BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 09.03.2023

PRESENT

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

CRL OP(MD)No.18869 of 2021

1.A.Abdul Kani
2.Rehana Begam
3.Narayanasamy ... Petitioners/Accused Nos.3 to 5

Vs

1.The Inspector of Police,
District Crime Branch,
Thanjavur.
(In Crime No.78 of 2021). ...Respondent/Complainant

2.The Deputy Superintendent of Police,
Economic Offences Wing Unit - II,
Tiruchirappalli. ... 2nd Respondent
(R - 2 suo motu impleaded vide order
dated 03.01.2023 in Crl.O.P(MD)No.18869 of 2021 by GIJ)

For Petitioners : Mr.Arul Vadivel @ Sekar,Senior Counsel
for J. Selvam, Advocate

For Respondents : Mr.R.M.Anbunithi
Additional Public Prosecutor (Crl.Side)

For Intervenors : Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

: Mr.G.Anto Prince, Advocate

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

PRAYER :-
For Anticipatory Bail in Crime No.78 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioners/accused Nos.3 to 5, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 406 and 420 of I.P.C in Crime No.78 of 2021 on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution is that A2 was running an unregistered company in the name and style of Raahath Transport Company in Thanjavur, and he invested investors to invest money in his company. He also induced that the investor, who invested Rs.5 lakhs would be given Rs.11,000/- per month. Having bona fide faith in his words, the defacto complainant handed over cheques for a sum of Rs.15,00,000/- to A.2. The petitioners also induced the defacto complainant to invest money in the company. After receiving the cheques, A2 handed over a stamped paper to the defacto complainant. On 19.09.2021, on hearing the demise of A2, the defacto complainant went to the company, and he also met so many persons from whom A2 alleged to have received money and cheated them to an extent of more than Rs.300 crores. Hence, the complaint.

3.The learned Senior Counsel appearing for the petitioners submitted that the petitioners are arraigned as Accused Nos.3 to 5. The first accused is the Company and the second accused is the proprietor of the first accused. The first petitioner is the elder brother of the second accused, the second petitioner is the wife of the second accused and the third petitioner is the Manager of the first accused company. The petitioners never involved themselves with the affairs of the first accused and the second accused. Whatever the offence committed by A.1 and A.2, the petitioners are not vicariously liable. Even assuming that there was mismanagement of any administration on the part of the second accused, as per the F.I.R., the second accused entered into an unregistered agreement with the defacto complainant and if at all any breach of agreement on the part of the second accused, the defacto complainants' ought to have approached the civil Court for appropriate remedy. By no stretch of the imagination, no criminal colour can be given in the present case.

4.The learned Senior Counsel appearing for the petitioner further submitted that no amount has been received by the petitioners and the entire transaction is only with the second respondent. Now, the second accused died and as such, the petitioners cannot be punished for the offence committed by the second accused. Even according to the complainants, till the demise of the second accused, they were promptly paid interest as agreed by the second accused. Thereafter, he suffered with Covid and died. Due to Covid, the omni buses could not be plied and as such, there was difficulty faced by the first and second accused who could not able to pay the interest as agreed by them. In fact, after registration of the F.I.R., the petitioners appeared before the respondent for investigation. During the investigation, they submitted all the property details and various business conducted by the second accused in various places including abroad. They were kept in the dark and no property stands in the name of the petitioners. In fact, the legal heirs of the deceased second accused filed Succession Original Petition in S.O.P.No.150 of 2021 before the Principal District Court, Thanjavur, on the demise of the second accused, dated 19.09.2021 and it is pending. The respondent so far seized more than 50 buses and 22 properties were also identified as per the details furnished by the petitioners herein. Now, they are taking steps to attach the said properties. Therefore, the custodial interrogation of the petitioner do not require and sought for anticipatory bail.

5.The defacto complainants' filed intervening application and objected to grant anticipatory bail to the petitioners.

6.Mr.M.Ajmal Khan, learned Senior Counsel appearing for the defacto complainant submitted that the second accused had been engaged in the transport business in the name and style of Raahath Transport Company running omnibuses and luxury cars throughout India. The petitioners herein induced several persons to deposit money in the buses and cars in order to share the profits gained by running the said buses and cars. After the completion of three years, the deposited amount will be returned to the respective depositors. Likewise, all the victims had deposited their hard-earned money on the buses and after receipt of the same, the second accused also executed a deed in Rs.100/- stamp paper. The second accused had been paid interest till February 2020. Thereafter, in view of Covid, he had not paid any amount from the month of March 2020. Thereafter, he died on 19.09.2021. The petitioners are none other than the same family members, and they are also involved in the business. Only at their instigation, all the poor victims deposited their hard-earned money in their accounts and as such, they are also rightly added as accused, though the first accused is a Proprietor concerned. Only on the intervention of this Court, the investigation has been transferred and altered the offence under the TANPID Act. Now, the investigation is pending. No amount has been recovered from the accused and no properties were so far attached by the Government order. Therefore, custodial interrogation of the petitioners is very much required in this case, and he vehemently opposed to grant anticipatory bail to the petitioners.

