

In the Court of Vacation Sessions Judge, Kanniyakumari District at Nagercoil.

Present : Thiru B. Karthikeyan, B.L.
Vacation Sessions Judge/Principal Sessions Judge,
Kanniyakumari at Nagercoil.

Thursday, the 23rd day of May, 2024.

CrI.M.P. No. 197/2024 (CNR.No.TNKK0V-000302-2024)

and

Intervening Petition in CrI.M.P. No. 246/2024

(CNR.No.TNKK0V-000323-2024)

and

CrI.M.P. No. 230/2024

(CNR.No.TNKK0V-000291-2024)

Subha Jayanth. S.B. (A1)

S/o Subbaiyan

.. Petitioner in CrI.M.P.No.197/2024

P. Asha, W/o Suresh (A3)

.. Petitioner in CrI.M.P.No.230/2024

/Vs./

Anju, W/o Sreeju

.. Intervening Petitioner/Defacto
Complainant

Sub Inspector of Police,

District Crime Branch, Nagercoil,

Crime No.6/2024 of District Crime Branch, Nagercoil,

Rep. by Public Prosecutor,

Nagercoil.

.. Respondent

Crl.M.P.Nos.197/2024 and 230/2024 are filed by Advocates Tvl Prem Sahayadhas and R. Raja Ganapathi respectively, u/s 438 Cr.P.C. praying to grant anticipatory bail to the petitioner in both petitions and the intervening petition in Crl.M.P. No. 246/2024 is filed by Advocate Tmt J. Susheela Devi, on behalf of the Intervenor/defacto complainant praying to dismiss the anticipatory bail petition in Crl.M.P. 197/2024.

COMMON ORDER

Heard both sides. Perused the anticipatory bail petitions and the intervening petition.

The petitioner/accused alleged to have been committed the offence u/s 120(b), 406 and 420 of IPC.

The case of prosecution is that the informant is working as a Branch Manager of Muthoot Mini Finance Ltd., On 23.02.2024 at about 11.11 A.M. A2 contacted the informant through her mobile phone and told her that there was jewels to take over in her bank and she had sent the card through WhatsApp to her mobile number. The informant after seeing the message told A2 that it won't tally for them and for that A2 while replying to the informant that the customer had already paid money in that. Moreover, A2 told the informant to bring Rs.25,38,000/- and the customer A5 was standing outside CSB Bank and also told to hand over the money to A5 and also told the informant to not to go inside the bank. Accordingly the

informant gave the money to A5 and later received the jewels which were given to her rolled in a paper. When the informant reached her branch and checked the jewels she found that they were fake jewels. A2 even after knowing that those jewels which was there in CSB Bank for three months were fake, without taking any action the CSB Bank had cheated Muthoot Mini Branch. Hence the charge.

The learned counsel for the petitioner in CrI.M.P.No.197/2024 submitted that no such occurrence took place as alleged in the FIR and the real fact is that the petitioner is the Branch Manager of CSB Bank, Marthandam Branch. The 5th accused had pledged jewel at CSB, Marthandam Branch on several dates and had received Rs.25,38,000/- as gold loan and during auditing, the petitioner who is the Branch Manager of the Bank was instructed to ask A5 to redeem the jewels he had pledged. Accordingly the bank officials as A5 to redeem the jewels and A5 remitted the entire amount at CSB Marthandam branch and redeemed the jewels he had pledged. Later to the shock and surprise of the petitioner, the petitioner and other bank employees were enquired at Thiruvattar Police Station based on the petition given by the informant. Again the same matter was enquired by Marthandam police and there due to the influence of the Deputy Superintendent of Police, Thuckalay the Marthandam Police putting the petitioner under threat and fear of arrest obtained a cheque for an amount of Rs.25,00,000/- and gave it to the informant. Even after obtaining the cheque the petitioner was continuously harassed and threatened by the Marthandam police to settle the amount or they have instruction from Deputy Superintendent of Police, Thuckalay to register a case and arrest the petitioner. So the petitioner filed a

petition for anticipatory bail before the Principal Sessions Court, Nagercoil as CrI.M.P.No. 1389/2024 and the same was dismissed on 16.03.2024 on the ground that the petition which was pending before the Marthandam Police Station as CSR No.252/2024 was transferred to District Crime Branch for investigation and the same is in transit and no complaint was pending before Marthandam Police Station. The petitioner is innocent and he has not committed any offence and he is ready to abide by any condition and prayed for anticipatory bail to the petitioner.

