IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2024

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THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.7711 of 2024

1. A.Murugan
2. R.Deva ... Petitioners

Vs.

State Rep by.
The Inspector of Police,
CCB - 1, Chennai.
Crime No. 16 of 2023.
... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C., pleased to order enlarge the petitioners on bail in crime No.16 of 2023 dated 21.01.2023, pending on the file of the respondent police.

For Petitioner : Mr.D.Selvam
For Respondent : Mr.L.Baskaran
Government Advocate (Crl. side)
For Intervenor : Mr.A.Saravanan

ORDER

The petitioners, who were arrested and remanded to judicial custody on **16.02.2024** for the alleged offences punishable under Sections 120(B), 420, 465, 467, 468, 471, 477(A) IPC in crime No. 16 of 2023 on the file of the respondent, seeks bail.

2. The petitioner submits that A-2 being proprietor of A1-Company, due to Covid - 19 crisis, A1- company was put to loss and was unable to pay his loan amount dues, because of the irregularity committed in paying the loan amount, his account was declared as Non Performing Asset(NPA) on 30.03.2021 under quick mortality due to low level of activity and non serving of the interest in the loan accounts. The first petitioner is the son-in-law of A3-Ulaganathan, contend that he was falsely implicated in this case. Since because he was son-in-law/A3 who took guarantor for the loan borrowed by A2 on behalf of the company/A1 which was declared as NPA due to non payment of the loan to the defacto complainant bank. Further he would submits that he was no way connected with the alleged offence only he gave a collateral guarantee document for availing loan as well as

Hypothecated his stocks. Besides, the alleged mortgage property was sold through SARFAESI proceedings and major loan amount was recovered. In spite of that the complainant bank gave a false complaint in which he was implicated as A6 as if he defraud the bank. Hence, he prayed to allow this petition with any conditions.

3. The second petitioner claimed himself as a employee of the A3 who was falsely implicated in this case as if he also colluded with A3 in order to defraud the loan amount borrowed by the A1 to A3 by diverted the said loan amount to the fictitious firms which stands in his name thereby he also benefited by the alleged loan amount and committed fraud upon the complainant bank. He further submits that he is employee of the said company he was not benefited by the loan borrowed by the A2 to A3.

4. The learned counsel for the defacto complainant/intervenor raised strong objection stating that first petitioner/A6 son-in-law of A3, who colluded with his father-in-law-A3 defraud the bank with malafide intention. Further, stated that A1 is the company, A2 is being the proprietor, A3 is the friend of A2 who stood as guarantor for the loan borrowed from the bank. Accordingly, credit facility was given by obtaining collateral security of immovable property in the name of A3 i.e., loan property survey No. 10/2A

part, 10/2B part, 11/5A part, 1/5B part residential layout plot No. 292, Srinivasa Nagar, Padur Village, Thiruporur Taluk, Kancheepuram District. Accordingly, loan was sanctioned to A2, the said loan was declared as Non Performing Asset on 30.03.2023 due to non payment of the said loan. But during the internal audit, it was found that A2 & A3 along with his family members played fraud upon the bank while availing the loan **and they were in the habit of the defraud the funds to the new fake units and the stocks which were procured by utilising the bank funds where hypothecated to other banks for the loans availed by them.** Besides, those accused persons produced fabricated documents at the time of availing the loan with the malafide intention to deceive the bank by colluding with penal values and gave a wrong value for the collateral property one Ulaganathan-A3 and also found that purchase invoice submitted by them was fabricated document. On enquiry it was found that all the invoices submitted by the accused were fabricated and stocks are not available for verification in the godown. Moreover, those stocks in the stores were already hyphothecated to Indian Bank for the credit facility to M/s. Dharhini Interiors and M/s.Agni Enterprises which are the companies have been defruad by the family members and with some address. Accordingly, the first petitioner is the son-in-law of A3 who colluded with his father-in-law with an intention to defraud the defacto complainant and also defrauded the another bank by availing loan to the tune of Rs.5.50 crores from RACPC Tambaram, Chennai which also classified as NPA due to non payment of loan thereby they defraud the bank with the malafide intention he also colluded with his father-in-law and cheated more than 50 crores. Hence he prays to dismiss this petition.

5. In respect of second petitioner, he is the employee of the A3 on verification it is found that he was named as proprietor in Mrs. Amesh agencies to that effect the loan availed by the A3 was diverted to those fake firm thereby he also benefited hence he raised strong objection to grant bail to the second petitioner.

6. The learned Public prosecutor submits that as per the direction of this court some of the loan amount was secured through SARFAESI Proceedings. Further the stated that the petitioners have cheated the other bank also, if they released on bail they may abscond and tamper the evidence. He prays to dismiss the petition.

7. Considering the submissions on either side, the facts reveals that the first petitioner is son-in-law of A3 who stood as a guarantor for the loan

borrowed by the A2 on behalf of the company-A1, soon after availing the loan, due to non payment of loan the loan was declared as Non Performing Asset, due to non payment of loan amount **both by the Member as well as guarantors A2 and A3** and thereafter loan was declared as NPA. During internal audit, it was found that the company is fake A2 and A3 defrauded the bank, the first petitioner is son-in-law of A3 colluding themselves and availed loan in other banks by showing the same stocks which were already hyphothecated to the complainant bank and the upon enquiry, it was found that invoices submitted by the accused was fake and loan borrowed in other banks also declared as NPA. Accordingly, more than 52 crores was cheated by them. On seeing the conduct of the first petitioner, he colluded with his father-in-law defrauded the bank intentionally and also other banks thereby causing huge loss to the financial institutions. Hence, I am not inclined to grant bail to the first petitioner.

8. As far as second petitioner is concerned, as per the objection of the intervenor, the second petitioner created company in his name under the name and style of M/s. Amish Agencies, in which the second petitioner stands as a proprietor and dealt with the company affairs and funds cheated by the accused were diverted to the said fake unit so he also benefited from

the cheated amount. Hence, the specific overt act against this petitioner is that he diverted the cheated amount to his firm wherein he was claimed as proprietor to that effect investigation is completed. Hence, this court is inclined to grant bail to the second petitioner with the following conditions.

9. Accordingly, the second petitioner is ordered to be released on bail on his executing a bond for a sum of **Rs.50,000/- (Rupees Fifty Thousand only) each** with **two sureties (one must be a blood surety),** each for a like sum to the satisfaction of the **learned Metropolitan Magistrate for exclusive trail of CCB Cases at Egmore,** and on further conditions that:

[a] 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;

[b] the second petitioner shall deposit a sum of Rs.25 lakhs to the credit of crime No. 16 of 2023 within a period of four weeks from the date of receipt of a copy of this order and shall report before the respondent police on alternative days at 10.30 a.m.,

for a period of six months and thereafter as and when required for interrogation.

[c] the second petitioner shall not abscond either during investigation or trial;

[d] the second petitioner shall not tamper with evidence or witness 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 abscond, a fresh FIR can be registered under Section 229A IPC.

10. In respect of first petitioner, this petition is dismissed and in respect of second petitioner the petition is allowed.

04.06.2024

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T.V.THAMILSELVI,J.

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To
1. The **Metropolitan Magistrate for exclusive trail of CCB Cases at Egmore,**

2. The Inspector of Police,
CCB - 1, Chennai.
3. The Central prison, Puzhal.

4. The Public Prosecutor,
High Court of Madras.

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