BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Reserved on : 08.08.2023
Delivered on : 22.08.2023

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

Crl.O.P.(MD)Nos.7539 and 7853 of 2023

Crl.O.P.(MD)No.7539 of 2023

1. K.S.M.Mohamed Saleem

2. M.Zakira Nazreen ... Petitioners/Accused Rank 1 & 2

Vs

The State represented by
The Inspector of Police,
District Crime Branch,
Dindigul District.
(Crime No.13 of 2023) ...Respondent/Complainant

(Amended as per order of this Court dated
24.04.2023 in Crl.MP(MD)No.6780 of 2023
in Crl.OP(MD)No.7539 of 2023)

Yasar Arabath ... Intervening Petitioner/Defacto Complainant
In Crl.MP(MD).7098 & 7351 /2023
in Crl.OP(MD).7539 & 7853/2023

For Petitioners: Mr.J.JOHN SATHYAN, Senior Counsel
for Mr.F.Deepak, Advocate

For Respondent : Mr.K.SANJAI GANDHI,
Government Advocate(Crl.Side)

For Intervenor : Mr.A.RAMESH, Senior Counsel
for Mr.M.VIVEK BHARATHI, Advocate

Crl.O.P.(MD)No.7853 of 2023

A.Mohamed Yusuf Ansari ... Petitioner/Accused No.3

Vs.

The State represented by
The Inspector of Police,
District Crime Branch,
Dindigul District.
(Crime No.13 of 2023) ...Respondent/ Complainant

For Petitioner : Mr.ABUDU KUMAR RAJARATNAM,
Senior Counsel
for Mr.F.DEEPAK, Advocate

For Respondent : Mr.K.SANJAI GANDHI,
Government Advocate(Crl.Side)

For Intervenor : Mr.A.RAMESH, Senior Counsel
for Mr.M.VIVEK BHARATHI, Advocate

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

COMMON PRAYER :-
For Anticipatory Bail in Crime No.13 of 2023 on the file of the respondent police.
COMMON ORDER: The Court made the following order :-

The petitioners/accused 1 to 3, who apprehend arrest at the hands of the respondent police for the alleged offences punishable under Sections 406, 420, 120-B and 506(1) IPC in Crime No.13 of 2023 on the file of the respondent police, seek anticipatory bail.

2. On the basis of the complaint lodged by the intervenor/defacto complainant, FIR came to be registered in Crime No.13 of 2023 on the file of the respondent police against the petitioners/accused 1 to 3 in the above two petitions for the alleged offences under Sections 406, 420, 120-B and 506(1) IPC.

3. Admittedly, the petitioners in Crl.O.P.(MD)No.7539 of 2023 are the accused 1 and 2 and the petitioner in Crl.O.P.(MD)No.7853 of 2023 is the third accused.

4. It is not in dispute that the first accused and his wife, second accused are running a company in the name and style of M/s.Bnazrum Agro Exports Private Limited, that the defacto complainant is none other than the son-in-law of the accused 1 and 2 and that the third accused is the General Manager of the said company.

5. The case of the prosecution, as evident from FIR, is that during 2018, the said company was running in loss, that the accused 1 and 2 approached the defacto complainant and obtained a sum of Rs.6 Crores on the assurance that they will register the company and its properties in his name, that the parties entered into an agreement on 19.09.2022 to sell the company for a total sum of Rs.40 Crores and out of which, the defacto complainant had to make a payment of Rs.16.5 Crores to the

accused 1 and 2 and the balance amount of Rs.23.5 Crores will be paid to Union Bank of India for closing the existing loan amount, that as per the said agreement, the accused have received a sum of Rs.6 Crores on 19.09.2022 and subsequently Rs.4.50 Crores and executed a share purchase agreement in favour of the defacto complainant, that a Board resolution was also passed appointing the defacto complainant as a Director of the company, but the same were not filed before the Registrar of Companies stating that the Bank is not providing No Objection Certificate and they have also received a sum of Rs.2.11 Crores for the same, that the accused have also received another sum of Rs.3 Crores on various dates and thereafter informed the Bank authorities not to provide No Objection Certificate, that a panchayat was convened between the family members and the accused agreed to pay the total sum of Rs.25 Crores for settling the issues and that the accused have been refusing to sell the properties or to return back the agreed amount, but diverted a sum of Rs.1.25 Crores to their personal accounts and that therefore, on the basis of the compliant lodged by the defacto complainant, the present case came to be registered.

