IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2024

CORAM:

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

CRL.OP No. 26300 of 2023

1.Prashant Talwalkar
2.Girish Talwalkar
3.Madhukar Talwalkar

...Petitioners

Vs.

The State Rep. by
The Inspector of Police,
Central Crime Branch,
EDF -II, TEAM XXXVII,
Vepery Chennai 600 007.
Crime No. 243 of 2023

...Respondents

PRAYER : This petition has been filed under Section 438 of Cr.P.C, to enlarge the petitioners herein on bail in the event of their arrest in crime No. 243 of 2023 on the file of the respondent police.

For Petitioner : Mr.Sathish Parasaran, Senior counsel.

for Sneha Parthasarathy
For Respondent : Mr.Leonard Arul Joseph Selvam,
Government Advocate (Crl. side)
For Intervenor : Mr.C.Manishankhar Senior counsel.
for Mr.Rahul M. Shakar

ORDER

This petition has been filed to enlarge the petitioners herein on bail in the event of their arrest in crime No. 243 of 2023 on the file of the respondent police.

2. The learned counsel for the petitioners submits that based on the defacto complainant's complaint FIR has been registered against the petitioners under Sections 406, 420 and 34 of IPC, in which, the petitioners herein are arrayed as A4, A5 and A6. On earlier occasion, this Court directed the investigating officer to issue notice to the accused under Section 41-A of Cr.P.C to A4 and A5 for the purpose of conducting enquiry with interim protection not to take any coercive steps. Thereafter, this petition listed on 05.12.2023, interim report filed by simply reproducing the complaint given by the defacto complainant. Again, on 16.12.2023 calling upon them by the investigating officer to present on 22.12.2023, on that day they appeared before the investigating agency but the investigating officer was on leave hence the in-charge of the Sub Inspector of police recorded

their statement and allowed them to leave. But, the status report submitted by the respondent police does not disclose the said fact and simply reproduce the complaint filed by the defacto complainant. In fact, these petitioners already lodged the complaint against Gawande group for misappropriation of funds of Talwalkar Better Value fitness Limited even before, the defacto complainant lodged complaint against the petitioners. Further, the petitioners attended the enquiry and cooperated for the investigation and answer given by them also recorded by the Investigating officer. On three occasions, they appeared before the investigating officer but the status report filed by the respondent police fails to make any case against them as no role is attributed to these petitioners in commission of alleged offence. So, based on that they are under the apprehension of the arrest they filed this petition for bail.

3. The brief facts of the case is that, according to the prosecution, the defacto complainant namely Mr.Mohan Gupta, Director of Gympac Fitness System Private Limited routed through the commissioner of Police against M/s. Talwalkars Better Value Fitness Limited and the erstwhile directors of Talwalkars Better Value Fitness Limited namely Anant Gawand, Harsha Bhatkal, Prashant Talwalkar, Girish Talwalkar, Madhukar Talwalkar and

Vinayak Gawande. The said Mohan Gupta, stated that Talwalkars Better Value Fitness Limited(TBVFL) by dishonestly making the defacto complainant believe that the funds received by the defacto complainant in their bank account amounting to a sum of Rs.10 crores was in fact sent by the petitioners and had misappropriated the said funds by not paying back the loan to Axis Bank Ltd. The FIR states that the defacto complainant, petitioners and Axis Bank had entered into a bill discounting facility scheme wherein the defacto complainant would deliver goods to the petitioners' company for which payment would be made by Axis Bank and the petitioners through their company would pay back the Bank in the agreed time frame. Accordingly, a sum of Rs.2,50,00,000/- was received on four dates in the month of July 2016 totally Rs.10 crores with a common bank narration statement which says sender Talwalker Better Value Fitness Limited. Trusting that the said amount had been mistakenly sent to the defacto complainant, the same was returned by the defacto complainant to Talwalkars Better value Fitness Limited on their instructions. The defacto complainant was shocked in the July 2019 when Axis Bank had approached them to settle the dues of Rs.10 crores that was allegedly due to Axis Bank since there was no open transactions/contract between Talwalkars, the defacto complainant and Axis Bank. It was at this point the defacto complainant realized that the petitioners through their company had submitted forged invoices and orders making it look as though the defacto complainant had an ongoing transaction with the petitioner's company. Further, the forged proforma invoices submitted by the petitioners to Axis Bank was printed on a fake letter head of the defacto complainant along with certificate of installation of gym equipment containing forged signatures and forged seal of the defacto complainant. So also, provided with a forged renewal sanction letter dated 07.12.2017 which was not signed by the defacto complainant and unaware of the conspiracy made by the bank and the petitioners. Therefore, he gave a complaint. Accordingly, FIR was registered. As per the contention of the petitioner, they appeared before the respondent police for the notice under Section 41-A of Cr.P.C on 01.11.2023 but they failed to appear before the respondent police due to short notice. Accordingly, another notice dated 31.11.2023 was issued with sufficient time to appear on 04.11.2023. But they have not appeared. Therefore, they raised objection to grant bail and near about Rs.10 crores was cheated by them, if they released on bail them may abscond and tamper the evidence and in respect of fabrication of records it needs detailed investigation including custodial interrogation to unearth the true facts.

