



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 16.06.2023
PRESENT

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

CRL OP (MD) Nos. 10323 & 10335 of 2023

R.RAJAMANKCKAM ... Petitioner / Accused No.2
in CRL OP (MD) No.10323 of 2023

RATHAN RAJ ... Petitioner / Accused No.1
in CRL OP (MD) No.10335 of 2023

Vs

THE STATE OF TAMIL NADU
THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH,
TIRUNELVELI
(CRIME NO.2 OF 2023)

... RESPONDENT / COMPLAINANT
IN BOTH CRL OPS

1 GANTA SRINIVASA RAO

2 PARCHURI RAJARAO

3 PRATHYUSHA GLOBAL TRADE PVT.LTD.,
REP.BY MR.PARUCHURI RAJARAO

4 PRATHYUSHA ESTATES PVT.LTD.,
REP.BY MR.PARUCHURI RAJARAO

5 P.V.BHASKARA RAO

6 P.V.PRABHAKARA RAO ... INTERVENING PETITIONERS/
DEFACTO COMPLAINANT
IN CRL.MP (MD).8623 & 8620/2023
IN CRL.OP (MD).10323 & 10335/2023

For Petitioners : Mr.Ajmalkhan
(In both CrI.O.Ps.) Senior Counsel
for M/S.Ajmal Associates

For Respondent : Mr.R.M.Anbunithi,
(In both CrI.O.P.s) Additional Public Prosecutor.

For Intervenor : Mr.B.Saravanan,
(In both CrI.O.Ps.) Senior Counsel
for Mr.M.Palanivel, Advocate



PETITIONS FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.

COMMON PRAYER :- For Anticipatory Bail in Crime No.2 of 2023 on the file of the Respondent Police.

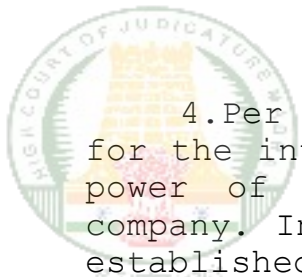
COMMON ORDER : The Court made the following common order :-

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The petitioners/A1 & A2, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 120B, 406 r/w 420 IPC in Crime No.2 of 2023, seek anticipatory bail.

2.The case of the prosecution is that one Shoban Babu, claiming to be the power of attorney holder of the erstwhile directors and shareholders of Prathyusha Power Gen Private Limited, appears to have preferred a complaint against the petitioners alleging that the petitioners grabbed the company's land admeasuring 11.80 acres situated in S.No.680/2, 681/1 and 681/2, Kodaganallur, Tirunelveli District, allegedly worth about Rs.1,40,00,000/- (Rupees One Crore Forty Lakhs only), and alienated the same to one Mr.Ahamadshah on 28.07.2020. The petitioners and other accused were the directors and shareholders of the above said company on 28.07.2020, ie, on the date of alienation by the above said company. The petitioners and other accused persons had purchased 100% of the shares of the company from the principals vide share purchase agreement dated 30.12.2013 and had become complete owner of the company from that day onwards and that the said share agreement incorporated a provision whereby the above mentioned lands were undertaken to be transferred by the company to the principals of the defacto complainant and the sale of the above said property in violation of the said clause results in commission of the offences conspiracy, criminal breach of trust, cheating as against the principals. Hence the case.

3.Mr.Ajmalkhan, learned senior counsel appearing for the petitioner would submit that the petitioners never involved in any offence as alleged by the prosecution. 100% shares of the company was brought from the principals for total consideration of Rs.17 Crores on 30.12.2013. From that date onwards, they become the complete owners of the company. The principals of the defacto complainant have no right or title in any manner in respect of the said company. He would further submit that the land admeasuring 11.80 acres situated in S.No.680/2, 681/1 and 681/2, Kodaganallur, Tirunelveli District is the property of the company and it had been alienated by the said company on 28.07.2020 by the registered sale deed. Therefore, the principals of the defacto complainant are not owner and the petitioners had taken of the said land. Hence, no offence is committed as alleged by the prosecution. In fact, on 30.12.2013, principals of the defacto complainant were signed and they had undertaken to be transferred the said land to them. Therefore, he sought anticipatory bail to the petitioners.



4. Per contra, Mr. C. Saravanan, learned senior counsel for the intervenor would submit that the defacto complainant is the power of attorney appointed by the erstwhile directors of the company. In the year 2002, M/S Prathyusha Power Private Limited was established by the principal for carrying on the business power generation based on biomass power plant with a capacity of 10 megawatts at Thurvarasi village, Thirupanikaraisalkulam, Tirunelveli and used to supply the generated power to the grid of Tamilnadu Electricity Board. They had purchased the above said land by way of sale deed dated 06.01.2003. In the year 2013, M/s. Nakshathra Holdings Private Limited, represented by its Director approached the principal for purchase of the entire shares in respect of the company. After holding negotiations, it was agreed to sell the above biomass based power plant by way of transfer of shares. There was memorandum of understanding for acquisition of the shares on 27.09.2013 to sell the shares held by the principal to the purchasers. Based on the memorandum of understanding, a share purchase agreement was entered into between the principals and the accused persons on 30.12.2013. As per the share purchase agreement, they become directors of the company and being the purchasers of the shares they have to transfer the said lands to the principals as per the share purchase agreement dated 30.12.2013. Therefore, they have no right or title over the said land. They are only purchasers of the shares and they have to transfer the said land to the principals. While being so, the accused persons sold out the lands in favour of the third parties, without any title over the property. Therefore, he prayed for dismissal of these petitions.

5. Heard both sides and perused the materials available in the record.

6. On perusal of records revealed that the petitioners also filed a petition under Section 11 of the Arbitration Act in OP.No.51 of 2023 before the Principal Bench, Chennai. On perusal of memorandum of understanding also revealed that there is clause to alienation in respect of dispute between them. Therefore, custodial interrogation of the petitioners does not require.

7. Considering the above facts and circumstances of the case, 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 I, Tirunelveli, 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, daily at 10.30 A.M., for a period of two weeks and thereafter, 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/-

16/06/2023

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/06/2023

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

GNS

TO

1 THE JUDICIAL MAGISTRATE NO.I, TIRUNELVELI.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, TIRUNELVELI DISTRICT.

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

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

+2. CC to M/S.AJMAL ASSOCIATES, SR.No.8989, 8990

ORDER

IN

CRL OP (MD) Nos.10323 & 10335 of 2023

Date :16/06/2023

SA/BUC/SAR. /22.06.2023/4P/7C

<https://www.mhc.tn.gov.in/judis>