BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Thursday, the Twentieth day of April Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice A.M.BASHEER AHAMED

CRL.O.P.(MD)NOS.44, 1081 AND 1199 OF 2017
AND
CRL.O.P.(MD)NOS.1600 AND 1654 OF 2017

MAHESWARI, ... PETITIONER / ACCUSED NO:7 IN CRL.O.P.(MD)NO.44/2017

JEEVANANTHAM ... PETITIONER / ACCUSED NO:12 IN CRL.O.P.(MD)NO.1081/2017

R.RADHAKRISHNAN ... PETITIONER / ACCUSED NO:16 IN CRL.O.P.(MD)NO.1199/2017

A.MARIAPPAN ... PETITIONER / ACCUSED NO:17 IN CRL.O.P.(MD)NO.1600/2017

MURUGAPERUMAL ... PETITIONER / ACCUSED NO:13 IN CRL.O.P.(MD)NO.1654/2017

Vs

THE STATE REP BY
THE INSPECTOR OF POLICE,
ECONOMIC OFFENCES WING II,
VIRUDHUNAGAR.
(CRIME NO.2/2016) ... RESPONDENT / COMPLAINANT IN CRL.O.P.(MD)NOS.44,1081 & 1654/2017

THE STATE REP BY
THE INSPECTOR OF POLICE,
ECONOMIC OFFENCES WING II,
MADURAI
(CRIME NO.2/2016) ... RESPONDENT / COMPLAINANT IN CRL.O.P.(MD)NO.1600,1199/2017

For Petitioner : M/S.K.SEEMARAJ Advocate, IN CRL.O.P.(MD)NO.44/2017

For Petitioner : M/S.J.SULTHAN BASHA Advocate, IN CRL.O.P.(MD)NO.1081/2017

For Petitioner : M/S.A.BALAJI Advocate, IN CRL.O.P.(MD)NO.1199/2017

For Petitioner : M/S.A.BALAJI Advocate, IN CRL.O.P.(MD)NO.1600/2017

For Petitioner : M/S.R.NEETHIRAJARAM, Advocate, IN CRL.O.P.(MD)NO.1654/2017

For Respondent : M/R.P.KANDASAMY, Govt. Advocate (Crl. Side) IN ALL THE PETITIONS

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

[Orders Reserved on 01.03.2017]

The petitioners in Crl.O.P.(MD)Nos.44, 1081 and 1199 of 2017 who apprehend arrest at the hands of the respondent police for the alleged offences punishable under Sections 406, 420 and 120(b) of IPC., and Section 5 of Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997, in Crime No.2 of 2016, seek anticipatory bail.

2. The petitioner in Crl.O.P.(MD)No.1600 of 2017, who was arrested and remanded to judicial custody on 24.01.2017 for the offences punishable under Sections 406, 420 and 120(b) of IPC., and Section 5 of Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997 and Prevention of Damage to Public Property Act, 1984, in Crime No.2 of 2016, on the file of the respondent Police, seeks bail.

3. The petitioner in Crl.O.P.(MD)No.1654 of 2017, who was arrested and remanded to judicial custody on 24.01.2017 for the offences punishable under Sections 406, 420 and 120(b) of IPC., and Sections 4 and 5 of Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997 in Crime No.2 of 2016, on the file of the respondent Police, seeks bail.

4. Admittedly, the case was registered against all the Accused in Crime No.2 of 2016, on 11.02.2016 by the respondent for the offences aforementioned. The earlier bail applications moved by the petitioners in Crl.O.P(MD)No.1600 of 2017 and in Crl.O.P(MD)No.1654 of 2017 before the TNPID Court at Madurai were dismissed.

5. The learned Government Advocate (crl.side) appearing for the respondent, on instructions, would submit that the case was registered based on the direction of this Court in Crl.O.P(MD) No.22487 of 2015, dated 11.02.2016 and there are 7 named accused at first instance of registering the First Information Report, on the basis of the written complaint given by one Sivasakthi along with 103 persons, against the Chairman, Directors, General Manager, Development Manger, and Branch Manager in respect of 'Karima Agree Tech Limited' having its Head office at Delhi situated in Plot No.13, Karkardoom Complex, New Delhi and its Branch Office in Tamil Nadu which had failed to pay the deposit amount of Rs.1,00,00,000/- collected from the complainants; that the petitioners in Crl.O.P(MD) No.1600 of 2017, Crl.O.P(MD)No.1654 of 2017, Crl.O.P(MD)No.1081 of 2017 and Crl.O.P(MD)No.1199 of 2017 are not named in the FIR and they have been implicated based on the consecutive complaints of the depositors and the petitioner in Crl.O.P(MD)No.44 of 2017 is the named accused in the FIR.

