IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on: 4.9.2015 : Pronounced on : 08.09.2015

Coram:

The Hon'ble MR.JUSTICE V.RAMASUBRAMANIAN

Crl.O.P.Nos. 21403, 21404, 21438, 21439, 22507 and 22508 of 2015

P.Ram Mohan	...	Petitioner in Crl.O.P.21403/2015
R.Ganesh	...	Petitioner in Crl.O.P.21404/2015
P.Augustine	...	Petitioner in Crl.O.P.21438/2015
K.Balasubramanian	...	Petitioner in Crl.O.P.21439/2015
R.Venkataramanan	...	Petitioner in Crl.O.P.22507/2015
H.Srimathi	...	Petitioner in Crl.O.P.22508/2015

Vs .

State of Tamil Nadu, rep. by the Superintendent of Police, E.O.W.II, Guindy, Chennai.	...	Respondent in all Crl.O.Ps.
Raman Shankar	...	Intervenor in Crl.O.P.21438 & 21439 of 2015

Prayer in Crl.O.P.Nos. 21438, 21439, 21403, 21404, 22507 and 22508 of 2015 is to enlarge the petitioners on bail, pending investigation in Crime No.5 of 2013 on the file of the respondent.

For Petitioners in Crl.O.P. Nos.21438, 21439, 22507 & 22508/15	:	Mr.I.Subramaniam, S.C. For Mr.Prakash Goklaney
For Petitioners in Crl.O.P. Nos.21403 & 21404/15	:	Mrs.K.Sumathi
For State	:	Mr.S.Shanmugavelayutham Public Prosecutor
For Intervenor	:	Mr.Karthik Seshadri

COMMON ORDER

On a complaint given by one Mr.G.Ramadoss, a First Information Report was registered in Crime No.5 of 2013, for alleged offences under Sections 406, 420 read with 120B of the IPC and Section 5 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997. The following persons were named as the accused in the FIR:

A1 - M/s. Vishwapriya Financial Services and Securities Ltd.

A2 - M/s. Akshyaboomi Investment (P) Ltd.

A3 - M/s. Quadrangle Trading Services Ltd.

A4 - Tr.R.Subramanian, Managing Director of A1

A5 - Tr.Ram Mohan, Chief Manager of A1

A6 - Tr.R.Narayanan, Director of A1

A7 - Tr.Rajarathinam, Director of A1

A8 - Tr.T.S.Ragavan, Director of A1

2. The gist of the complaint was that in a company originally known as Viswapriya Financial Services and Securities Limited, which later got its name changed as Viswapriya India Limited, the complainant and his family members invested a total amount of Rs.6,60,000/-, in a scheme known as "Prime Invest"; that they were issued with documents titled as "Secured Non Convertible Debentures" of multiple units, each valued at Rs.1,000/-; that on the maturity of those documents, the company directed the defacto complainant and his family members to surrender the documents; that when

they did so, the company issued post dated cheques in the name of two other companies by name Akshaya Bhoomi Investments Private Limited and Quadrangle Trading Services Limited, as if the investment was diverted to those companies; that the cheques dishonoured when presented; and that all the three companies as well as the Officers of the companies had cheated the investors, committed a breach of trust and also committed an offence punishable under a special enactment.

3. Though the complaint was registered on 21.10.2013, the police did not arrest any of the accused, in view of the protective orders granted by the Company Court in C.A.Nos. 1009 and 1010 of 2013, in a petition filed by a group company by name Analog Financial Services Private Limited under Sections 391 to 394 of the Companies Act, 1956 for approving a scheme of arrangement. Though the scheme of arrangement was eventually sanctioned by an order dated 30.4.2014 in C.P.No.15 of 2014 by the Company Court, neither the persons covered by the scheme, nor the investors, whom, according to the accused, are not covered by the scheme, got back their investments.

