



Crl.O.P.(MD) No.1303 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2024

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.1303 of 2024

Arul Raja

...Petitioner

VS

**1.The Inspector of Police,
Sipcot Police Station,
Thoothukudi.**

2.Mahalakshmi

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to direct the first respondent to execute the warrant issued against the 2nd respondent on 10.03.2023 in CC.No.196/2013 on file of learned Judicial Magistrate Fast Track Court (ML), Thoothukudi.

For Petitioner : M/s.R.Vennila

**For R1 : Mr.T.Senthil Kumar
Additional Public Prosecutor**



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ORDER

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This Criminal Original Petition is filed to direct the first Respondent to execute the warrant issued against the second Respondent on 10.03.2023 in CC.No.196/2013 on file of learned Judicial Magistrate, Fast Track Court (ML), Thoothukudi.

2.The learned Additional Public Prosecutor submits that in most of the cases, the accused persons after getting bail were attending the Court proceedings. But some time, they did not co-operate with the trial proceedings, for which warrant has to be issued. Thereafter, they come to the Court and filed Petitions to re-call the warrant. Due to this attitude of the accused, most of the trial is pending before the Trial Court. If the Court takes stringent action against the accused, who are free away from the Court proceedings, they can very well invoke Section 82 of Cr.P.C. Once they invoke the provisions of Cr.P.C., they declared as proclaimed offender. They cannot move once again the bail application without challenging the said order.



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3.The learned Additional Public Prosecutor in support of his contention invited the attention of this Court to the judgment of the Hon'ble Supreme Court in the case of ***Prem Shankar Prasad Vs. State of Bihar and another*** reported in ***2021 SCC Online SC 955***, wherein it had been held as under:

“18. It is required to be noted that after investigation a charge-sheet has been filed against respondent no.2 – accused for the offences punishable under sections 406, 420 of IPC also. Thus it has been found that there is a prima facie case against the accused. It has come on record that the arrest warrant was issued by the learned Magistrate as far as back on 19.12.2018 and thereafter proceedings under sections 8283 of Cr.PC have been initiated pursuant to the order passed by the learned Chief Judicial Magistrate dated 10.01.2019. Only thereafter respondent No.2 moved an application before the learned Trial Court for anticipatory bail which came to be dismissed by the learned Additional Sessions Judge, Saran, by a reasoned order. The relevant observations made by the learned Additional Sessions Judge, Saran, while rejecting the anticipatory bail application are as under:

“Perused the record. The prosecution case as alleged in the typed application of the informant Prem Shankar Prasad is that the informant is a retailer shopkeeper of medicines in the name of Maa Medical Store,



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Gandhi Chauk, Chapra and the petitioner is his stockiest who runs his business in the name of Rajnish Pharma, Mauna Pakari. The petitioner and the informant were on good terms, so, the informant gave Rs. 36,00,000/ to the petitioner in case and through cheque for purchase of medicine. When the required were not supplied to the informant, the informant demanded his Rs. 36,00,000/ then, the petitioner gave a cheque of Rs. 10,00,000/ bearing cheque no. 137763 dated 25.11.2017 which was in the Canara Bank of the petitioner which was dishonored by the bank with a note "insufficient fund". Thereafter the informant demanded his money in case. On 20.06.18 but, the brothers of the petitioner misbehaved with the informant. The brothers of the petitioner also threatened not to contact the police or the consequences will be worst: On this informant Chapra Town PS No. 453/2018 was registered and investigation proceeded.

Perused the case diary from which it transpires that in para 4 there is a restatement of the informant in which he has supported the prosecution case. In para 8, 9, 10, and 11 witness Amit Kumar Sinha, Awadhesh Kumar, Dhannu Kumar and Uday Shankar Prasad has been examined under [section 161](#) of Cr.PC in which they have supported the prosecution case. In para 16 there is supervision note of SDPO, Sadar in which prosecution case. In found true under [sections 420, 406](#) of IPC and 138 of [NI Act](#). In para 23 processes under [sections 82 and 83](#) of Cr.PC have been



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issued against the petitioner in para 38 there is a statement of witness Ashutosh Mishra who is a medical representative and has stated that Rajnish Srivastava, being stockiest of the medicine used to sell the medicines of his company in course whereof he has borrowed a sum of Rs. 7,10,000/ from him. When he asked to return back the money he has issued a cheque of the aforesaid amount which was dishonor by his bank due to insufficient fund. In para 39 another witness Pramod Kumar Thakur has been examined who has deposed that this petitioner Rajnish Srivastava has borrowed a sum of Rs. 10,00,000/ on the pretext of purchasing a piece of land. When he demanded his money back. Rajnish Srivastava gave a cheque of the aforesaid amount which was dishonored by the bank. The investigation in the case is still going on.

From perusal of the case record I find that the informant has alleged to have given a sum of Rs. 36,00,000/ to this petitioner in order to supply certain medicines which was neither supplied nor the amount was ever refunded. Admittedly, the said amount was given to the petitioner on an oral undertaking as there is nothing on record to substantiate the aforesaid averments, but, the fact remains that the petitioner in order to refund the said amount has issued a cheque of Rs.10,00,000/ bearing cheque no. 137763 dated 25.11.2017 which was deposed by the informant in the bank, but, the same was dishonored with record I further find that the petitioner is in the habit



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of borrowing money from different persons and then used to make default in payment inasmuch as by issuing cheques without sufficient balance in his account which transpires from paras 38 and 39 of the case diary.”

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21. Thus the High court has committed an error in granting anticipatory bail to respondent No.2 – accused ignoring the proceedings under Section 8283 of Cr.PC.

22. Even the observations made by the High Court while granting the anticipatory bail to respondent No.2 – accused that the nature of accusation is arising out of a business transaction and therefore the accused is entitled to the anticipatory bail is concerned, the same cannot be accepted. Even in the case of a business transaction also there may be offences under the [IPC](#) more particularly sections 406, 420, 467, 468, etc. What is required to be considered is the nature of allegation and the accusation and not that the nature of accusation is arising out of a business transaction. At this stage, it is required to be noted that respondent No.2 accused has been chargesheeted for the offences punishable under sections 406 and 420, etc. and a chargesheet has been filed in the court of learned Magistrate Court.

23. In view of the above and for the reasons stated above, the impugned judgment and order dated 14.08.2019 passed by the High Court granting anticipatory bail to respondent No.2 – accused is un-



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sustainable and deserves to be quashed and set aside and is accordingly quashed and set aside. However, two weeks' time from the date of pronouncement of this judgment is granted to respondent No.2 to surrender before the concerned Trial Court and thereafter it will be open for respondent No.2 – accused to pray for regular bail, which may be considered in accordance with law and on its own merits. The present appeal is accordingly allowed in the aforesaid terms.”

4.Considering the submission of the learned Additional Public Prosecutor, the Petitioner is directed to file a petition before the learned Judicial Magistrate, Fast Track Court (ML), Thoothukudi to declare the absconding accused as proclaimed offender, so that the properties can be attached. The learned Judicial Magistrate, Fast Track Court (ML), Thoothukudi is directed to pass appropriate orders on filing the petition by the Petitioner directing the Police Officials to issue notice in leading daily news papers at the cost of the Petitioner herein, Complainant in CC.No.196 of 2013. This Criminal Original Petition is disposed of, accordingly.

Internet:Yes./No
Index:Yes/No
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30.01.2024

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To

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- 1.The Inspector of Police,
Sipcot Police Station,
Thoothukudi.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

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