4. The learned counsel for the intervenor raised objection stating that their Gymback Fitness System Private limited, had requested the bank to grant financial assistance to the tune of Rs.10 crores so as to enable to execute the contracted supply of gym equipments to Talwalkar Better value Fitness Limited under vendor programme of TBVFL existing with Axis Bank. Accordingly, bank sanctioned the aforesaid loan to the tune of Rs.10 crores to the Gympac Fitness Systems Private Limited as per the agreed terms between the parties that Gympac Fitness Systems Private Limited would raised proforma invoices upon the TBVFL and upon anknowlegment by TBVFL of the Gympac Fitness Systems Private Limited's proforma invoice and its submission with the Axis Bank, along with relevant documents, the bank would disburse the facility as per the loan documents to the Gympac Fitness Systems Private Limited. Thereupon, TBVFL in lieu of payment of consideration for the service rendered by the Gympac Fitness Systems Private Limited would repay within 90 days the loan of the Gympac Fitness Systems Private Limited with the Axis Bank and in default, the Axis Bank would have recourse to recover the outstanding dues from the Gympac Fitness Systems Private Limited/defacto complainant as well.

Accordingly, bank disburse the loan, in tranches, between 10.10.2017 and 28.02.2019 to the defacto complainant as and when the invoices presented by TBVFL with bill discounting in accordance with the loan documents and the same is duly acknowledged by the defacto complainant and TBVFL/petitioners making its timely repayment to the bank until February 2019. During the month of march 2019, TBVFL issued four letters to the bank, accompanied by a letter of authority, bill of exchange, proforma invoice and certificate of installation requesting the bank to grant bill of discounting facility of Rs.10 crore and transfer the funds to the account of the defacto complainant as per the terms of the loan agreement. Accordingly, said amount of Rs.10 crores was disbursed to the defacto complainant on March 2019. Accordingly defacto complainant's bills were discounted by the bank pursuant to the request made by TBVFL but within 90 days TBVFL/petitioners bound to repay the said amount but they failed to adhere the repayment schedule therefore the bank strained to call upon the defacto complainant to repay the outstanding dues of Rs.10 crores 14 lakhs with interest as per the terms of the agreement. In fact, Rs.10 crores was credited to the defacto complainant's account by the bank in mistaken manner. Despite request made by the defacto complainant TBVFL/petitioners failed to repay the same. Further he came to know that they committed forgery and by misrepresentation obtained funds from the bank and transferred the funds to the Gympac Fitness Systems Private Limited/defacto complainant account and cheated the defacto complainant by fabricating documents using for their unlawful gains. In fact, all the signatures and the company seal are forged by the TBVFL company to obtain renewal letter from the bank. Besides, proforma bill are forged by the accused/petitioners company with letter sale deeds of Gympac Fitness Systems Private Limited transaction with Axis Bank without their knowledge and also sent their renewal letter and on came to know that immediately they raised objection to the bank. Considering the act of the fraud, misappropriation of loan amount by way of misrepresentation, the defacto complainant lodged the present complaint and all the directors of the company conspired more particularly petitioners. If they released on bail they would not cooperate for the investigation and produce all the documents like letter pad, forged proforma invoice and certificates of installations said to be issued by them dated 19.03.2019 as well as dated on 16.02.2019 by producing those copy of the documents.

