IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

CORAM

THE HON'BLE MR. JUSTICE **C.V.KARTHIKEYAN**

Crl.M.P.No.4587 of 2024
in
Crl.O.P.No.23495 of 2023

M/s.Bank of Baroda
Kolathur Branch,
No.198/2, Baba Nagar 1st Main Road,
Srinivasa Nagar,
Villivakkam,
Chennai – 600 049
Rep. by Mr.C.Mohanraja
Branch Head ...Petitioner/Defacto Complainant

Vs.

1.Surya Narayanan ...Respondent / 1st accused

2.The State represented by
The Inspector of Police,
Team XI, Bank Fraud Investigation,
CCB-I, Chennai.
(Crime No.178 of 2023) ..Respondent/Complainant

PRAYER:

Criminal Miscellaneous Petition is filed under Section 439(2) of Cr.P.C. praying to cancel the anticipatory bail granted to the 1st respondent / 1st accused vide order dated 01.12.2023 in Crl.O.P.No.23495 of 2023.

For Petitioner : Mr.M.Palanivel

For 1st Respondent : Mr.P.Jesusmoris Ravi

For 2nd Respondent : Mr.V.J.Priyadarsana
Govt. Advocate (Crl. Side)

ORDER

The Criminal Miscellaneous Petition has been filed seeking to cancel the order granting anticipatory bail to the 1st respondent / A1 in Crl.O.P.No.23495 of 2023 by an order dated 01.12.2023.

2.The case of the prosecution is that the petitioner, Proprietor of M/s.HMB Foods in business of hotel business at Perambur, Chennai had obtained term loan for the limit of Rs.85 Lakhs from the defacto complainant, Bank of Baroda, Kolathur Branch, Villivakkam, Chennai. It is stated that credit facility was also obtained for the purpose of renovation of hotel. It is also stated that the bank had also disbursed a sum of Rs.46,79,495/- though the sanction was for a limit of Rs.85,00,000/-. It is only appropriate that the amount was so disbursed, because it should be only within a sanctioned limit and not above the sanction limit and some leverage must be given to public bank. That is what exactly happened and the petitioner defaulted in repayment.

3.It is stated that, in this connection, though the petitioner claimed that he had been repaid an amount of Rs.1,42,764/- every month, there was a further demand from the defacto complainant to settle the entire dues within a specific time period. It is also very specifically stated that the petitioner had produced as documents of title forged documents on the basis of which, the loan had been granted.

4.On that particular date, on hearing the learned counsel for the accused and also the learned counsel for the intervener, this Court had granted anticipatory bail since letters had been exchanged and the petitioner had also given a demand draft for the initial payment. But however, it is insisted on behalf of the petitioner herein / defacto complainant that the accused has taken advantage of the order granting anticipatory bail and had not repaid the amount.

5.An affidavit had been filed by the accused wherein, he had stated as follows:

> *"2.I state that the petitioner has paid a total sum of Rs.10,00,000/- as follows to the defacto complainant bank:*
> *i).A sum of Rs.10,00,000/- on 08.11.2023.*
> *ii).A sum of Rs.3,50,000/- on 30.11.2023.*
> *iii).A sum of Rs.1,50,000/- on 01.12.2023.*
> *iv).A sum of Rs.2,00,000/- on 01.02.2023.*
> *v).A sum of Rs.3,00,000/- vide DD dated 04.04.2024.*
>
> *3.I state that regarding settlement of the entire amount under Crime No.178 of 2023, I have provided a letter dated 29.11.2023 regarding the payment of the entire claim under the Crime No.178 of 2023, the same was not considered by the de-facto complainant bank.*
>
> *4.I state that the value of the FIR is a sum of*

Rs.38,39,989/- and as on date a Total sum of Rs.20,00,000/- has been paid by the petitioner herein. Further Civil proceedings for recovery has also been initiated by the respondent bank in DRT-III, Chennai in Diary No.4467 of 2023.

5.I state that the petitioner is ready to pay a sum of Rs.2,00,000/- on or before 14.06.2024, a sum of Rs.3,00,000/- on or before 24.06.2024.

6.I state that the petitioner would clear the balance Rs.13,39,989/- within 2 months from payment of the above sum amount."

6.However, it is contended that the accused statement is not correct and that the accused had given forged document to the bank to avail loan.

7.A status report had also been filed by the respondent / Investigating Officer, wherein, he had stated that still there is a balance of Rs.34,99,367/- and that interest amount will be added on daily basis.

8.The earlier order granting anticipatory bail was dated 01.12.2023 nearly more than six months back. The accused should have taken advantage of this period and he should have repaid the entire amount, but he seems to protract and now an affidavit has been filed. The bonafide is not expressed on the part of the accused.

9.In view of the same, I am not inclined to continue to hold that the 1st respondent / A1 is entitled for anticipatory bail and accordingly, the order granting anticipatory bail in Crl.O.P.No.23495 of 2023 dated 01.12.2023 is cancelled. This Criminal Miscellaneous Petition stands allowed. The 2nd respondent is directed to secure the 1st respondent / A1 in manner known to law.

25.06.2024

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To

1. The Inspector of Police,
   Team XI, Bank Fraud Investigation,
   CCB-I, Chennai.

2. The Public Prosecutor,
   High Court of Madras.

C.V.KARTHIKEYAN. J.
smv

Crl.O.P.No.8290 of 2024

25.06.2024