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**(2024) 04 MAD CK 0029**

**Madras High Court**

**Case No:** Criminal Original Petition No. 6821 Of 2024

A.Shanmugavelu

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** April 3, 2024

**Acts Referred:**

- Indian Penal Code, 1860 - Section 229A, 406, 420

**Hon'ble Judges:** T.V.Thamilselvi, J

**Bench:** Single Bench

**Advocate:** M.Madhuprakash, V.Meganathan

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### **Judgement**

T.V.Thamilselvi, J

1. The petitioner, who was arrested and remanded to judicial custody on 01.12.2023 for the alleged offence under Section 406 and 420 of I.P.C. in Crime No.348 of 2023 on the file of the respondent police, seeks bail.

2. The case of prosecution is that the petitioner deceived the defacto complainant by projecting his company viz., Rightway Logistics Pvt. Ltd., as a profit making company and induced him to pump money in the petitioner's concern, however, at that time, his company is under loss. On believing the same, the defacto complainant transferred a sum nearly about Rs.61 lakhs to the said company in order to help his business. Out of the said amount, the petitioner paid a sum of Rs.20 lakhs and the remaining amount of Rs.41 lakhs is in due and now he evaded to repay the same. However, he came to understand, on verification of records, the said company is a loss making company and now he started his business and making profits, but with a dishonest intention, he failed to repay the amount paid to him. Hence, the complaint was registered against the petitioner.

3. The learned counsel appearing for petitioner submitted that there is no specific overtact attributed against the petitioner and he was falsely implicated in this case,

but in fact, there was a oral understanding between the parties and already he informed that his company is under loss. Hence, he has not made any false representation as stated by the defacto complainant and he is no way connected with the offence. He would submit that he has not at all committed any of offence as alleged by the respondent police and he has been falsely implicated in this case and he will abide by any condition that may be imposed by this court. He would further submit that the investigation is almost completed and that the petitioner has been suffering incarceration for more than 72 days from 20.01.2024. Hence, he prayed to grant bail to the petitioner.

4. The learned Government Advocate (Crl. Side) appearing for respondent would submit that out of business transaction, the defacto complainant transferred the amount of Rs.61 lakhs to the account of petitioner and now part of amount was paid and there is a balance amount of Rs.41 lakhs. But, the petitioner failed to repay the balance amount. He would submit that that if he is released on bail, he would tamper the witnesses and hamper the investigation and the investigation is almost completed. Hence, he vehemently opposed to grant bail to the petitioner.

5. The learned counsel for Intervenor would submit that the petitioner and his wife approached the defacto complainant to help his business, thereby he transferred a sum of nearly about Rs.61 lakhs to the petitioner, out of which, a sum of Rs.20 lakhs was paid by him and the remaining amount of Rs.41 lakhs is in due, but he failed to pay the same. He would submit that now he started his business and making profits, but only with a dishonest intention, he refused to repay the amount. Hence, he prayed to dismiss this petition.

6. On seeing the facts, it reveals that both were inducted in some business and out of business transaction, the defacto complainant transferred the amount around Rs.61 lakhs and now part of amount was paid, but there is a balance amount of Rs.41 lakhs to be paid. Though the contention of learned counsel for petitioner that he sustained loss in his business, but as per the reply made by the learned counsel for intervenor, still he has no loss in his business. Therefore, on considering the facts and circumstances and the fact that investigation is almost completed and also considering the period of incarceration undergone by the petitioner from 01.12.2023 for more than 124 days, this Court is inclined to grant bail to the petitioner subject to the following conditions:

7. Accordingly, the petitioner is directed to deposit a sum of Rs.10,00,000/- (Rupees ten lakhs only) into the credit of Crime No.348 of 2023 before the concerned Magistrate within a period of two weeks from the date of receipt of copy of this order and on such deposit, the defacto complainant is permitted to withdraw the amount on production of proper identification and acknowledgement, and the petitioner is ordered to be released on bail on condition to execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each, in which one surety must be a blood surety, for a like sum to the satisfaction of the learned XXIII

Metropolitan Magistrate, Saidapet, and on further conditions that:

- (a) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;
- (b) the petitioner shall report before the respondent police on every Sunday at 10.30 a.m. for the period of three months ;
- (c) the petitioner shall not commit any offences of similar nature;
- (d) the petitioner shall not abscond either during investigation or trial;
- (e) the petitioner shall not tamper with evidence or witness either during investigation or trial;
- (f) on breach of any of the aforesaid conditions, the learned Judicial 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];
- (g) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.