7.The learned Additional Public Prosecutor appearing for the respondents submitted that initially the case was registered in Crime No.78 of 2021 on the file of the first respondent for the offences under Sections 406 and 420 of I.P.C. As directed by this Court, now investigation has been transferred to the file of the second respondent and altered the offences under Sections 406 and 420 of I.P.C and Section 5 of TNPID Act. So far, the second respondent received complaints from various victims and thereby the accused persons cheated to the tune of Rs.1,000/- crores. However, the property was worth about Rs.22 crores, and now [illegible]re identified and had been sent a proposal to the Government for attachment. That apart, 57 omnibuses were seized and some of the cars were seized from the accused persons. Already, the second accused created a charge over the remaining omni buses, and they were seized by the respective bankers in order to realize the loan parted by the second accused. Insofar as the petitioners are concerned, they are arraigned as Accused Nos.3 to 5. Only through these petitioners, so many depositors deposited their respective hard-earned money. Immediately, after the demise of the second accused, the entire money has been withdrawn by the accused persons. Therefore, they are rightly implicated as accused and the custodial interrogation of the petitioners is very much required in this case.

8.Heard the learned counsel appearing on either side and perused the materials available on record.

9.There are totally five accused, in which the petitioners are arraigned as Accused Nos.1 to 3. A.1 is the Company owned by A.2. A.2 died on 19.09.2021. The modus operandi of the accused persons that they used to collect deposits on each omni buses to the tune of Rs.5,00,000/- and share the profit of their said respective buses with the depositors. So far, they collected Rs.1,000/- crores from various depositors and invested not only in India, but also abroad in various businesses. The second accused paid the share of the depositors till February 2020. Thereafter, admittedly, he failed to share any profit with the depositors. Unfortunately, he died due to Covid on 19.09.2021.

10.As far as the petitioners are concerned, the first petitioner is the brother of the second accused, the second petitioner is the wife of the second accused and the third petitioner is the Manager of the first accused company. The first petitioner received a sum of Rs.35,37,933/- and Rs.4,58,00,911/- in the Indian Overseas Bank, a sum of Rs.13,14,99,624/- and Rs.4,25,96,892/- in IB Bank and a sum of Rs.85,16,933/- in UCO Bank and totally received a sum of Rs.31,99,44,800/- and all the amounts were withdrawn by him. As far as the second petitioner is concerned, she received through Indian Overseas Bank to the tune of Rs.1,34,21,031/- and through another account in ICICI Bank to the tune of Rs.21,35,192/- and all the amounts were withdrawn by her. Likewise, the third petitioner also received huge amount from the depositors, and he is the master brain behind the entire crime with the second accused, since he is the Manager of the first accused company, and he only managed all the accounts of the depositors. Therefore, he knows the business conducted by the second accused in various places in India and also abroad. So far, the second respondent seized 57 omnibuses and the properties were identified only to the tune of Rs.22 crores. Now, the proposal has been sent to the Government for attachment of the said properties. Therefore, the petitioners had committed very serious offence as against the entire

Society and had cheated to the tune of Rs.1,000/- crores. Only after the intervention of this Court, now the investigation has been transferred to the file of the second respondent and the offences also altered under Section 5 of the TNPID Act and Sections 406 and 420 of I.P.C. Therefore, the custodial interrogation of the petitioners is very much required, and this Court is not inclined to grant anticipatory bail to the petitioners. Accordingly, this Criminal Original Petition is dismissed.

sd/-
09/03/2023

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

PS
TO

1 THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH,
THANJAVUR

2 THE DEPUTY SUPERINTENDENT OF POLICE,
ECONOMIC OFFENCES WING,
UNIT-II, TIRUCHIRAPPALLI.

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

+1 CC to M/s.G.Anto Prince., Advocate (SR-3863[I] dated 10/03/2023)

+1 CC to M/s.J.SELVAM, Advocate (SR-3952[I] dated 10/03/2023)

ORDER
IN
CRL OP(MD) No.18869 of 2021
Date :09/03/2023

PKP/SBN/SAR-2/20.03.2023/ **5P/6C**