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CRL OP(MD).



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

( Criminal Jurisdiction )

Date : 14/06/2023

PRESENT

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

CRL OP(MD) . No.9962 of 2023

1. S.A.Mahendra Babu,
2. S.Raja Mohamed,
3. S.Ragunathan Subbaih,
4. G.Gopalakrishnan,

... Petitioners/Accused 1 to 4

Vs

1. The Inspector of Police,  
District Crime Branch,  
Dindigul District,  
Dindigul  
(Crime No.19 of 2023).
2. The Inspector of Police,  
Kodaikanal,  
Dindigul District.

... Respondents/Complainants

For Petitioner : M/s.Chellapandian S,  
Advocate.

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

For Intervenor : Mr.K.Vignesh Kumar  
Senior Counsel

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

PRAYER :-

For Anticipatory Bail in Crime No.19 of 2023 on the file of the  
<https://www.mhponline.in/judis> respondents police.



ORDER : The Court made the following order :-

The petitioners/A1 to A4, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 294(b), 416, 421, 468, 471, 420 and 34 of I.P.C., in Crime No.19 of 2023 on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution is that the ex-gratia amount allotted for the occupational diseases, during their employment at Hindustan Unilever Thermometer Manufacturing Factory, Kodaikanal, was swindled by office bearers of "Ponds Hindustan Lever Limited Company Ex-Mercury Employees Welfare Association" namely, S.A.Mahendra Babu (President), Raja Mohamed (Secretary), Ragunathan (Treasurer), K.Gopalakrishnan (Adviser). Further, due to settlement arrived between the above said Sangam and factory management at an out of Court conciliation proceedings occurred during the pendency of writ petition in W.P.No.8291 of 2006, the complainant and other employees were forced to sign in an empty stamp papers and cheques which were later used as settlement deeds and consequently, such cheques were encased by Senior Counsel Ms.Vaigai and Ana Mathew and other executives of said industries. Further, in the complaint, the complainant has alleged that, he was allotted with Rs.40,00,000/- as ex-gratia amount for his occupational disease against which Rs.10,55,750/- was debited for advance tax and the remaining Rs.29,44,250/- was deposited in his account by cheque, among which, Rs.15,00,000/- was forcefully extracted by the petitioners. Likewise, 113 employees were cheated in the year 2016. Further, it is alleged that, such forceful extraction, misappropriation, cheating, creating false document, were all done with the abetment of counsel who represented the Sangam before the Principal Bench, namely, Senior Counsel- Ms.Vaigai and her associate Anna Mathew, the officials of Hindustan Mercury Factory, Manager John George, Nagarajan and Advocate Commissioner appointed by this Court and the Notary who attested the documents was taken to task for the commission of the above said offences along with the petitioners herein and office bearers under Sections 294(B), 416, 421, 468, 471, 420 and 34 IPC.

3.The learned counsel for the de-facto complainant would submit that the petitioners are the office bearers of Ponds "Hindustan Lever Limited Company Ex-Mercury Employees Welfare Association". The defacto complainant and other employees elected them as office bearers and entrusted to claim compensation through its employer in view of the occupational health issues, since many of the employees were affected with perennial and non-perennial diseases, while they were under employment. However, they produced 60 fictitious persons and received compensation. They also influenced the employer and obtained more compensation for the relatives. They obtained blank cheque, stamp paper and other papers, while



the compensation, which was received by each employee to it the expenses, Advocate fees and others. Therefore, they committed very serious offences as against the poor employees and the custodial interrogation of the petitioners is very much necessary in this case.

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4. The learned counsel for the petitioners would submit that for the very same set of allegations, one of the employees lodged complaint before the second respondent and the same was enquired by the Deputy Superintendent of Police. After conducting a detailed enquiry, the Deputy Superintendent of Police found that no allegation is made out as against the petitioners, since the petitioners are only the office bearers of the Association and they offered with the employer on behalf of the employees. All the employees were individually paid compensation depending upon their occupational health issues. Their health issues were examined and accordingly, each one of the employees was paid compensation. That apart, the enquiry officer, namely, the Deputy Superintendent of Police, Kodaikanal Police Station conducted a detailed enquiry and found that whatever the allegations made as against the petitioners are civil in nature and they are directed to approach the civil Court for appropriate relief. Subsequently, another employee also lodged a complaint for the very same set of allegations before the first respondent and the same was also enquired and closed as civil in nature. In fact, all the employees and members of the Association filed a writ petition before this Court in W.P.(MD)No.22342 of 2016 with the following prayer:

*"Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, to direct the respondents 1 to 3 to file all the records, receipts, vouchers, account books, challans, affidavits in their possession pertaining to the disbursement of the ex-gratia amount paid to the petitioners and to the remaining beneficiaries and enquire into the irregularities and misappropriation committed by the office bearers of the first respondent and the officials of the third respondent in disbursing the ex-gratia amount to the petitioners. Consequently, to direct the respondents 1 to 3 to settle the balance ex-gratia amount payable to the petitioners in accordance to the number of years of their service and to direct the office bearers of the first respondent to refund the amount to the petitioners received towards Union Expenses, Legal Expenses by force and coercion from the petitioners within the stipulated time fixed by this Court."*

