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CRL OP(MD). N



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

Date : 25/01/2023

PRESENT

The Hon`ble Mr.Justice A.D.JAGADISH CHANDIRA

CRL OP(MD). No.13779 of 2022

1. A.Arulraj
2. Aravind Asir

... Petitioners/Accused No.1 & 2

Vs

The State rep.by,
The Inspector of Police,
District Crime Branch,
Kanyakumari District.
(Crime No. 16 of 2022).

... Respondent/Complainant

M. Subramaniam

... Petitioner/Interener in
Crl.MP(MD)No.9754 of 20222

For Petitioners : M/s. Mohideem Basha.N, Advocate

For Respondent : Mr.P.Kottai Chamy,
Government Advocate (Crl.Side)

For Intervenor : Mr.R.Murugan, Advocate

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

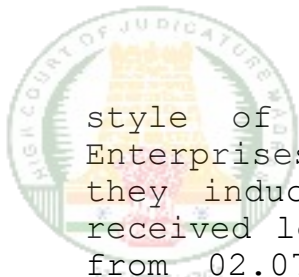
PRAYER :-

For Anticipatory Bail in Crime No. 16 of 2022 on the file of the respondent Police.

ORDER : The Court made the following order :-

The petitioners/Accused, apprehending arrest at the hands of the respondent police for the alleged offence punishable under Sections 294(b), 406, 418, 420, 506(ii) of I.P.C, in Crime No.16 of 2022, on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution as per the defacto is that he has engaged in the business in the name and
<https://www.mca.gov.in/>



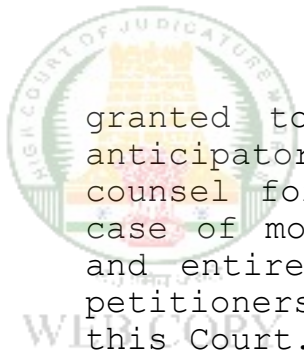
style of Asirvatham Nadar & Sons Jewellery and Ganes Enterprises. The accused are known to him for the past 20 years and they induced the defacto complainant to give loans to them and received loan to the tune of Rs.3,40,00,000/-, on several occasions from 02.07.2004 to 2017. On 21.08.2022, when the defacto complainant asked for return of money, the first accused had went to his house, abused and also intimidated him and the second accused had also attempted to assault him with a key chain. The defacto complainant has lodged a complaint before the Crime Branch Police Station, since no action taken, he preferred a complaint before the learned Magistrate and the same was referred under Section 156(3) of Cr.P.C.

3.(i)The learned counsel for the petitioner would submit that he is innocent and a case of simple money lending has been exaggerated and a false complaint has been given, as if, it is a case of cheating. The learned counsel for the petitioner further submitted that the petitioners are engaged in the business of jewellery and they have been borrowing money from the defacto complainant from the year 2004 and after reconcilliating the account, for the due amount the petitioners had executed three sale deeds in respect of valuable properties worth about several crores, viz., Doc.Nos.50/2019, 129/2019, 69/2019. The petitioners as well as the wife of the first petitioner have also given blank cheques as security to the defacto complainant.

(ii)He would further submit that the defacto complainant is the person, who is a money lender, had harassed the petitioners and wife of the first petitioner, despite execution of documents, thereby, the wife of first petitioner died. On 23.06.2020, the petitioners have given a complaint before the Superintendent of Police, Nagercoil and the defacto complainant appeared in person and also admitted the execution of sale deeds by the petitioners and also agreed that he will not harass the petitioners and will seek remedy before the Civil Court.

(iii)He would further submit that later, based on a blank cheque issued by the first petitioner's wife, the defacto complainant has sent a legal notice and also filed a criminal complaint against the dead person. In the meanwhile, the defacto complainant has also filed two civil suits in O.S.No.138 of 2020, 139 of 2020 for recovery of money. Suppressing all the above facts, the defacto complainant has lodged a false complaint before the learned Judicial Magistrate. Based on the reference made by the learned Magistrate under Section 156(3) of Cr.P.C, the respondent has registered the case.

(iv)Earlier, the petitioners have filed a petition in CrI.OP(MD)No.9570 of 2022 to quash the FIR and interim stay was granted to the petitioners. During such time, the petitioners have



granted to the petitioners in the quash petition, the anticipatory bail petition was dismissed by this Court. The learned counsel for the petitioners would further reiterate the fact that case of money transaction has been converted into a criminal case and entire case of prosecution is borne out by records and the petitioners are ready to abide any stringent condition imposed by this Court. Hence, prays to release them on anticipatory bail.

4.The learned Government Advocate (Crl.Side) would submit that the petitioners have borrowed an amount of Rs.3,40,00,000/- from the defacto complainant, from the year 2004 and failed to repay the same. When the defacto complainant demanded to repay the said amount, the accused persons had threatened him and the second accused had attempted to assault him with key chain. Hence, prays to dismiss the petition.

5.The learned counsel for the intervenor would submit that it is true that the petitioners and the defacto complainant are known to each other for the past 20 years and right from the year 2004, with an intention of cheating, accused had induced the defacto complainant to lend money to them. Believing their words, the defacto complainant had paid Rs.3,40,00,000/- through RTGS and cash transactions. Later, without repaying the same, they cheated the defacto complainant and also criminally intimidated and tried to assault him. Hence, prays to dismiss the petition.

6.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7.Taking into consideration the facts and circumstances of the case and considering the nature of dispute between the parties, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

8.Accordingly, this Criminal Original Petition is allowed and the petitioners are ordered to be released on bail in the event of arrest or their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned **Judicial Magistrate No.I, Nagercoil**, 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 learned 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 only at 10:30 a.m., for a period of one week, thereafter, as



and when required for interrogation;

(c) the petitioners shall not tamper with the evidence or witness either during investigation or trial;

(d) the petitioner 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]**; and;

(f) if the accused/ petitioners thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

sd/-

25/01/2023

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/02/2023

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

PNM

TO

1 THE JUDICIAL MAGISTRATE NO.I,
NAGERCOIL.

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

3 THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH,
KANYAKUMARI DISTRICT

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

+1. CC to M/S. MOHIDEEM BASHA.N, Advocate SR.No.1271(I)

+1. CC to M/S. MURUGAN R, Advocate SR.No.1283(I)

ORDER

IN

CRL OP(MD) No.13779 of 2022

Date :25/01/2023