitioner / Accused No.3
2. M.Karthikeyan ... Petitioner / Accused Rank unknown

Vs

1.The State represented by
The Inspector of Police,
Economic Offences Wing,
Karur Town and District.
(Crime No.1 of 2022). ... Respondent / Complainant

2.Jai Kavitha ... Petitioner / Intervener / Defacto Complainant in CRL MP(MD) No.7234 of 2022

For Petitioner : M/s.Ajmal Khan, Senior Counel
for M/s.Deepak C, Advocate.

For Intervenor :M/s.Anand, Advocate
for M/s.P.Samuel Guna singh, Advocate

For Respondent : Mr.R.M.Anbunithi,
Additional Public Prosecutor

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

PRAYER :-

For Anticipatory bail in Crime No.1 of 2022 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioners/Accused who apprehend arrest at the hands of the respondent police for the offences punishable under sections 120(B),420, 406, 408, 409, 466, 467,468,471,477(A) of IPC in Crime No. 1 of 2022 on the file of the respondent police, seek anticipatory bail.

2. The case of the prosecution as per the de-facto complainant is that the defacto complainant is the wife of the first accused and both of them were partners of two partnership firms namely M/s.Morvi Exports and Ram Textiles. These firms have borrowed various loan from Syndicate Bank(now Canara Bank) and several properties were given as security towards credit facilities. She is a guarantor for these loans. The loan accounts fell in default and they were classified as NPAs on 07.04.2010. During the subsistence of the mortgage the first accused executed a settlement deed in her favour. on 03.05.2010 in respect of some of the mortgaged properties and action under SARFAESI Act was initiated by the bank. Few properties were sold and sale proceeds were paid into the loan account. An appeal in S.A. No. 96 of 2012 was contested before the DRT Chennai and ordered in her favour on 01.04.2014. The loan accounts were settled in full. However, the Bank, by falsely stating that there was a reversal entry of Rs.4 Crores had actually sanctioned new loan to Morvi Exports and had retained the properties belonging to the complainant and had thus cheated her and the bank is refusing to hand over the original property documents to the complainant. Hence she preferred complaint and she had impleaded the bank officials in the rank of Branch Managers, Divisional Managers, Deputy General Managers and Regional Manager as accused.

3. The learned counsel for the intervenor vehemently objected to grant anticipatory bail to the petitioners stating that bank officials of the canara bank colluded with her husband and indulging in manipulation of accounts, fraudulently created fictitious loan account for Rs.4 crores in the year 2014 and Rs.16 crores in the year 2019 and created charges over her property with an intention to grab three properties (worth more than Rs.35 crores) and they have also misappropriated the amount to the tune of Rs.16 crores.

4. Heard both sides and perused the materials available on record including the First Information Report.

5. It is seen that the defacto complainant and the first accused were partners of M/s.Morvi Exports and Ram Textiles. They have already availed various credit facilities from the erstwhile Syndicate Bank now Canara Bank by creating equitable mortgage of six properties in 2005 in the form of packing credit loans. Thereafter in the year 2007, M/s.Ram textiles has advanced a loan of Rs. 6 Crores and M/s. Morvi Exports was sanctioned a loan of Rs.16 Crores on 11.09.2008. However the defacto complainant retired from the partnershipfirm on 01.04.2009. The entire business operations of both these firms had been stopped in the month of October 2009 and the total outstanding amount is Rs.23.96 Crores. A sum of Rs.10.78 Crores was repaid by selling few properties In the meanwhile the accused persons had settled the properties belonging to him by registered settlement deed dated 03.05.2010 in favour of the defacto complainant. Though settlement deed executed in her

favour those properties continued to remain mortgage with [illegible]nk and both the loan accounts were classified as non performing assets on 07.04.2020. After initiation of proceedings under the SARFAESI Act by issuance of demand notice on 15.10.2010 she sold away the mortgaged properties on 16.11.2020 and deposited the money into the loan account and accordingly the entire outstanding of Ram Textiles was settled on 15.04.2011 and now the outstanding loan amount of Morvi Export was Rs.12.57 Crores alone as per demand notice dated 27.08.2011. Thereafter one of the mortgaged properties was sold on 29.03.2012 and a sum of Rs.1.85 crores was paid into the loan account. Since the first accused started to harass the complainant and his children to give back the properties gifted by him, she sent notice to the bank stating that the properties were mortgaged with the bank belong to her after settlement deed.