The learned counsel for the petitioner in CrI.M.P.No.230/2024 submitted that the petitioner is A3 in this case and the petitioner has no knowledge about the fake jewels and the alleged jewels were already pledged in the Indian Overseas Bank, Asaripallam Branch and on their request only the jewels were taken over to CSB Bank and in the event of take over the procedure is to weight the jewels and there is no necessity to check the genuineness of jewels and when the respondent police inquired the alleged matter with the petitioner, she appeared in person and told all the facts with them and given statement and the respondent police convinced with her statement. Thereafter with ill motive, this false case has been foisted against the petitioner. The petitioner is innocent and she has not committed any offence as alleged in the FIR and there is no specific overt act attributed against the petitioner and the petitioner has no previous cases and the investigation of the case is almost over and the petitioner is ready to abide by any condition and prayed for anticipatory bail to the petitioner.

When this case was heard before this court, one Anju, who is the complainant has filed the intervening petition. That petition is numbered as CrI.M.P.No. 246/2024. The intervening petitioner is permitted to intervene.

The learned counsel for the intervenor submitted that the intervening petitioner is a branch manager at Muthoot Mini Finance Corporation Ltd., in Azhagamandapam. This petitioners along with other accused persons namely Sobitha (staff), Asha (Appraiser), Nagesh Swan and their customer Arun Joshi have conspired to cheat her. On 23.02.2024 at 11.11 A.M. A2 contacted the defacto complainant and informed her that their bank was planning to take over some jewels and she sent the details through whatsapp and instructed her to bring Rs.25,38,000/- in cash to the CSB Bank where she works and informed her that she would not need to enter into the CSB Bank premises and instructed to hand over the amount to the 5th accused, who was waiting outside the CSB Bank. However, before handing over such amount, the defacto complainant contacted the 1st accused and confirmed whether the instructions given by the 2nd accused were accurate or not. The 1st accused acknowledged that the jewels of A5 were under his custody and then the 1st accused instructed to hand over the amount to the 5th accused. Then the defacto complainant gave Rs.25,38,000/- to A5. Subsequently the defacto complainant met with the 1st accused and received the jewels of the 5th accused and thereafter she went to her bank and handed over all the jewels to the appraiser of her bank and he

inspected all the jewels and found that all the jewels are spurious one. Immediately the defacto complainant called the 1st accused and conveyed the message to him, but he did not respond. The defacto complainant went to the CSB Bank seeking an explanation for the cheating. But all the accused persons convinced the defacto complainant that the problem would be resolved within a short span of time. But they did not settle the matter. The 1st accused gave a written statement before the respondent police by acknowledging his illegal act. If the petitioner is granted anticipatory bail, it will hamper and tamper with the prosecution witnesses. At the behest of the accused persons, a few unidentified persons approached the defcto complainant to withdraw the case and threatened her. The investigation of the case is not yet over and the anticipatory bail petition in CrI.MP No.197/2024 may be dismissed.

The learned Public Prosecutor opposed the application and submitted that complainant is working as a Branch Manager of Muthoot Mini Financiers Ltd., Azhagamandapam. A5 pledged spurious jewels on several occasions in Catholic Syrian Bank, Marthandam Branch and obtained Rs.25,38,000/- as loan. Subsequently, the bank staff of CSB Bank, Marthandam found the jewels are spurious. A2 contacted the defacto complainant over mobile phone and stated that there are some jewels in her branch for taking over. Moreover A2 sent customer copy to the defacto complainant through WhatsApp. Customer copy is a fabricated one. Even then the defacto complainant told to A2 that it will not tally. But A2 told that already A5 who pledged the jewels in the bank, paid certain amount in the lloan

