Crl.O.P.No.6312 of 2024

C.V.KARTHIKEYAN, J.

The petitioner/A3 who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 406 and 420 of IPC in Crime No.93 of 2023, seeks anticipatory bail.

2.This petitioner had filed earlier petition in Crl.O.P.No.26262 of 2023 and A2 had filed Crl.O.P.No.26303 and A1 had filed Crl.O.P.No.26264 of 2023, all seeking anticipatory bail. All the three petitions came up for consideration on 30.11.2023 and this Court had granted anticipatory bail only to A2 and had dismissed the anticipatory bail petitions filed by this petitioner and by A1. Subsequently, A1 had been taken into custody and released on own bond. In the order dated 30.11.2023, this Court had reduced the facts and had observed as follows:

"2. It is the case of the prosecution that A-1 had introduced himself as being closely associated with a former Minister and also stated that his wife / A-2 is also close to the said former Minister and would obtain a Government job under the Minister quota.

3. It is stated that the complainant gave a sum of Rs.3,00,000/- to the first accused as advance in cash. Thereafter, the third accused came to be introduced, who stated that he is a close relative of leading political person holding high post. It is stated that all the accused had given an assurance that they would give job to the daughter of the complainant and in this connection, the defacto complainant had handed over a total sum of Rs.9,00,000/-. The job was not given. Thereafter, it is stated that the third accused had given a cheque for Rs.2,00,000/- which was dishonoured when presented for payment. It is under those circumstances that a complaint was originally lodged on 14.10.2022 and since enquiry was kept pending, an application was filed under Section 156(3) Cr.P.C., before the X Metropolitan Magistrate, Egmore and thereafter, on direction the FIR had been registered by the respondent under Sections 406 and 420 of IPC on 10.03.2023. It had been further stated that during the course of investigation, the respondent had *issued notice under Section 41-A of Cr.P.C., but none of the accused had appeared for enquiry. It is also stated that the first accused has a previous case registered in Cr.No. 422 of 2021 under Sections 419, 465, 467, 468, 471, 120(b), 420 and 511 IPC. It is pending trial.*

4. Grant of bail has been very strongly objected by the respondent.

5. The learned counsel for the first accused stated that all the accused persons and the defacto complainant are business partners and and in that process, there had been money transactions. It had been stated that there is no averment in the FIR about the cheque being issued by the third accused and the cheque being dishonored. It is also represented that the entire transaction took place during the year 2020 when there was a change in business among all the parties and that the FIR had been lodged after much delay.

6. The learned counsel for the second and third accused also stated the same facts particularly that there were business transactions among the accused and the defacto complainant. It is stated that there was no intention to cheat and there was no such offer made to give a Government job to the daughter of the defacto complainant.

7. However, the learned Government Advocate (Crl. Side) disputed these facts and stated that the accused had projected themselves as being close to persons, who were influential and who could get a job in the Government and trusting the accused, the defacto complainant had parted with a sum of Rs.9,00,000/-. It is contended by the learned Government Advocate (Crl. Side) that though notice had been issued under Section 41-A Cr.P.C., the accused persons did not respond to the said notice. It is also contended that a cheque was issued by the third accused for a sum of Rs.2,00,000/- which was also returned dishonored by the bankers. It is pointed out that the first accused has a previous case in Cr.No. 422 of 2021 registered under Sections 419, 465, 467, 468, 471, 120(b), 420 and 511 IPC. Consideration of grant of any anticipatory bail had been strongly opposed by the learned Government Advocate (Crl. Side).

8. I have carefully considered the arguments advanced.

9. It is the case of the learned counsels that there were business transactions between the accused persons and the defacto complainant. It had been stated that there were transactions even prior to the Corona period and *there was exchange of money. It is stated that though the amounts had been received, the specific contention of the first accused is that he had received a sum of Rs.3,00,000/- and had repaid a sum of Rs.2,10,000/- through G pay, Rs.8,000/- through cheque, Rs.1,00,000/- through G pay, Rs.75,000/- through G pay, Rs.30,000/- through G pay and had given 3 ½ sovereigns of gold Earrings. He had also given his car on rental to the defacto complainant for a period of 9 months.*

10. From the petition filed by the second accused again the very same facts have been stated that the same payments as had been stated by the first accused had been repeated. It is contended that the amounts are not payable by either the first accused or the second accused to the defacto complainant.

11. In the petition filed by the third accused, it had been again stated that the first accused had received only Rs.3,00,000/- and the same details of repayments have been given. It had against been alleged that no amounts are payable by the accused persons.

12. However, the contention of the defacto complainant is that money was originally received on the strength of alleged close relationship of the first accused with persons of importance and that believing and trusting *the words of the first accused, the defacto complainant had parted with a total sum of Rs.9,00,000/-.*

13. The very fact that the first accused had returned back a sum of Rs.3,00,000/- shows that there had been payment of money which flowed from the defacto complainant to the first accused. The very fact that the third accused had issued a cheque for Rs.2,00,000/- which had been returned dishonored also shows that there has been flow of money from the defacto complainant to the third accused. It is thus seen that prima facie the fact that the defacto complainant had paid money is established by the statements of the accused persons. They only restrict it to a sum of Rs.3,00,000/- but the third accused had issued another sum of Rs.2,00,000/- which would also make it probable that the defacto complainant could have paid a sum of Rs.9,00,000/-.

3.The change in circumstance is the subsequent arrest of A1 and release of A1 on own bond and A2 had also been granted anticipatory bail.

4.Taking those two circumstances into consideration, this Court is inclined to grant anticipatory bail to the petitioner herein with certain conditions.

5.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 X Metropolitan Magistrate, Egmore, 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.

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[b] the petitioner shall report before the respondent police everyday at 10.30 a.m., until further orders.

[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 Supreme 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.

15.03.2024

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