5. The learned counsel for the intervenor submits that alleged certificate of installation of gym equipments dated 15.02.2019 not signed by them. In fact, no such equipments was supplied as alleged by the accused company and another letter dated 19.03.2023 contained with sale of Gympac Fitness Systems Private Limited in fact that seal affixed in the document does not belongs to them thereby the learned counsel for the intervenor attempted to convince this Court that they committed fraud for unlawful gains. By way of reply, the learned counsel for the petitioners submit that in fact the present petitioners family was engaged in that field for more than two decades under the name of Talwalkar Gym and the same was started by the third petitioner. Thereafter, petitioners 1 and 2 were jointly running the gym business which referred as Talwalkar and they are non technical persons involved in traditional business of body building and, in the year 2003 Gawande's company approached the Talwalkar and proposed to form a company opening the strength and expertise of both families since already Talwalkar was experts in running gyms and the Gawandes claimed to have experience in legal, compliances, banking and finance related matters of the company, which are run by Vinayk Rankaar

Gawande, Anant Ratnakar Gawande and Harsha Bhalkal. Talwalkars ground handling day to day operations of gyms, the Gawande group handling all the legal , compliances, banking and finance related matter of the company, role of Talwalkars and Gawandes are reflected in shareholders agreements dated 01.07.2003 & Red herring prospectus of the company. Accordingly, they started new company running gym in the name of Talwalkar Better Value fitness Limited/accused company as per the terms of the petitioner would cooperate for running the gym and whereas all business official legal matters involved in day to day operations were given to Gawande. While so, in the year 2009, A1/company defaulted in payment of loan immediately petitioners came to know that, sought for necessary information from the Gawandees including reason for the default. In fact, they came to know that fraudulent resolution passed by the Gawandes conspired with company Secretary and uploaded in the Website but no such resolution was passed. Therefore, necessities arose for filing Civil suit in O.S No. 1109 of 2020 at Civil Court Bombay with prayer to direct the Gawandes to access the financial records. Further they would take steps to lodge complaint against the Gawandes. Moreover, bank also initiated proceedings before the NCLT. Based on the complaint of the defacto complainant and already they were cooperated for the investigation. So there is no possibility for tapering the records. Hence, he prayed to grant bail.

6. The Government Advocate (Crl. side) submits that the petitioners were not attend the enquiry nor co-operate for the investigation. Moreover, all were from Bombay allegations against them is that they cheated to the tune of Rs.10 crores by submitting fabricated records. Hence, it needs detailed investigation prayed to dismiss this petition.

7. Considering all the submissions, as per the defacto complainant Gympac Fitness System Limited had terms of agreement with the accused company/TBVFL and Gawandes, all the accused are bound by the terms of the agreement. The defacto complainant involved in the business of selling fitness equipments to various dealers. Ever since, from the year 2009 they supplied and sold all the fitness equipments to A1 company accordingly they entered into vendor financing bill discount agreement with accused company and Axis bank in October 2017 which espired on October 2018 but during the tenure a sum of Rs.40 crores was transferred to Gympac Fitness System Limited on various occasions and the same was paid by the TBVFL/A1 company. In the month of March 2019, the defacto complainant

received a sum of Rs.10 crores on four tranches and on receipt of money, they informed the bank and TBVFL/A1 company, TBVFL/A1 company claimed that money asked them to re-convey. Accordingly, amount was transferred to the account number of TBVFL/A1 company in the March 2019 on various tranches but the said amount was not repaid to the bank. Hence the Axis bank issued notice to the defacto complainant demanding to pay to the tune of Rs.10 crores with interest. Thereafter, Gympac Fitness company came to know that invoice, resolution submitted by the TBVFL/A1 company are fabricated and forged one to that effect intervenor also produced some of the documents containing with signatures still it is not belongs to them but as per the submission on the side of the petitioner, thrown allegations against Gavandes stating that petitioner accused Talwalkar involved only in gym business on the other hand entire financial of the company was managed by Gavandes as per the internal terms. So they were not aware of the dealings with the bank nor they have not submitted any fabricated records. However, as on date, NCLT proceedings was initiated against against Gavandes. Further as per the status report of the investigating officer and its directors are facing two FIR for allegedly defaulting cases before the Laxmi Vilas Bank for Rs.115 crores. Besides, they were defaulted Indian Bank and CSB bank. Hence, they were involved in similar offence frequently.

8. Considering all the facts and circumstances of the case, as per the status report of the respondent police, against these petitioners not only the defacto complainant filed the complaint for cheating of Rs.10 crores but also they cheated other three banks and cheated to the tune of Rs.300 crores. Considering the above, they committing similar offence by fabricating the records. Hence, this case needs custodial interrogation of the accused, if they released on bail, they may abscond or tamper the evidence and also they failed to appear for the 41-A notice under Section Cr.P.C notice. Hence this Court is not inclined to allow this petition. Accordingly, this petition is dismissed.

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16.04.2024

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To
The Public Prosecutor,
High Court, Madras.

T.V.THAMILSELVI, J.

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