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**(2024) 04 MAD CK 0241**

**Madras High Court**

**Case No:** Criminal Original Petition No. No.10018 Of 2024

Sneha Makwan

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** April 30, 2024

**Acts Referred:**

- Indian Penal Code, 1860 - Section 120(B), 229A, 406, 420

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

**Bench:** Single Bench

**Advocate:** S.Silambanan, K.Sathish, V.Meganathan, P.K.Ganesh

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### **Judgement**

T.V.Thamilselvi, J

1. The petitioner, who was arrested and remanded to judicial custody on 27.03.2024 for the alleged offence under Section 406, 420, r/w 120(B) of I.P.C. in Crime No.10 of 2017 on the file of the respondent police, seeks bail.

2. The case of prosecution is that the defacto complainant is running the business of selling diamonds at Chennai and Surat. The petitioner's husband is a Gemologist, who was working at Chennai. At that time, the defacto complainant used to visit petitioner's husband for checking quality of diamonds, thereby both petitioner's husband and defacto complainant acquainted with each other. However, during the month of December 2014, the petitioner's husband under the guise of introducing diamond merchants at Mumbai, approached him without making payment for diamonds worth about Rs.69,88,120/- has sent to Mumbai by entering into an agreement that the petitioner's husband has no right to sell or mortgage diamonds. Moreover, the allegation against this petitioner is that the said diamonds were sent to Mumbai through priority courier by this petitioner to A3 and A4, who are diamond merchants in Mumbai and subsequently neither the amount was paid nor the diamonds were returned by her husband.

Accordingly, the complaint was registered against the petitioner.

3. The learned senior counsel appearing for petitioner submitted that the petitioner is wife of A1 and she was employed in a private concern and she is no way connected with the alleged dealing of A1 with the defacto complainant in respect of selling diamonds nor she has received any diamond from the defacto complainant. He would also submit that there is no specific overtact attributed against the petitioner and she has not at all committed any of offence as alleged by the respondent police. He would submit that she has been falsely implicated in this case and she 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 33 days from 27.03.2024. Hence, he prayed to grant bail to the petitioner.

4. The learned counsel for intervenor would submit that in the year of 2014, A1 along with this petitioner approached him and offered that they are having valued customers at Chennai and Mumbai to market the costly cut polished diamonds. Considering that, he had assigned 162.64 carat quantity of cut and polished diamond (ornamental/good high quality) of value Rs.69,88,120/- for examination and inspection with a written commitment, but they failed to return the amount, however they have sold the diamonds and misappropriated the amount. Hence, the complaint was lodged and he prayed to dismiss this petition.

5. The learned Government Advocate (Crl. Side) appearing for respondent would submit that the petitioner's husband, under the guise of introducing diamond merchants at Mumbai, approached defacto complainant, without making payment for diamonds worth about Rs.69,88,120/-, has sent to Mumbai by entering into an agreement that the petitioner's husband has no right to sell or mortgage diamonds, but thereafter, neither the amount was paid nor the diamonds were returned by her husband. He would submit that the petitioner is arrayed as A2 and the co-accused was released on bail. He would submit that that if she is released on bail, she would tamper the witnesses and hamper the investigation and the investigation is almost completed. Hence, he vehemently opposed to grant bail to the petitioner.

6. According to the prosecution, the defacto complainant sustained loss of Rs.69,88,120/- in the year of 2014 and now the value is more high, however, they sold to A3 and A4 and that now A1 was released on statutory bail and A3 and A4 were granted anticipatory bail and that as on date, no recovery was made, besides, there is small recovery of diamond from A3 and A4, which is worth about Rs.2,50,000/-, that too can be used only for industrial purpose and not for jewellery purpose. By way of reply, the learned senior counsel for petitioner would submit that she is in custody for 33 days and she will abide any condition, since she is not aware of her husband business. According to defacto complainant, she accompanied with her husband and gave a promise to sell those diamonds, thereby she had also actively participated in selling diamonds and misappropriated the

amount. Furthermore, the learned senior counsel for petitioner had assured to produce any security for the amount, but this court is not inclined to receive any security and inclined to receive only cash deposit. Considering the above facts and circumstances, and also the fact that the case is of the year 2014, so there is no possibility for tampering evidence and hampering investigation and the fact that investigation is almost completed and also considering the period of incarceration undergone by the petitioner from 27.03.2024 for more than 33 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.20,00,000/- (Rupees twenty lakhs only) into the credit of Crime No.10 of 2017 before the concerned Magistrate within a period of four weeks from the date of receipt of copy of this order and the defacto complainant is permitted to withdraw the amount on production of proper identification and acknowledgement and on such deposit, 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 Metropolitan Magistrate for exclusive trial of CCB and CBCID Metro Cases at Egmore, Chennai, 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 Saturday 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.

8. Furthermore, already the recovery made from A3 and A4, there is a diamond worth about Rs.2,50,000/- was recovered by the respondent police and the same is also permitted to withdraw by the defacto complainant, who is 62 year old senior citizen, since she was dragged from pillar to post from the year of 2014 on filing

undertaking affidavit before the trial court.