6. The case of the accused 1 and 2 is that their Bnazrum Agro Exports Private Limited company is an agro based company established in the year 1998 and is having 3000 farmers directly involved in the company for its manufacturing and raw

materials supplies, that the said company is 100% export oriented company, that due to the pandemic Covid situation and Russia-Ukraine war, there was some financial constraint suffered by the company, that the defacto complainant being the son-in-law has given Rs.9 Crores for the company revival and other banking liabilities, that the defacto complainant was also appointed as CEO of the company and was also given cheque signatory power to manage the affairs of the company, that the defacto complainant had thereafter managed the affairs of the company by doing various financial transactions and that the intention of the defacto complainant is to get the entire shares of the company which was declined by the accused 1 and 2 as they wanted the defacto complainant to have 70% of shares and 30% of shares by the first accused.

7. The case of the third accused is that there is no specific averments against the third accused and only vague allegations have been made against him, as if, he aided the accused 1 and 2, that perusal of FIR would clearly depict that a civil case and family dispute has been converted into a criminal case and that the third accused has nothing to do with any of the allegations alleged by the defacto complainant and due to the disputes raised between the family members of the company and the unpleasant situations created by them, the third accused resigned his job on 10.03.2023 from the company.

8. It is the case of the accused 1 to 3 that they are innocent and they have not committed any offence as alleged in the complaint, that the entire materials available on record does not attract any of the ingredients for the offences and that they are from respectable family and law abiding citizens and they will not evade the due process of law.

9. The defacto complainant has filed two applications in Crl.M.P.(MD)Nos.7098 and 7351 of 2023 seeking permission to intervene in the above criminal original petitions by mainly alleging that there is every apprehension of tampering and hampering with the evidences and witnesses and as such, the accused are not entitled for any relief.

10. It is not in dispute that before registration of FIR, the respondent police has freezed all the five bank accounts of the said company and a communication was sent to the bank authorities in this regard and that therefore, the first accused has filed a petition in Crl.M.P.No.9018 of 2023 under Section 102 r/w 457 Cr.P.C. to de-freeze all the five bank accounts of the first accused company on the file of the Judicial Magistrate No.II, Dindigul and the learned Magistrate, after enquiry, has allowed the petition on 05.04.2023, de-freezing all the five bank accounts in Union Bank of India, UMFB Branch, Coimbatore and permit the first accused to operate the accounts and further directed the first accused to execute a bond for Rs.25 Crores

under Section 102 Cr.P.C. The defacto complainant, aggrieved by the said order, has preferred a criminal revision before this Court in Crl.R.C.(MD)No.515 of 2023 and this Court, after hearing all the counsels on record, has passed an order dated 21.06.2023 dismissing the revision with costs by holding that the action of the police authorities in freezing the accounts is illegal and the order of the learned Magistrate, de-freezing the bank accounts is legally valid.

11. Heard the learned Senior counsel appearing for the accused 1 to 3, the learned Government Advocate (Criminal Side) appearing for the respondent police and the learned Senior counsel appearing for the defacto complainant.

12. Before entering into further discussion, it is necessary to refer the decision of the Hon'ble Supreme Court relied on by the learned Senior counsel appearing for the defacto complainant in Central Bureau of Investigation Vs. Santosh Karnani and others reported in 2023 (2) Crimes 330 (SC) with regard to the principles governing grant of anticipatory bail and the relevant passage is extracted hereunder:-

> “24. The time-tested principles are that no straitjacket formula can be applied for grant or refusal of anticipatory bail. The judicial discretion of the Court shall be guided by various relevant factors and largely it will depend upon the facts and circumstances of each case.

The Court must draw a delicate balance between liberty of an individual as guaranteed under Article 21 of the Constitution and the need for a fair and free investigation, which must be taken to its logical conclusion. Arrest has devastating and irreversible social stigma, humiliation, insult, mental pain and other fearful consequences. Regardless thereto, when the Court, on consideration of material information gathered by the Investigating Agency, is prima facie satisfied that there is something more than a mere needle of suspicion against the accused, it cannot jeopardise the investigation, more so when the allegations are grave in nature."