The Hon'ble Division Bench of this Court by an order dated 28.02.2017, dismissed the writ petition with the following observations:

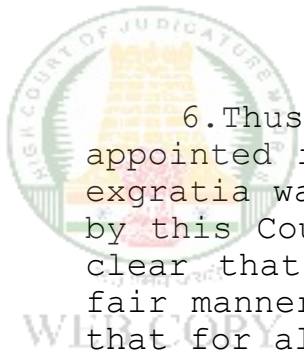


"20. Further, this Court also called for the submitted by the Advocate Commissioner, which was kept in a sealed cover and in the custody of the Registrar General and perused the terms of settlement arrived at between the first and third respondents. On perusal of the same, we do not find any illegalities or irregularities in arriving at such a settlement. Further, it has come to light that the ex-gratia was paid depending upon the nature of sufferings sustained by the workers and not on the basis of the years of service. In fact, the disbursement of ex-gratia was made in the present of the Advocate Commissioner appointed by this Court. The said Advocate Commissioner also filed a report with regard to the disbursement of the ex-gratia in a fair manner and the same was taken into record. After taking into consideration of the said report, the Writ Petition No.8291 of 2006 was closed. Hence, there is no need for appointment of any independent persons to investigate into the entire activities once again, even assuming the Writ Petition is maintainable and have to be considered on merits. Therefore, we do not find any merit in the Writ Petition.

21. Further, it is also seen that the first respondent took all possible steps to safeguard the interest of the workers, who suffered ill-health due to the mercury toxin omitted from the HUL. The same is evident from the fact the first respondent/Association filed W.P.No.8291 of 2006, seeking compensation and during the pendency of the writ petition, since several workers died, the first respondent/Association with the approval of the General Body took efforts to file claim on behalf of the members in the High court of Justice, Queen's Bench Division, UK against the respondent company and Unilever PLC, which was holding the Company of the third respondent. The said claim was filed after making enormous efforts and expenditure by the first respondent, and the said claim was later withdrawn due to the terms of settlement arrived at in W.P.No.8291 of 2006. even the petitioners had full knowledge of all the steps taken by the first respondent on their behalf. Therefore, we are of the view that it is not fair on the part of the petitioners to raise false allegations that the first respondent indulged in all sorts of fraudulent activities so as to misappropriate the ex gratia amounts payable to the workers.

22. For the reasons stated hereinabove, we do not find any merit in the writ petition. Accordingly, the Writ Petition stands dismissed. No costs."

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



6. Thus, it is clear that the Advocate Commission is appointed in order to receive the compensation. The disbursement of exgratia was made in the presence of Advocate Commissioner appointed by this Court. The report of the Advocate Commissioner is also very clear that each of the employees was duly paid compensation in a fair manner. Further, it is not the case of the defacto complainant that for all the employees, the compensation was jointly awarded and it was divided by the employees. According to the defacto complainant, 60 employees were fictitiously claimed compensation from the employer for their occupational health issues. If at all the fictitious persons were granted compensation, the employer is only the aggrieved person. Therefore, the defacto complainant has no locus to stand the same. That apart, what are the fees paid to the Advocates and other expenses are concerned, if there is any dispute, the defacto complainant ought to have filed a civil suit for appropriate relief before the civil Court. Even then, on the second complaint, the first respondent registered the First Information Report for the offences punishable under Sections 294(b), 416, 491, 468, 471, 420 and 34 IPC without any iota of material in order to attract those offences as against the petitioners. Therefore, the custodial interrogation of the petitioners does not require in this case.

7. In view of the above, this court is inclined to grant anticipatory bail to the petitioners with certain conditions:

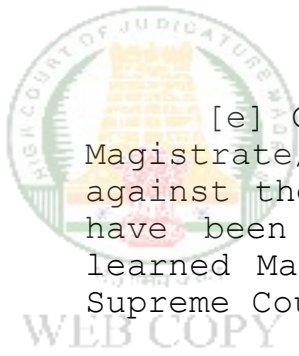
8. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on their appearance, within a period of fifteen days from the date on which the order copy made ready, before the learned Judicial Magistrate No.I, Dindigul, on condition that the petitioners shall execute a 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 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.

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

SJI

TO

1. The Judicial Magistrate No.I, Dindigul.
2. Do-Through The Chief Judicial Magistrate,  
Dindugul District.
3. The Inspector of Police,  
District Crime Branch,  
Dindigul District, Dindigul.
4. The Inspector of Police,  
Kodaikanal, Dindigul District.
5. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S.CHELLAPANDIAN, Advocate ( SR-8766[I] dated  
15/06/2023 )

+1 CC to M/s.K.VIGNESH KUMAR, Advocate ( SR-8923[I] dated  
16/06/2023 )



CRL OP(MD).



23

ORDER

IN

CRL OP(MD) No.9962 of 2023

Date :14/06/2023

DL/SBN(30.06.2023) / 7P/8C

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