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

Date : 20/03/2023

PRESENT

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

CRL OP(MD). No.15381 of 2021

Nagarajan Pramaiyaji ... Petitioner / Accused No.5

Vs

1.The State rep by
The Inspector Or Police,
District Crime Branch,
Thoothukudi District.
Crime No.10 of 2021. ... Respondent / Complainant

2.Sudha Padmakumar ... Petitioner / Intervener / Defacto Complainant in CRL MP(MD) No.10389 of 2021

For Petitioner : M/s.Nandha Kumar R, Advocate.

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

For Intervenor : Mr.R.Manohar, Advocate

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

PRAYER :-

For Anticipatory Bail in Crime No.10 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A5, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 406, 465, 467, 468, 471, 472, 420 and 120-B IPC, in Crime No.10 of 2021 on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution is that the de-facto complainant herein is the General Manager of Flomic Global Logistic Company. A1 introduced himself to the de-facto complainant through Lington Website and told that he came to know about his business ie., clearing and forwarding agency throughout Tamil Nadu including

Thoothukudi Port and Chennai. A1 also told him that he is a[illegible]ng the said business and he is having several companies and several customers in Thoothukudi and if they opened a way, to open the clearing and forwarding business at Thoothukudi, he will help them. Immediately, A1 was called to the de-facto complainant's office for interview and he was appointed as a Sales Representative and an appointment order was sent on 31.08.2020. Accordingly, A1 joined duty on 01.09.2020. As per the assurance given by A1 that he will help him in clearing and forwarding business at Thoothukudi Port and Chennai, A1 was appointed as company employee. Later, A1 introduced A2 to the de-facto complainant saying that he is working in a company, namely, Hi Tech Fly Ash India Private Limited. Likewise, A1 and A2 introduced A3 to the de-facto complainant stating that A3 is their close friend and he is working in Orient Container Lines Company and doing the same logistic business in Thoothukudi and Chennai. Further, A1 told that with the help of A2 and A3, they will do the clearing and forwarding business and the de-facto complainant agreed for the same. During the year 2020, the de-facto complainant asked A2 and A3 to submit the documents pertaining to their company. Therefore, A2 and A3 submitted their company's documents at the instigation of A1 for verification through email. When the de-facto complainant verified the same through GST Portal, he came to know that these companies are registered at Thoothukudi. But the owner is different. The de-facto complainant confirmed that these companies are existence at Thoothukudi. Later, on 15.06.2020, the de-facto complainant received an email from A1 stating that he has obtained an order to export 15 containers and he will execute through his company. A1 to A3 told that the containers have to be cleared only through the foreign company, for which, the de-facto complainant also admitted and thereafter, the first container was cleared. Likewise, from 15.06.2020 to 21.11.2020, 26 shipments were made. For that shipments, the de-facto complainant's company paid the total amount of Rs.2,69,50,236/- through online payment. Subsequently, A1 to A3 has repaid a sum of Rs.1,24,83,300/- to the de-facto complainant. When the de-facto complainant asked the remaining amount of Rs.1,44,66,936/-, A1 to A3 had introduced one John Vasikaran to the de-facto complainant, who is the Managing Director of Hi Tech Fly Ash India Private Limited. When the de-facto complainant asked the remaining amount to the said John Vasikaran, he also stated that due to Diwali Period, they were not able to return back the money and gave an assurance that they will pay the money in due course. Thereafter, they did not give any proper reply. Later, the de-facto complainant came to know that the accused persons had misused the said company's name and cheated the de-facto complainant. Subsequently, based on the confession statement of A4, the petitioner has been implicated in this case.

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

4.Even according to the case of the prosecution the petitioner has been implicated as fifth accused, only on the basis [illegible] the confession statement of the third accused. That apart, the petitioner gave space, in order to run export and import by the other accused persons, as if, they also stated that they have contacts in all over the world in order to export and import business. Therefore, believing the said words, the de-facto complainant supplied 26 shipments to the value of Rs.2,69,50,236/-, in which, A1 to A3 had settled the amount to the tune of Rs.1,24,83,300/- and they have not paid the remaining amount of Rs.1,44,66,936/-. Therefore, the petitioner is being the fifth accused, he had no specific overt act in the present crime and he has given space to conduct business in favour of A1 to A3. One of the accused was arrested and released on bail. However, the petitioner did not involve directly with the de-facto complainant.

5.Taking into consideration of the facts and circumstances of the case and also the fact that it is a case of business transaction between the de-facto complainant and other accused persons, this court is inclined to grant anticipatory bail to the petitioner with certain conditions:

6.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, Thoothukudi, 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 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 petitioner shall not tamper with 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 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 me 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/-
20/03/2023

/ TRUE COPY /

/03/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

SJI

TO

1. The Judicial Magistrate No.I, Thoothukudi.

2. Do-Through The Chief Judicial Magistrate,
Tuticorin District.

3. The Inspector Or Police,
District Crime Branch,
Thoothukudi District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.NANDHAKUMAR, Advocate (SR-4595[I] dated 20/03/2023)

ORDER
IN
CRL OP(MD) No.15381 of 2021
Date :20/03/2023

ED/CG/SAR-4 (28/03/2023) 4P 6C