6. The defacto complainant mainly alleging that in the year 2012 the bank officials colluding with the first accused and one M/s. Power Creating Zone Private limited had attempted to grab her individual properties . The defacto complainant further alleging that the bank had advanced a new loan of Rs. 4 Crores in favour of M/s. Morvi Exports on 26.11.2014 and declared the same as NPA on 15.12.2014.. The bankers have also given false details and that without even disturbing the loan they created as if they have advanced loan to Rs. 4 Crores.. Thereafter the bank has also instituted an application in OA 1277/16 before the Debts Recovery Tribunal by falsely stating her as one of the partners with an intention to grab her properties. She has also lodged a consumer complaint in complaint No. 6/2019 before the District Consumer Forum, Karur which was also ordered in her favour on 23.03.2020. Therefore the main crux of the complainant is that the first accused who is her husband along with other accused who are previous branch Managers, Regional Manager, General Manager,NPA Management and legal department of erstwhile Syndicate Bank and now Canara Bank had conspired and defrauded her valuable immovable properties worth about more than Rs.35 Crores by fraudulently giving loan of Rs. 4 crores to M/s. Morvi Exports by mortgaging her properties, whereas the learned Senior Counsel contended that the partners of the above said firm have availed loan facilities in which the defacto complainant had stood as guarantor. For the credit facilities extended by the bank, the properties originally belong to the first accused were given in mortgage in favour of the bank to secure the advances. Sinece they committed default in both loan accounts they were declared as NPA . The bank also initiated SARFAESI proceedings.

7. In pursuant to the interim order passed by the Debts Recovery Tribunal in S.A.96/2012 a sum of Rs. 4 Crores was deposited by the proposed purchaser. In the final order dated 01.10.2014 it held that on request of applicant, this tribunal has ordered to deposit the amount of Rs. 4 Crores on various dates. Therefore the applicant has to get back the deposited amount of Rs.4

Crores only from R2. He is not entitled interest for tha nt since the applicant has entered into sale agreement with the third respondent knowing that he was not the owner of the property, on 18.04.2012. The applicant has no right to claim any amount other than the amount awarded from the tribunal on the basis of the sale agreement, hence the second respondent has to return the deposited amount of Rs. 4 Crores to the defacto complainant. Accordingly the money received from the applicant/third party proposed purchaser under the interim order of DRT and credited into the loan account of the defaulting partnership firm was refunded by the bank necessarily from the loan account of the defaulting partnership firm. This is falsely projected by the informant as a new loan and she is falsely claiming that the securities in the form of mortgage that were originally created will therefore stand discharged and she is eligible to get back the title documents of the mortgaged properties. Under the said context the present First Information Report has been registered.

8. The petitioner has also produced loan account documents which revealed that the said amount was returned to the proposed purchaser and the said amount was treated as new loan. Thereafter no loan was sanctioned as alleged by the complainant and there was no demand. In respect of the so call loan it was allegedly sanctioned in the year 2009. That apart all the SARFAESI proceedings were initiated by the bank, whereas the present complaint has been lodged by the officials of the bank as if they defrauded . The remaining allegations levelled against the petitioners are true and the account statement are generated by the bank. Admittedly there is no professional gain to the petitioners herein since they are the erstwhile managers of Syndicate Bank now merged with Canara Bank. Now they are working as Managers of Canara Bank, therefore custodial interrogation of the petitioners is not required since the documents are also produced during enquiry. In fact the proceedings are also pending before the Debts Recovery Tribunal. Hence this Court is inclined to grant anticipatory bail to the petitioners subject to the following conditions:

9. 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 Chief Judicial Magistrate, Karur, on condition that the petitioners shall execute a 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 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.

sd/-
21/03/2023

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/04/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

AAV

To

1.The Chief Judicial Magistrate,
Karur.

2.The Inspector of Police,
Economic Offences Wing,
Karur Town and District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.C.DEEPAK, Advocate (SR-4697[I] dated 23/03/2023)

ORDER
IN
CRL OP(MD) No.8719 of 2022
Date :21/03/2023

ED/SBN/SAR-1 (31/03/2023) 5P 5C