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CRL OP(MD). N



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 15/02/2023

Delivered on : 03/03/2023

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.22328 of 2022

1.D.Roshini

2.K.Satheeskumar

... Petitioners/2nd & 5th Accused

Vs.

State through
The Sub-Inspector of Police,
District Crime Branch,
Sivagangai.
(Crime No.16/2021)

... Respondent/De-facto Complainant

For Petitioners : Mr.J.Gunaseelan Muthiah, Advocate
For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor.
For Intervenor : Mr.Issac Mohanlal, Senior Counsel,
for Mr.V.Muthu Kamatchi, Advocate

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

PRAYER :-

For Anticipatory Bail in Crime No.16 of 2021 on the file of the Respondent police.

Order: The Court made the following the Order:

The petitioners/accused, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 406, 468, 471, 420 and 120(b) IPC, in Crime No.16 of 2021, seek anticipatory bail.

2. It is not in dispute that the first petitioner/2nd accused is the wife and the second petitioner/5th accused is the brother of the first accused and that the 3rd and 4th accused are the parents of the accused 1 and 5.

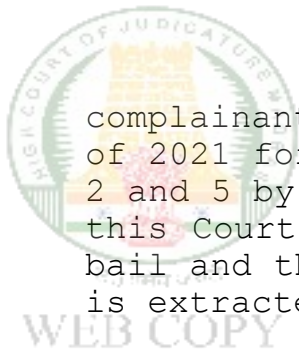


3.The case of the prosecution is that all the five is approached the complainant for getting investment for their business in the name of P.K.Oil Store, Dinesh Store and Mangai Pickle, from various persons with the promise that the investor would be paid appropriate lump sum returns, that based on the said promise, the defacto complainant gave a sum of Rs.80 Lakhs, but he was paid interest only Rs.1,50,000/- and that thereafter, the accused have refused to return back investment and on enquiry, the complainant came to know that the accused had cheated many persons to the tune of Rs.10,70,00,000/-. Hence, the complaint.

4.The petitioners' case is that they are no way connected with the business run by the first accused Dinesh kumar, that except the relationship as father, mother, brother and wife, they have nothing to do with the alleged business, that the defacto complainant has purposely included the family members of the first accused with intention to extract money, that the petitioners have alerted the first accused, when he was borrowing money from the defacto complainant for the purpose of investing in the share market business, that despite their advice, Al believed the defacto complainant in toto and now has got locked with the above criminal case, that the petitioners are not aware of the exact terms of business existed between the first accused and the defacto complainant, that the petitioners were informed that the complainant has borrowed loan from individuals, but not given the same to the first accused and however, he has falsely represented to the creditors as if he has paid the amount to the first accused and that the transaction is purely a loan transaction and the defacto complainant has lodged the above complaint only to escape from the clutches of law and the creditors, who have given amount.

5.The learned counsel for the petitioners would submit that the petitioners came to know that the first accused has already filed an insolvency petition in I.P.No.24 of 2021 and the same is pending on the file of the III Subordinate Court, Madurai, that the present case not a case of collection of deposit, but only a loan transaction for which they have obtained sufficient security for the amount and if at all any liability towards repayment of loan by the first accused, the proper remedy is only filing of suit for recovery of money, that the complainant in a short cut method has lodged the complaint with the false allegations, that there is no evidence attributing any offence against the petitioners, that the defacto complainant has himself preferred the forged pamphlet as if the petitioners were also involved in the business, that the defacto complainant is the main cause for the loss of the business of the first accused and that they have not committed any offence as alleged.

6.It is evident from the records that the petitioners along with accused 3 and 4, have obtained anticipatory bail from the Sessions Court, Sivagangai; that the intervenor/defacto



complainant has filed two petitions in Crl.O.P(MD)No.14192 ()4 of 2021 for cancellation of anticipatory bail granted to the accused 2 and 5 by the Principal District and Sessions Court, Sivagangai and this Court vide order, dated 30.11.2021, cancelled the anticipatory bail and the last paragraph of the common order passed by this Court is extracted hereunder for better appreciation.

"9.This is a case of fraud committed by the accused to an extent of Rs.10,77,50,000/- and more than 600 persons have been cheated by the respondents/accused. The amount is yet to be recovered. The case was registered only on 16.07.2021. The accused No.1 is yet to be secured by the Investigation Agency and the amounts which were collected by the accused have been transferred to various other places. The accused No.1 has also filed an Insolvency petition before the Sub-Court, Madurai. Though this Court provided an opportunity to the accused to produce the materials as to how they conducted this scheme, the accused have not produced any document in support of their contention. Further, the learned Principal Sessions Judge, who dismissed the earlier application filed by the accused Nos.3 and 5 on the ground that if the accused are released on anticipatory bail, it would affect the further course of investigation and the remedy to the investors will be hugely affected, granted anticipatory bail to the accused persons on the ground of COVID-19 third wave threat. Hence, considering the gravity of offence, the volume of fraud committed, the manner in which the anticipatory bail has been granted on the ground of COVID19 second wave threat and third wave threat , this Court is prima facie satisfied that the anticipatory bail granted by the learned Principal Sessions Judge is liable to be cancelled. Accordingly, these Criminal Original Petitions are allowed and the anticipatory bail granted to the private respondents/accused Nos.2 to 5 by the learned Principal District and Sessions Judge, Sivagangai, in Crl.M.P.Nos.2158 & 2894 of 2021 dated 29.07.2021 and 13.09.2021 stand cancelled."