4. In the meantime, the second and third accused namely Akshyaboomi Investment (P) Ltd., and M/s. Quadrangle Trading Services Ltd., filed a petition in Crl.O.P.No.12098 of 2014 for quashing the FIR in Crime No.5/2013. Initially, the petition was entertained and a stay granted during the vacation sitting of this Court in May 2014. Thereafter, the first and fourth accused namely Viswapriya (India) Limited and R.Subramanian filed a

similar quash petition in Crl.O.P.No.27161 of 2014 and obtained a stay of all further proceedings. For some strange reasons, the quash petition filed by the first and fourth accused were withdrawn on 5.12.2014, after arguments were over. Nevertheless the stay granted in Crl.O.P.No.12098 of 2014 in favour of the second and third accused continued. But the quash petition was ultimately dismissed on 29.4.2015.

5. Thereafter, the first accused company namely Viswapriya (India) Limited, came up with a second innings and moved a writ petition in W.P.No.14229 of 2015, under Article 226 of the Constitution, praying for a declaration that the registration of the FIR in Crime No.5 of 2013 was without jurisdiction. Following the same pattern, as adopted by the second and third accused, this writ petition was also moved during the vacation court and an interim stay of further proceedings was obtained. However, this writ petition was also dismissed by a final order dated 6.8.2015.

6. Thus, the police, whose hands were tied right from the time of registration of the FIR on 21.10.2013, got their fetters removed only on 6.8.2015. Thereafter, on 7.8.2013, the police took into custody four persons by name P.Ram Mohan, R.Ganesh, P.Augustine and K.Balasubramanian, who are the petitioners respectively in Crl.O.P.Nos. 21403, 21404, 21438 and 21439 of 2015.

7. These four accused moved applications before the Special Court for enlarging them on bail. But the Special Court dismissed their bail petitions. The police filed applications for taking these accused into their custody, but

the same was also dismissed by the Special Court by an order dated 17.8.2015. Thereafter, these four accused came up with the present applications for bail.

8. Along with them, the fourth accused Mr.R.Subramanian, who is said to be the kingpin, came up with a petition in Crl.O.P.No.21449 of 2015 seeking anticipatory bail. Mr.Prakash Goklaney, learned counsel appearing for him, sought to argue the anticipatory bail petition, separately. Therefore, arguments were heard in the bail petitions of the four accused, on 1.9.2015. In the course of arguments, it was found that a full picture would emerge only if the anticipatory bail petition of the fourth accused was also heard. Therefore, all the four bail petitions of the arrested persons and the anticipatory bail petition of the fourth accused were adjourned to 4.9.2015.

9. In the meantime, the police took into custody three more persons by name R.Venkataramanan, H.Srimathi and T.S.Raghavan, allegedly in the early hours of 3.9.2015. Therefore, two of them namely, R.Venkataramanan and H.Srimathi moved Crl.O.P.Nos. 22507 and 22508 of 2015 on the very same day, namely 3.9.2015, in an attempt at preempting an order of remand by the Special Court. But I ordered notice returnable by 4.9.2015. On 4.9.2015, the arguments in the bail petitions of those arrested on 3.9.2015, as well as the arguments in the anticipatory bail application of the fourth accused were also heard.

10. I have heard Mr.I.Subramaniam, learned Senior Counsel appearing for two of the petitioners, Mr.Prakash Goklaney, learned counsel appearing

for two of them and Mrs.K.Sumathi, learned counsel appearing for the rest of the two. I also heard Mr.S.Shanmugavelayutham, learned Public Prosecutor and Mr.H.Karthik Seshadri, learned counsel for the Intervenor.

11. As I have indicated earlier, the petitioners in the first four bail applications, are in judicial custody from 7.8.2015 onwards. The petitioners in the last two bail applications are in custody from 3.9.2015. The offences alleged against them are under Section 406, 420 and 120B IPC read with Section 5 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997.

12. Though the name of Mr.P.Ram Mohan who is the petitioner in Crl.O.P.No.21403 of 2015 alone is found in the FIR and the names of the other petitioners are not found in the FIR and though this fact is sought to be taken advantage of, by the learned counsel appearing for the other petitioners, I do not think that the same could be a criteria for deciding these applications, in the light of what is stated in para 11 of the counter filed by the State. It is stated in para 11 of the counter that the other accused are Directors of some of the group companies. Mr.R.Subramanian, who was the promoter of at least about 40 companies, appears to have weaved the business relationship between these companies in such a manner that they present a very complex web, befitting the term "World wide Web".