13. The Constitution Bench of the Hon'ble Supreme Court in Sushila Aggarwal Vs. State (NCT of Delhi) reported in (2020) 5 SCC 1 has specifically held that while deciding applications for anticipatory bail, the Courts should be guided by factors like the nature and gravity of the offences, the role attributed to the applicant and the facts of the case.

14. As rightly pointed out by the learned Senior counsel appearing for the defacto complainant, the accused 1 and 2, in their application for anticipatory bail, have specifically stated that the company was facing some financial constraint due to

the pandemic Covid situation and Russia-Ukraine war and they were constrained to receive a sum of Rs.9 Crores from their son-in-law, the defacto complainant herein for the revival of their company.

15. Even according to the accused, the defacto complainant was made as CEO of the company along with cheque signatory power to manage the affairs of the company. Moreover, the accused have also admitted that the defacto complainant had managed the affairs of the company by doing various financial transactions, but their complaint is that the defacto complainant had acted with an intention to get the entire shares of the company, for which, the accused 1 and 2 were not amenable and according to them, they were ready to give 70% of shares to the defacto complainant by retaining 30% of shares with the first accused.

16. The learned Senior counsel appearing for the accused 1 and 2 would submit that the defacto complainant had sent his wife and his children out of their matrimonial home to the house of the accused 1 and 2 and that the defacto complainant has been attempting to give family dispute a criminal color.

17. The learned Senior counsel appearing for the accused 1 and 2 would submit that in case of the defacto complainant taking back his wife and children, the accused are ready to return the amount received from him, but the defacto complainant not accepting the same has purposely lodged the complaint to take revenge on the

accused.

18. The learned Senior counsel appearing for the defacto complainant would submit that initially, the defacto complainant's wife had canvassed for her father requesting the defacto complainant to help her father for reviving the company, that subsequently, they had settlement talks at Chennai and at that time, the first accused had agreed to repay Rs.25 Crores and settle the issues with the defacto complainant, that since the accused have failed to pay the agreed amount within the time stipulated, the defacto complainant had sent his wife to ask her parents with regard to non-payment of the amount settled between the parties, that the accused had brain washed the defacto complainant's wife and started to threaten the defacto complainant that they would file a criminal complaint through his wife that he was harassing her by demanding dowry and he would be sent to jail.

19. It is very unfortunate that the first accused was manipulating his daughter and the defacto complainant his wife, as a trump card in their business game.

20. The learned Senior counsel appearing for the defacto complainant would submit that the first accused himself has sent a letter dated 12.08.2020, wherein, he had specifically admitted the receipt of Rs.580 lakhs by expressing his hope that the current situation of Covid-19 will be restored to the normal soon, that they have given enhancement proposal to their bankers for their credit limits and the same was

in process, that they are also engaging in selling of their property and that they are assuring that they will repay the amount on priority basis whichever by possibility of succeed in any one of above mentioned activities at the earliest. He would further submit that that the defacto complainant and the accused 1 and 2 have entered into an agreement cum undertaking document dated 19.09.2022, wherein, they have agreed to sell 21.95 acres of land in which the company was situated and also 100% of shares of the company to the defacto complainant and that they have fixed the sale price at Rs.40 Crores and the defacto complainant has agreed to settle the bank loan of Rs.23.50 Crores and the remaining amount to the accused 1 and 2 deducting the amount already paid to them, that subsequently, the first accused being the Managing Director of the company has sent a letter to Union Bank of India informing them that they are going to transfer 85.02% of shares to the defacto complainant and the remaining 14.98% of shares to the wife of the defacto complainant and requested the banking authorities to give No Objection for change in the shareholding and for completing the registration in change of ownership of the individual properties and that thereafter, the defacto complainant came to know that the first accused has sent another letter to the banking authorities to stop processing of issuance of No Objection Certificate on transfer of shareholding and transfer of ownership on properties of the individual Directors.

21. The learned Senior counsel appearing for the defacto complainant would further submit that the accused 1 and 2, by not paying the amount agreed, had cheated and committed criminal breach of trust and also threatened the defacto complainant and his men and that the General Manager of the company, the third accused was actively assisting the other accused in the commission of offences and that therefore, he was forced to lodge the above complaint.