6. Adding further, the learned Government Advocate (crl.side) would further submit that the petitioner in Crl.O.P(MD)No.1600 of 2017 is the incharge of Karunkalakudi Branch; the petitioner in Crl.O.P(MD)No.1654 of 2017 is the incharge of Virudhunagar and Madurai Division; that the petitioner in Crl.O.P(MD)No.44 of 2017 is the incharge of the over all function of the Madurai Branch; the petitioner in Crl.O.P(MD)No.1081 of 2017 is the incharge of the company of over all Tamil Nadu and the petitioner in Crl.O.P(MD) No.1199 of 2017 is the incharge of over all function of the Kumbakonam Branch, in the capacity of Branch Manager and the said accused have canvassed and make the depositors to deposit a huge amount of Rs.1,12,92,810/-, as per the subsequent complaints given by one Chitrai Selvi and 9 others and the investigation is pending.

7. The petitioner in Crl.O.P(MD)No.1600 of 2017 would submit that he initially joined in the said company, as a 'Data Entry Operator' and thereafter, promoted as Senior Staff for monthly salary and his job is only to make entries of the inflow and to tally the amount and to report the same to the Manager on everyday evening; that the defacto complainant acted as an agent for the said Company had canvassed many depositors and for such deposits, he had awarded with commission and now turned against the Company, that too, against the employees of those who have no role in the day-to-day fund administration of the Company and he is no way connected with the commission of crime and he has resigned his job as early as on 15.04.2016.

8. The petitioner in Crl.O.P(MD)No.1654 of 2017 would submit that the petitioner is arrayed as an accused in this case only because he worked as Manager in the said Company and the petitioner has not committed any such offence, as alleged by the respondent and the petitioner is an innocent and his name is not found in the FIR.

9. The petitioner in Crl.O.P(MD)No.44 of 2017 would submit that she joined the company in the year 2011 as a clerk and she is no way connected with the day-to-day affairs of the company and she is falsely implicated in this case and she is not liable for anything regarding the fund administration.

10. The petitioner in Crl.O.P(MD)No.1081 of 2017 would submit that the petitioner was initially appointed as an agent and in that capacity, he has collected money from the public and the same was deposited to the said Company and he resigned his agent post on 15.10.2016, which was accepted on 20.02.2016 and after that there was no connection between the petitioner and the said Finance Company.

11. The petitioner in Crl.O.P(MD)No.1199 of 2017 would submit that he is working as Marketing Executive for the monthly salary in Kumbakonam Branch and the petitioner has neither indulged in day-to-day affairs nor administers the Financial Company and he has been implicated with false allegation, as if he had collected amount from the depositors and part the same in his own pockets.

12. The petitioner in Crl.O.P(MD)No.1199 of 2017 and in Crl.O.P(MD)No.4417 of 2017 would further submit that the petitioner in Crl.O.P(MD)No.1081 of 2017 is having the entire administration of the Southern State of Tamil Nadu as well Madurai Branch from November 2010 and he is the only person having touch with the Head Office of the Company and acted under the guidance of the Chairman and Managing Director, who is the sitting MLA of the State of Rajesthan and he is having the sole administration and day-to-day financial activities of the Company in the State of Tamil Nadu.

13. The learned counsel appearing for the petitioners would contend that the Apex Court as well as the Principal Bench of this Court, which dealt with the cases pertaining to fake financial establishments held that the employees, who are working for remuneration cannot be held liable for cheating committed by the Company.