13. The second argument that the FIR was lodged on 21.10.2013 and that there was no necessity for an arrest after nearly 22 months, is also to be rejected in view of the fact that the accused 1 to 4 have employed all the

skills (if not tactics) at their command, for stalling the investigation right from 21.10.2013 up to 6.8.2015. Therefore, the second argument is liable to be rejected.

14. The third argument that after the dismissal of the application of the investigating agency for police custody of the accused, the continued incarceration was meaningless, cannot also be countenanced in view of the fact that the main person is still at large.

15. Arguments were advanced on the role of each one of these petitioners, to drive home the point that they were mere employees, who were not responsible for the management of the affairs of the company, so as to attract the penal provision in Section 5 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997. Reliance was placed in this regard on the judgment of a learned Judge of this Court in ***Prasannadevi v. State [CDJ 2009 MHC 3490]***, wherein this court deprecated the practice of implicating innocent persons such as Clerks, Accountants and Office Assistants working in financial establishments.

16. But at this stage it will be highly premature to go by the statements made by the petitioners in these petitions, to the effect that they were not responsible for the management of the affairs of the accused-company. Moreover, the petitioners are stated by the prosecution to be Directors in some of the group companies. Therefore, it is not possible at this stage, to define the role of the petitioners.

17. It is next contended by all the learned counsel appearing for the

petitioners that these petitioners appeared before the Investigating Officer, whenever they were summoned and that therefore, their incarceration would only be punitive. According to the learned counsel for the petitioners, a search was conducted in the office premises of the companies and the police have also seized records. Therefore, they contend that the entire case would now depend only upon documentary evidence, which has already been seized by the prosecution and that the continued detention of the petitioners is unnecessary.

18. In order to test the veracity of the above contention, I directed the learned Public Prosecutor to file the list of documents seized from the office premises of the companies. Accordingly, a list running to about 16 pages was filed by the learned Public Prosecutor. While what the prosecution has seized, as reflected from pages 1 to 15 of the list, appears to be insignificant, what the prosecution found to be missing and which is found in the 16th page of the list, appears to be quite significant. The list of missing files are indicated by the prosecution as follows:-

(1) Depositors Registers

(2) Book of accounts

(3) Journal & Registers

(4) Original COI, MOA, AOA

(5) Copy of the receipts given to the depositors

(6) Files regarding the statutory filings with ROC & RBI & SEBI

(7) File regarding IT filings

(8) Files regarding the details of assets of the companies

(9) Files regarding the details of receivable of the company

(10) Files regarding the details of liabilities of the company

(11) Files regarding the banking transactions of the company

(12) Files regarding the reserves of the company

(13) Files regarding the bank guarantees given to the company

(14) And many more vital documents necessary for the investigation.

19. But it appears that the continued detention of the petitioners herein in judicial custody, may not help the prosecution to recover these files and records. Moreover, both before the police as well as before the Company Court, the fourth accused R.Subramanian, has given a statement that he was responsible for the management of the affairs of all the companies. Even in the meeting of the depositors convened at the instance of Analog Finance Services Pvt. Ltd., as per the orders passed by the Company Court in C.A.Nos.1009 & 1010 of 2013, Mr.R.Subramanian made a statement that he is responsible for ensuring the implementation of the scheme of arrangement. When such a person is at large, there is no point in detaining the petitioners any more in custody.

20. Therefore, the petitions are allowed and the petitioners are directed to be enlarged on bail subject to the following conditions:

(i) Each one of the petitioners shall execute a bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two sureties each for a likesum, to the satisfaction of the Special Court, TANPID Act;

(ii) The petitioners shall report before the respondent Police as and when required for interrogation;

(iii) The petitioners shall not tamper with evidence or witnesses either during investigation or trial; and

(iv) The petitioners shall not abscond either during investigation or trial.

08.9.2015.

Index : Yes/No
Internet : Yes/No

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V.RAMASUBRAMANIAN,J.

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08.9.2015.