22. It is pertinent to note that the accused have not disputed the letter written by the first accused dated 12.08.2020 and the agreement cum undertaking document dated 19.09.2022 executed by the accused 1 and 2 in favour of the defacto complainant.

23. It is not in dispute that the Board of Directors of the company has passed a resolution dated 18.01.2023 appointing the defacto complainant as Managing Director of the company with effect from 18.01.2023 and that in pursuance of the said resolution, the first accused sent a letter to Union Bank of India informing the proposal of the existing Directors to resign as Directors and to transfer their entire shares to the defacto complainant and his wife at 85.02% and 14.98% respectively and also their proposal to transfer the immovable properties owned by the existing Directors of the company and requested them to give No Objection for change in the shareholding and also for completing the registration in change of ownership of the

individual properties.

24. The learned Senior counsel appearing for the defacto complainant would submit that after sending the above letter to Union Bank of India and when the defacto complainant has been waiting for No Objection Certificate from the said bank, he came to know from the letter of Union Bank of India dated 18.04.2023 that the defacto complainant's claim as Managing Director of the company was not acceptable to them as they have not issued No Objection Certificate for the same and that they have received a letter from the company to stop processing of issuance of No Objection Certificate on transfer of shareholding and transfer of ownership on properties of the individual Directors, the process was put on hold and hence, in the above circumstances, they will not be able to proceed for issuance of No Objection Certificate.

25. The learned Senior counsel appearing for the third accused would submit that the third accused has already submitted his resignation on 10.03.2023 itself, that the third accused has no connection whatever with the allegations made in the complaint and that the defacto complainant has not raised any specific allegations against the third accused.

26. No doubt, the third accused, in his application for anticipatory bail, has produced the copy of the resignation letter dated 10.03.2023.

27. As rightly pointed out by the learned Senior counsel appearing for the defacto complainant, even according to the third accused, being the General Manager of the company, he had been at the forefront of the company finding solutions to each and every problem, which includes procurement, production, finance, transportation, exports, banking, customer relationships, farmers and other areas as well, that he had assumed complete responsibility even during the Managing Director's absence and had been a good problem solver and decision maker and that he had gone to great lengths to organize the finances through banking or other means to resolve the financial issues.

28. As rightly contended by the learned Senior counsel appearing for the defacto complainant, even as per the resignation letter of the third accused, it is clearly evident that the third accused was actively involved in the entire affairs of the company including its financial transactions.

29. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in Rajesh Bajaj Vs. State NCT of Delhi and others reported in (1999) 3 SCC 259, wherein, the Hon'ble Supreme Court has held that the crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not and the relevant passages are extracted hereunder:-

"It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. One of the illustrations set out under Section 415 of the Indian Penal Code (illustrations f) is worthy of notice now:

"(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats."

The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that respondent after receiving the goods have sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.

The High Court seems to have adopted a strictly hyper-technical approach and sieved the complaint through a cullendar of finest gauzes for testing the ingredients under Section 41, IPC. Such an endeavour may be justified during trial, but certainly not during the stage of investigation. At any rate, it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a commercial transaction simplicitor wherein no semblance of criminal offence is involved.

The appellant is, therefore, right in contending that the FIR should not have been quashed in this case and the investigation should have been allowed to proceed.

We, therefore, allow this appeal and set aside the impugned order."

30. No doubt, the above decision came to be rendered in a case of quashing an FIR, but the observations made therein are squarely applicable to the case on hand.

31. Regarding the contention of the learned Senior counsel appearing for the

accused that the complaint does not disclose any of the ingredients for the offences, it is necessary to refer the following passages in the judgment above referred,

> "It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence. In State of Haryana vs. Bhajan Lal (supra) this Court laid down the premise on which the FIR can be quashed in rare cases. The following observations made in the aforesaid decisions

are a sound reminder:

> "We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."”

