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Crl.O.P.(MD)N



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 10.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
Crl.O.P.(MD)No.15705 of 2022

Pavithra ... Petitioner/De-facto complainant

vs.

1.Priyadharshini ... Respondent/Accused (A1)

2.The State rep.by,
The Sub-Inspector of Police,
Thiruppuvanam Police Station,
Sivagangai District.
Crime No.177 of 2022 ... Respondent/Complainant

PRAYER : This Criminal Original Petition has been filed under Section 439(2) of Cr.P.C., to cancel the anticipatory bail granted to the first respondent by the learned Principal Sessions Judge, Sivagangai in Crl.M.P.No.2775 of 2022, dated 22.07.2022 and commit to him custody.

For Petitioner : Mr.K.Mahendran, Advocate

For R1 : Mr.K.Sivabalan, Advocate

For R2 : Mr.B.Thanga Aravindh
Government Advocate (Crl. side)

ORDER

This Criminal Original Petition has been filed to cancel the anticipatory bail granted to the first respondent by the learned Principal Sessions Judge, Sivagangai in Crl.M.P.No.2775 of 2022, dated 22.07.2022 in Crime No.177 of 2022 registered for the offence under Sections 417 and 420 of IPC.

2.The first respondent was granted anticipatory bail by the Court below in Crl.M.P.No.2775 of 2022 by order dated 22.07.2022 on condition that the petitioner shall deposit a sum of Rs.1,00,000/- before the learned District Munsif cum Judicial Magistrate Court, Thiruppuvanam in Crime No.177 of 2022 and further, directed the first respondent to report before the respondent police daily twice at 09.30 a.m., and 05.30 p.m., until further orders. Accordingly, the first respondent has duly complied with the conditions and now the investigation is pending on the file of the second respondent.

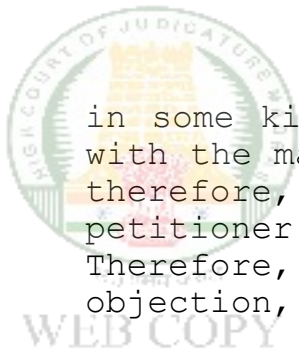


3.The learned counsel for the petitioner/de-facto complainant would submit that the first respondent has already filed a petition for anticipatory bail before the learned Principal Sessions Judge, Sivagangai in Crl.M.P.No.2452 of 2022 and the same was dismissed vide order dated 29.06.2022. Without even completion of 30 days, again the first respondent filed another application for anticipatory bail in Crl.M.P.No.2775 of 2022 and the Court below has granted anticipatory bail by an order dated 22.07.2022 without any valid reasons. He would also submit that the learned Public Prosecutor appeared before the Court below has no objection and also stated that the first respondent did not involved in any other case, except the present case. It is clear suppression of fact that the first respondent involved in some other cases. That apart, she received a sum of Rs.31,90,000/- from the petitioner/de-facto complainant. Therefore, she swindled huge amount, whereas, the Court below has ordered to deposit a sum of Rs.1,00,000/-. It is very meagre. Therefore, the Court below granted anticipatory bail on erroneous ground. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court in **Vipan Kumar Dhir Vs. State of Punjab and another** reported in **AIR 2021 SCC 4865**, in which, the Hon'ble Supreme Court held that even if there is no procedure in declaring the accused as an absconder, that by itself cannot be ground to grant pre-arrest bail in the case.

4.On perusal of records reveals that the first respondent is arrayed as A1 in the FIR registered in Crime No.177 of 2022 on the complaint lodged by the petitioner/de-facto complainant.

5.The crux of the complaint is that the first respondent is the relative of the petitioner/de-facto complainant herein. The first respondent/A1 by inducing the petitioner/de-facto complainant, has received a sum of Rs.31,90,000/-. After receiving the amount, the first respondent paid a sum of Rs.11,61,000/- as interest for only 9 months. Thereafter, she failed to pay any interest towards the principal amount. When it was questioned by the petitioner/de-facto complainant, the first respondent gave an evasive reply and adopted delaying tactics and failed to return back the amount. On receipt of the FIR, the first respondent filed a petition for anticipatory bail before the Court below in Crl.M.P.No.2452 of 2022 and the same was dismissed by an order dated 29.06.2022. Again the first respondent filed another application for anticipatory bail in Cr.M.P.No.2775 of 2022, in which, the Court below has granted anticipatory bail to the first respondent on certain conditions.

6.Accordingly, the first respondent has duly complied with the conditions imposed by the Court below. That apart, the Court below recorded the submission of the learned Public Prosecutor that the investigation is not yet completed and huge amount involved in this case. Therefore, if the petitioner is granted bail, she was indulged



in some kind of offence, she would abscond and also she met with the material witnesses, thereby hampering the investigation and therefore, he would raise his strong objection to enlarge the petitioner on bail. Hence, he prayed to dismiss the petition. Therefore, the learned Public Prosecutor has raised strong objection, while granting anticipatory bail.

7.However, the learned Government Advocate (Crl. side) would submit that except the present case, the first respondent did not involved in any other case. That part, the first respondent and the other victims have lodged a complaint as against one Kavitha, in which, FIR has been registered in Crime No.6 of 2022 by EOW, HQRS, Chennai for the offences punishable under Sections 120B and 420 IPC and Section 5 of TNPID Act. Even according to the petitioner/De-facto complainant, the first respondent assured that she will hand over the money to the said Kavitha, who in turn, invested the same in the Share Market Trading Business. According to the first respondent, the entire money was handed over to the said Kavitha, who in turn was cheated the petitioner/de-facto complainant along with the first respondent. In fact the petitioner/de-facto complainant, was paid a sum of Rs.11,61,000/-.

8.Considering the above facts and circumstances, the Court below has rightly granted anticipatory bail by mentioning the above said conditions. The first respondent has also duly complied with the conditions and therefore, the Judgment relied on by the learned counsel for the petitioner/de-facto complainant is not applicable to the case on hand.

9.In view of the above, this Court is not inclined to cancel the anticipatory bail granted to the first respondent. Hence, this Criminal Original Petition is dismissed.

sd/-

10/03/2023

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/03/2023

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

SJI

TO

1.THE PRINCIPAL SESSIONS JUDGE, SIVAGANGAI.

2.THE SUB-INSPECTOR OF POLICE,
THIRUPPUVANAM POLICE STATION,
SIVAGANGAI DISTRICT.



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

+1 CC to M/s.K.MAHENDRAN, Advocate (SR-4087[I] dated 13/03/2023)

+1 CC to M/s..SIVABALAN K, Advocate (SR-4153[I] dated 14/03/2023)

ORDER

IN

CRL OP(MD) No.15705 of 2022

Date :10/03/2023

RK/BUC/SAR-1 (24/03/2023) 4P/6C