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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 08/06/2023

PRESENT

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

CRL OP(MD). No.8545 of 2023

Vishnuvarthan ... Petitioner/Accused No.1

Vs

The State represented by
The Inspector of Police,
District Crime Branch,
Madurai District.
Crime No.11/2023. ... Respondent/Complainant

Chandrasekar ... Petitioner/Intervenor/Defacto Complainant
in CRL MP(MD)No.7883 of 2023

For Petitioner : M/s.J.Anandkumar,
Advocate.

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

For Intervenor : Mr.J.Hariharan, Advocate

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

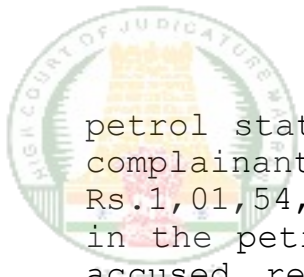
PRAYER :-

For Anticipatory Bail in Crime No.11/2023 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 and 420 of I.P.C., in Crime No.11 of 2023 on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution is that the defacto complainant is a resident of France and he was interested in investing money in India and for the same his brother-in-law one K.Muthuramasubramanyam introduced his friend one A.S.Vishnuvarthan, the petitioner herein, who is running a petrol bunk in the name and style of M/s.Asha Jothi Agency. The petitioner invited the defacto complainant to invest in



petrol station with the profit share of 50%. Since then the defacto complainant has given amount to the petitioner to the tune of Rs.1,01,54,640/-. The petitioner and A2 herein are existing partners in the petrol station dealership with bharath petroleum, the second accused relinquished his 25% share and was willing to exit the partnership and in this regard, defacto complainant, the second accused and the petitioner entered into an agreement of reconstruction of dealership. Therefore, the second accused executed an agreement notary to exit the M/s.Asha Jothi agency (partnership firm) with a consideration amount and the same was notarized. After a few weeks, the defacto complainant went back to France due to pandemic situation. Therefore, the defacto complainant's brother-in-law oversaw the business along with the first accused and updated informations related to the business periodically to the defacto complainant. After two years, when the defacto complainant returned to India he came to know that the second accused, who exited from the firm, continued to run the business along with other persons. Thereafter, the defacto complainant asked to return the money which was given to the petitioner and the petitioner, whereas, refused to pay the money. Therefore, the defacto complainant caused notice to the Barath Petroleum company not to accept any other document except the reconstruction agreement. Hence, the case.

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

4.It is seen that there are two accused in this case and the petitioner herein is arrayed as A1. Though the second accused was already granted anticipatory bail by this Court, the de-facto complainant failed to intervene in the said application and as such this Court recorded that the de-facto complainant entrusted a sum of Rs.1,01,54,640/- with the accused persons in order to share profit in the partnership firm. Further recorded that it is commercial transaction and all the allegations are civil in nature. Now the de-facto complainant intervening in the present anticipatory bail application and submitted that the accused after having been received substantial amount in order to induct him as a partner in the petrol bunk business and also assured to share the profit. The reconstitution deed was submitted by the accused before the BPCL and subsequently, by a letter dated 26.10.2022 disagree on the reconstitution deed process to the Bharath Petroleum Corporation Limited. Therefore, the BPCL rejected the request of reconstituting the partnership firm for the reason application fees not paid and the existing dealer not interested for reconstitution. It was challenged by the de-facto complainant in W.P.(MD)No.89 of 2023 and the same is pending before this Court. Again, the accused persons received huge amount from the other persons and submitted reconstitution proposal before the BPCL. The same was also rejected by the communication dated 07.01.2023 on the ground that the earlier rejection of reconstitution deed with the de-facto complainant is under challenge before this Court in W.P.(MD)No.89 of 2023. Therefore, it is seen that the accused having been received huge



amount from the de-facto complainant and thereafter raised objections before the BPCL not to induct the de-facto complainant as partner of Asha Jothi Agency. Therefore, the offences are clearly made out as against the accused person.

5. However, the learned counsel for the petitioner would submit that the entire money was invested by the de-facto complainant only through his brother-in-law Muthurama Subramanian. Insofaras, they had returned the money to the tune of Rs.17 lakhs through the brother-in-law of the de-facto complainant. He is also willing to make substantial amount in favour of the de-fact complainant to show his *bona fide*.

6. Considering the above facts and circumstances of the case, 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 fifteen days from the date on which the order copy made ready, before the learned Judicial Magistrate No.I, Madurai, 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 Rs.35,00,000/- (Rupees Thirty Five Lakhs Only) by way of demand draft drawn in favour of the defacto complainant directly and on production of proof/acknowledgement the learned Magistrate shall accept the sureties furnished by the petitioner.

[c] the petitioner shall report before the respondent Police, daily at 10.30 a.m., for a period of four weeks and thereafter, as and when required for interrogation;

[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/-

08/06/2023

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/06/2023

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

SJI

TO

1 THE JUDICIAL MAGISTRATE NO.I
MADURAI.

2 DO-THROUGH :
THE CHIEF JUDICIAL MAGISTRATE, MADURAI DISTRICT.

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

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

+1 CC to M/s.J.ANAND KUMAR, Advocate (SR-8338[I] dated 08/06/2023)

+1 CC to M/s.N.BALASURAMANIAN, Advocate (SR-8531[I] dated 12/06/2023)

ORDER

IN

CRL OP(MD) No.8545 of 2023

Date :08/06/2023

SS/BUC/16/06/2023/4P/7C