32. In the case on hand, according to the defacto complainant, he has paid cash to the tune of Rs.9,02,50,000/- (Rupees Nine Crores Two Lakhs and Fifty Thousand only) and Rs.11,23,50,000/- (Rupees Eleven Crores Twenty Three and Fifty Thousand only) through account transactions, totalling Rs.20,26,00,000/- (Rupees Twenty Crores and Twenty Six Lakhs only). According to the defacto complainant, the accused in the agreement dated 19.09.2022 has specifically admitted the receipt of Rs.6 Crores in 2018, cash of Rs.5 Crores and Rs.1 Crore through two cheques on the date of agreement itself.

33. It is not the case of the accused that they have not received any amount from the defacto complainant.

34. The learned Senior counsel appearing for the accused would submit that there are absolutely no materials to show that the accused had fraudulent intention even at the time of commencement of transactions. Whether the accused were having fraudulent intention even at the time of commencement of transactions can only be ascertained from the surrounding circumstances and subsequent conduct of the parties. In the present case, even as per the case of the accused, they have been informing the defacto complainant and taking steps, as if, they are going to change the ownership in favour of the defacto complainant till receiving of substantial amount from the defacto complainant and after that they have sent an information to their bankers not to process their earlier request for the issuance of No Objection Certificate. Admittedly, the accused have not offered any reason or explanation for stopping the process. Considering the above, as rightly contended by the learned Senior counsel appearing for the defacto complainant, the same would go to show that there existed a prima facie case against the accused.

35. It is evident from the case putforth and the records produced by the accused that the first accused being the Managing Director of the company and the third accused being the General Manager of the company were at the helm of affairs of the

company including the transactions with the defacto complainant.

36. As rightly contended by the learned Senior counsel appearing for the defacto complainant, the letter written and the agreement executed in favour of the defacto complainant and subsequent letter sent to their bankers by the accused would go to show that there are prima facie materials available against the accused.

37. The learned Government Advocate (Criminal Side) appearing for the respondent police would submit that since the defacto complainant has alleged that the amount received from him were diverted for the personal purpose of the first accused and that since the first accused has not admitted the receipt of the entire amount as stated by the defacto complainant, custodial interrogation is very much necessary.

38. Considering the entire facts and circumstances of the case and also the nature and gravity of the offences alleged and the availability of the prima facie materials therefor and taking note of the quantum of amount involved, this Court is not inclined to grant anticipatory bail to the accused 1 and 3. But, considering the fact that there are no specific and serious allegation against the second accused, who is the wife of the first accused, and mother-in-law of the defacto complainant and taking note of her age, this Court is inclined to grant anticipatory bail to the second accused with certain conditions.

39. In the result, the petition in Crl.OP(MD)No.7539 of 2023 is partly allowed and the petition in Crl.OP(MD)No.7853 of 2023 is dismissed.

40. Accordingly, the second petitioner in Crl.O.P.(MD)No.7539 of 2023 is ordered to be released on bail in the event of her arrest or her appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate Court No.I, Dindigul, Dindigul District, on condition that the second petitioner in Crl.O.P.(MD)No.7539 of 2023 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 second petitioner in Crl.O.P.(MD)No.7539 of 2023 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 second petitioner in Crl.O.P.(MD)No.7539 of 2023 shall report before the respondent police on every Monday at 10.30 a.m., until further orders.

[c]the second petitioner in Crl.O.P.(MD)No.7539 of 2023 shall not tamper with the evidence or witness either during investigation or trial.

[d]the second petitioner in Crl.O.P.(MD)No.7539 of 2023 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 second petitioner in Crl.O.P.(MD) No.7539 of 2023 in accordance with law as if the conditions have been imposed and the second petitioner in Crl.O.P.(MD)No.7539 of 2023 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 second accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

sd/-
22/08/2023

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/08/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CSM
TO
1 THE JUDICIAL MAGISTRATE NO.I,
DINDIGUL, DINDIGUL DISTRICT.

2 DO THROUGH THE CHIEF JUDICIAL
MAGISTRATE, DINDIGUL DISTRICT.

3 THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
DINDIGUL DISTRICT.

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

+1 CC to M/s.F.DEEPAK, Advocate (SR-12585[I] dated 22/08/2023)

+1 CC to M/s.F.DEEPAK, Advocate (SR-12652[I] dated 23/08/2023)

ORDER
IN
Crl.O.P.(MD)Nos.7539 and 7853 of 2023
Date :22/08/2023

SA/VR/SAR. /24.08.2023/23P/7C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.