account. So the defacto complainant believed the words of A2 and went to the CSB, Marthandam with Rs.25,38,000/-. A5 was waiting outside of bank. So the defacto complainant paid the amount to A5. A5 remitted the amount in the bank and redeemed the spurious jewels in the bank and handed over to the defacto complainant. Then the defacto complainant and A5 came to the Muthoot Bank, Azhagamandapam branch and A5 pledged the jewels in the Muthoot Branch. But the Appraiser found all the jewels are spurious. So the defacto complainant contacted the 2nd accused, but she did not give any proper reply. So she filed a petition before the Thiruvattar Police Station. Subsequently the matter has been transferred to Marthandam Police Station for want of territorial jurisdiction. During enquiry before the Marthandam Police, the 1st accused issued a cheque for Rs.25,38,000/- in favour of defacto complainant. Then that petition was transferred to District Crime Branch, Nagercoil, this case has been registered on 11.05.2024. A5 was arrested by the police, because A5 pledged several jewels almost in all banks in Nagercoil. Earlier case was registered, he was arrested by the police and released on statutory bail. While he was complying the condition, this case was registered. So he was arrested by the police and the investigation of the case is not yet over and he has serious objection to grant anticipatory bail to the petitioners and both petitions may be dismissed.

As pointed out by the learned counsel for the petitioners no overt act has been alleged against the petitioners herein. Even according to the prosecution, originally the complaint was given before Thiruvattar Police Station from where the

defacto complainant was referred to Marthandam Police Station where, it is claimed that, there was preliminary investigation and thereafter, the complaint was referred to the District Crime Branch, Nagercoil. Finally, in the District Crime Branch, Nagercoil the First Information Report has been registered. In fact, on the previous occasion in Crl.M.P.No. 1389/2024 filed by the petitioner in Crl.M.P.No.197/2024, on the representation by the prosecution that the complaint was under transmission to District Crime Branch, Nagercoil and that, no complaint is pending before the Marthandam Police Station, the same was recorded and the petition in Crl.M.P.No.1389/2024 was dismissed. Surprisingly, it appears that the FIR has been registered now on 11.05.2024 based on a petition allegedly dated 05.03.2024, wherein the complainant claims that she learnt from the Office of the Deputy Superintendent of Police, Thuckalay that the complaint has been transferred to the District Crime Branch, Nagercoil, which clearly indicates that the FIR was not registered based on the original complaint said to have been given by the defacto complainant which is allegedly under transmission to District Crime Branch, Nagercoil, but was registered based on a fresh complaint said to have been lodged by the defacto complainant subsequent to such transmission. This apart, from 05.03.2024 when the complaint is said to have been given by the defacto complainant from this day, the investigation by the police does not appear to have gathered any material to show that the accused persons were aware of the fact that the jewels allegedly pledged by A5 are spurious. The claim that the defacto complainant went with cash and handed over the cash to A5 and not to the Branch

Manager of Catholic Syrian Bank also appears to be a bit away from the normal procedure in such cases. The contentions of the intervening petitioner, including those made in paragraph 4, 5 and 11, go beyond the allegations made in the FIR and cannot be a factor while deciding the petitions. As such, this court finds the petitioner in both petitions are entitled for grant of anticipatory bail with conditions.

In the result, in the event of arrest or on their appearing before the court concerned the petitioners are ordered to be enlarged on anticipatory bail on their executing a bond for a sum of Rs.10,000/- with two sureties each for a likesum to the satisfaction of Judicial Magistrate No.I, Nagercoil subject to the following conditions :-

1. The petitioners shall appear before the court concerned within 15 days from today without fail.
2. After release, the petitioners shall appear and sign before the respondent police daily at 10.00 A.M. until further orders.
3. The petitioners shall also make themselves available before the respondent as and when required.
4. The petitioners shall not tamper with the witnesses or in any manner interfere with or put obstacle to the smooth progress of investigation.
5. The petitioners shall not leave the jurisdictional police limit without prior permission.

If there is any violation of condition, the Investigation Officer is with in his discretion to approach the court of the learned Judicial Magistrate for cancellation

of bail even though bail granted by the Sessions Court as per the ruling of the Hon'ble Supreme Court reported in **P.K.Shaji /Vs./ State of Kerala, (2005) AIR S.C.W. 5560.**

Pronounced by me in open court this the 23rd day of May, 2024.

Vacation Sessions Judge.

To

The Judicial Magistrate No.I, Nagercoil. (through e-mode)

The Sub Inspector of Police, District Crime Branch, Nagercoil. (through court cell e-mode)

The counsel for the petitioner in both petitions.