7.It is evident from the records that the accused 2 to 5 including the petitioner herein have moved the Hon'ble Supreme Court with petitions for Special Leave to appeal in (SLP.Nos.1045 and 1046 of 2022 and the Hon'ble Apex Court by holding that they do not find any ground to interfere with the impugned order passed by the High Court, dismissed the Special Leave Petitions, vide order, dated 17.02.2022.

8.It is not in dispute that after dismissal of the Special Leave Petitions, accused 2 to 5 including the petitioners have filed petitions in crl.O.P.(MD)No.4010 and 4150 of 2022, seeking



anticipatory bail and that this Court after enquiry and by ^{ing} that there is no change in circumstances since the dismissal of the Special Leave Petitions, dismissed the said petitions, vide order dated 18.05.2022 and the following passages in the said order are reproduced hereunder :

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13. The petitioners in their applications have stated that they have advised the first accused to settle the issue and they have also instructed him to settle the issue amicably, so that at least they can live a peaceful life, that the petitioners have also prepared to help the first accused for settlement and that the accused Nos. 2 and 4 have also prepared to give their jewels for settlement to the complainant.

14. Except the above, the petitioners have raised the points and aspects, which were already considered and decided by this Court, which was confirmed by the Hon'ble Apex Court.

15. The defacto complainant/Intervenor in his applications has specifically stated that the petitioners have purposely made a wrong statement as if they have been attempting to settle the issue.

16. The learned counsel for the Intervenor/defacto complainant would submit that inspite of cheating nearly Rs.11 Crores, the petitioners/accused are still at large even after dismissal of the Special Leave Petitions and that the respondent Police in collusion with the accused has not initiated any action for the nine months.

17. It is the case of the complainant that the petitioners/accused were the real masterminds, who created the fake records like pamphlets, false advertisements and induced the public to invest their hard earned money by making false promise, that nearly more than 600 peoples were cheated and their hard earned money were looted by the accused, that many of the complaints were not developed into FIR, because of threatening and high handed activities of the accused and that even after registration of FIR, the accused threatened some Doctors and Government servants not to initiate action against them.

18. Considering the seriousness and gravity of the offence alleged and also the fact that the amount is yet to be recovered and the investigation is pending as stated by the learned Additional Public Prosecutor and more importantly the fact that there is no change in circumstances, since the dismissal of the Special Leave Petitions by the Hon'ble Apex Court, this Court is not inclined to grant anticipatory bail to the petitioners."



9.The petitioners in the present application for anticipatory bail have stated that the first accused Dinesh Kumar was arrested subsequently and was remanded to judicial custody; that the first accused was granted statutory bail by the learned Judicial Magistrate No.II, Sivagangai in CrI.M.P.No.6357 of 2022, dated 13.09.2022, that the fourth accused was also arrested and remanded to judicial custody and that the third accused has already been granted anticipatory bail by this Court in CrI.O.P.(MD)No.19203 of 2022, dated 07.12.2022.

10.When the above petition was taken up for hearing on 06.02.2023, considering the submissions made by the learned Additional Public Prosecutor that the case file was pending before the Inspector General of Police, South Zone, regarding the transfer of case, which came to be registered in Crime No.16 of 2021, directed the learned Additional Public Prosecutor to get instructions from the Inspector General of Police, South Zone, regarding the stage of the transfer of the case. In pursuance of the same, the learned Additional Public Prosecutor in the subsequent hearing submitted that they have decided not to transfer the case and as such, the case is now pending before the District Crime Branch, Sivagangai.

11.The learned Additional Public Prosecutor would further submit that the investigation revealed that the first and main accused had transferred some of the amounts to the Bank accounts of the petitioners and that the first accused in his confession statement, has specifically stated that he purchased movable and immovable properties in the names of his family members, including the petitioners.

12.As rightly contended by the learned Additional Public Prosecutor, except the averments with regard to the arrest of the accused 1 and 4 and the granting of statutory bail in favour of the first accused and by granting of the anticipatory bail in favour of the third accused, the petitioners have not shown any other change in circumstances, since the dismissal of the Special Leave Petition of the Hon'ble Supreme Court and the petitions in CrI.O.P.(MD) Nos.4010 and 4150 of 2022.

13.Considering the above facts and circumstances of the case and taking note of the seriousness and gravity of the offence alleged and also the fact that the amount is yet to be recovered and also the fact that there is no change in circumstances since the dismissal of the Special Leave Petition of the Hon'ble Supreme Court and the petitions in CrI.O.P.(MD) Nos.4010 and 4150 of 2022.



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14. In the result, the Criminal Original Petition is dismissed/-
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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

DAS

TO

1 THE SUB INSPECTOR OF POLICE
DISTRICT CRIME BRANCH, SIVAGANGAI DISTRICT.

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

+1 CC to M/s.J.GUNASEELANMUTHAIAH, Advocate (SR-3416[I] dated
06/03/2023)

ORDER

IN

CRL OP(MD) No.22328 of 2022

Date :03/03/2023

RS//SAR-3(10.03.2023) 6P 4C