BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.01.2023
PRESENT
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P(MD)No.21459 of 2022

1.Kanagamoorthy
2.Kaladevi ...Petitioners/A1 & A2

-vs-

The State represented by
The Inspector of Police,
City Crime Police Station,
Trichy
(Cr.No.6 of 2022) ...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 438 of Cr.P.C, praying to enlarge the petitioners on bail in the event of their arrest in connection with Cr.No.6 of 2022 on the file of the respondent Police.

For Petitioners : Mr.R.Senthil Kumar
For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor
For Intervenor : Mr.T.Lenin Kumar

O R D E R

The petitioners, who apprehend arrest at the hands of the respondent Police for the offences punishable under Sections 381, 417, 420, 465, 468, 506(i) IPC in Crime No.6 of 2022 on the file of the respondent Police, seek anticipatory bail.

2.The case of the prosecution as per the de-facto complainant is that the defacto complainant and his wife had formed companies by name M/s.Lawanya Property Developers Private Limited and M/s.Kohinoor Foundations Private Limited on 22.01.2008 and registered the same with ROC Ministry of Company Affairs. There are 10,000 shares of Rs.10/- each and the total share value is Rs.1 lakh. The defacto complainant and his wife are the directors of the said companies. On 07.04.2008 they appointed one Bharadhan as Managing Diretor of M/s.Kohinoor Foundation Private Limited by the Extra Ordinary General Meeting. By him and by the defacto complainant the properties were purchased in Document No.1917/2008, 2980/2008, 49/2009, 3458/2010. On 21.04.2010, MOU was entered into between M/sKohinoor Foundations Private Limited and by which the profit have to be shared at the ratio of 80% to M/s.Lawanya Property Developers Private Limited and 20% to M/s.Kohinoor Foundations Private Limited. On 23.04.2012, power of attorney was executed in favour of the defacto complainant by M/s.Kohinoor Foundations

Private Limited and was registered in Document No.200/[illegible] On 15.09.2012, Bharathan resigned the post of Managing Director of the said company. Hence, the defacto complainant and his wife had selected the 1st petitioner/1st accused Kanagamoorthy as the Managing Director of the said company and he had no shares in the said company. Thereafter, 9 acres of land in Alundur Village were registered in the name of M/s.Kohinoor Foundations Private Limited in Document Nos.4741/2012 dated 15.10.2012, 4947/2012, dated 25.09.2012 and M/s.Kohinoor Foundations Private Limited and had not paid any amount for the same. Some of the properties in Alundur Village were sold in Document No.5455/2012 dated 29.10.2022, 4929/2012 dated 01.11.2012, 4951/2012, the 1st petitioner/1st accused had got a sum of Rs.90/- lakhs from the sale of 50 cents of land from one Sivanandhan in Document No.5455/2012 and had accounted a sum of Rs.20 lakhs only to the amount M/s.Kohinoor Foundations Private Limited and he had not accounted the balance sum of Rs.70 lakhs and had not maintained the accounts properly and committed forgery. When the defacto complainant asked the 1st petitioner/1st accused, he replied that he will return the said amount, while selling the remaining properties to Sivanandhan and committed forgery. During the month of May 2017, M/s.Kohinoor Foundations Private Limited had purchased 60% shares from the defacto comlaiannt and his wife. On 30.03.2018 at 9 p.m when the defacto complainant was in his office along with his office assistant Durai, he asked about the scandal to the petitioners/accused and they caused damage to the glass in the table and threatened him with the glass piece. He also locked the office of the defacto complainant and taken away the checks and documents of the company. Hence, the complaint.

3.The learned counsel for the petitioners would submit that the petitioners are innocents and a false complaint has been given. He would also submit that the 1st petitioners is the Director in M/s.Kohinoor Foundations Private Limited and the company has been disclosing the profit and loss in the balance sheet and it has been filed every year before the Registrar of Companies. The defacto complainant and the first petitioner signed in the profit and loss statement. He would submit that during the relevant time, the company has also purchased the properties from various persons and sold part of the property and the defacto complainant has also signed in the sale deed dated 25.09.2012 which has been registered in document No.4741/212 and subsequent document dated 29.10.2012 in document No.4951/2012 and another document dated 12.12.2012 registered as document No.5455/2012 and income tax had already been paid for all the relevant years. He would also submit that the defacto complainant is also aware of the same and if at all the defacto complainant has any grievances, he has to approach the Registrar of Companies in respect of his claims and grievances whereas he has attempted to settle the dispute by police action and gave a criminal complaint against the Directors of the Company. He would further submit that the entire case of the prosecution borne out by documents and the petitioners are ready to appear before the respondent police and they are ready to deposit the origi le deeds worth Rs.25 lak\hs to the credit of crime number before the court without prejudice to their rights and contentions as adequate security to show their *bonafides.* He prays for grant of anticipatory bail to the petitioners.

4.The learned Government Advocate (crl.side) would submit that the defacto complainant and the petitioners are the Directors in the company and without the knowledge of the defacto complainant, the petitioners have sold the property worth about Rs.90 lakhs and the defacto complainant only accounted Rs.20 lakhs and they have cheated Rs.70 lakhs. Hence, he prays for dismissal of this application.

5. Mr.Lenin Kumar, learned counsel for the intervenor would submit that the intervenor had believed the petitioners and had handed over the business to them whereas they have fabricated the documents and they have sold the valuable properties belonging to the company and cheated the defacto complainant and he would strongly oppose for grant of anticipatory bail to the petitioners.

6.Heard the learned Counsel. Taking into consideration the facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

7. 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 No.I, Trichy, on condition that the petitioners shall execute 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 shall deposit the original title deeds worth Rs.25 lakhs to the credit of Crime No.6 of 2022 before the learned Judicial Magistrate No.1, Trichy without prejudice to their rights and contentions;

[b]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.

[c] the petitioners shall stay at Tiruneveli and report before the Tirunelveli Town Polic Station everyday at 10.30 a.m., for a period of two weeks, thereafter report before the respondent police every Saturday at 10.30 am until further orders.

[d] the petitioners shall not tamper with evidence or witness

either during investigation or trial.

[e] the petitioners shall not abscond either during investigation or trial.

[f] 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].**

[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-
23/01/2023

/ TRUE COPY /

/02/2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CM

TO

1 THE JUDICIAL MAGISTRATE NO I,
TRICHY

2 THE CHIEF JUDICIAL MAGISTRATE
TRICHY

3 THE INSPECTOR OF POLICE
TIRUNELVELI TOWN POLICE
STATION
TIRUNELVELI.
4 THE INSPECTOR OF POLICE
CITY CRIME POLICE STATION, TRICHY,
5. The Additional Public prosecutor,
Madurai Bench of Madras High Court, Madurai
+1 CC to M/s.R.SENTHIL KUMAR, Advocate (SR-1014[I] dated 24/01/2023)
+1 CC to M/s.T.LENINKUMAR, Advocate (SR-1124[I] dated 25/01/2023)

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Date :23/01/2023

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