14. Perused the materials available on record and heard the arguments advanced by either side.

15. Admittedly, except the petitioner in Crl.O.P(MD)No.44 of 2017, the names of the other petitioners are not found in the FIR, which set the law in motion in this case. The petitioner in Crl.O.P (MD)No.44 of 2017 is arrayed as 7th accused, who is the Branch Manger of A1 / Financial Institution at Madurai. The said FIR does not disclose the specific role played for the petitioner herein. Though the FIR which set the law in motion did not disclose the specific allegation that the petitioners herein were responsible for the Management of the affairs of the Financial Institution. To invoke the Penal provision under Section 5 of the TNPID Act, one should shoulder the responsibility of the managing the affairs of the Financial Company. A person, who simply manges the affairs of the Company cannot be said to have taken the responsibility of answering the allegations of mismanagement of the Firm. All the persons, who managed the affairs of the Financial Institution need not necessarily be responsible for the Management of the affairs of the Institution. What is required under Section 5 of the TNPID Act is that the person charged should have been responsible for the Management of the affairs of the Institution. The persons, who simply the manages the affairs of the financial institution, as paid servant, fall out the ambit and scope of the above said provision of law. The Canvassing

Agent, Clerk, Accountant and Office Assistant as such cannot be held responsible for the Management of the Affairs of the Company. The Canvassing Agent may contribute his might by mobilizing funds for the Financial Company on contract basis for payment of brokerage or service charges. But, by no stretch of imagination, it can say that such a person shouldering the responsibility of the Management of affairs of the Company.

16. The petitioners herein are arrayed as incharge of Karunkalkudi Branch, Madurai, in charge of Virudunagar and Madurai Division of the said Finance Company, Madurai Branch Manager (Accused Maheswari), incharge of the Company all over the Tamil Nadu (Accused Jeevanandam) and incharge of the Kumbakonam Branch in the capacity of Branch Manager (Accused R.Radhakrishnan) respectively by the respondent.

17. Though the learned Government Advocate (crl.side) submits that the petitioners have canvassed the people of Madurai and surrounding Districts to deposit huge amount by displaying the various Deposit Schemes, no such records to sustain the above plea is produced by the respondent to show that the petitioners are collected the deposits from the complainants / Depositors or General Public. As rightly contended by the counsel for the petitioners that the petitioners are the employees of the said Financial Company and they have no way connected with collection of deposits by issuing or signing the bonds or deposits on behalf of the Company and they are the solarized employees of the Financial Company.

18. Considering the above facts and circumstances of the case and also considering the period of incarceration of the petitioners in Crl.O.P(MD)No.1600 of 2017 and the petitioner in Crl.O.P(MD) No.1654 of 2017 in jail, this Court is inclined to grant bail to the petitioners, subject to certain conditions:.

19. Accordingly, the petitioners in Crl.O.P.(MD)Nos.1600 and 1654 of 2017 are ordered to be released on bail on their executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) each with two sureties, each for a like sum to the satisfaction of the Special Court for TANPID Act Cases, Madurai and on further condition that:

[a] the petitioners shall report before the respondent police daily at 10.30 a.m., until further orders, for interrogation.

[b] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[c] the petitioners shall not abscond either during investigation or trial.

[d] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners 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].

20. Accordingly, the petitioners in Crl.O.P.(MD)Nos.44, 1081 and 1199 of 2017 are ordered to be released on bail in the event of arrest or on their appearance, before the Special Court for TANPID Act Cases, Madurai on condition that each petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that the petitioners shall report before the respondent police daily at 10.30 a.m., until further orders, for interrogation. The petitioners shall comply with the condition stipulated under Section 438 Cr.P.C., scrupulously.

21. The petitioners shall appear before the concerned Magistrate within a period of 15 days from the date on which the order copy is made ready, failing which, the petition for anticipatory bail stands dismissed.

sd/-
20/04/2017

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE JUDGE,
SPECIAL COURT FOR TANPID ACT CASES,
MADURAI

2 THE INSPECTOR OF POLICE,
ECONOMIC OFFENCES WING II,
VIRUDHUNAGAR.

3 THE INSPECTOR OF POLICE,
ECONOMIC OFFENCES WING II,
MADURAI

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI

+1. CC to M/S.K.SEEMARAJ Advocate SR.No.20594
+2 ccs to M/R.A.BALAJI ,Advocate, SR.NO:20595,20596
+1 cc to M/R.R.NEETHI RAJARAM ,Advocate, SR.NO:20576

SVA/KKR/21.04.2017/SAR4/6P/9C

ORDER
IN
CRL.O.P.(MD)NOS.44, 1081 AND 1199 OF 2017
AND
CRL.O.P.(MD)NOS.1600 AND 1654 OF 2017
Date :20/04/2017