BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 21.03.2017

DELIVERED ON: 08.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Crl.RC(MD)No.135 of 2017

Ramarathinam : Revision Petitioner / A4

Vs.

State : Through
The Inspector of Police,
EOW – Unit II,
Madurai
(Crime No.8 of 2016) : Respondent / Complainant

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records and set aside the order passed by the Special Court for cases under TNPID Act, Madurai, vide order dated 23.01.2017 in Cr.M.P.No.166 of 2017.

For Petitioner :Mr.N.Ananthapadmanabhan

For Respondent :Mr.B.Pughalendhi
Addl.Advocate General

Assisted by Mr.C.Ramesh,
Additional Public Prosecutor.

O R D E R

This Revision has been filed praying to set aside the order passed by the learned Special Judge for Cases under TNPID Act, Madurai, vide order dated 23.01.2017 in Cr.M.P.No.166 of 2017.

2. The petitioner herein is the Director of MRDT India Limited, Madurai, Rural Development Benefit Fund India Limited, MRDT Chits Limited and MRDT Cloud Hostings Limited, which were registered under the Companies Act, 1956, but they have not obtained permission either from RBI or SEBI to run business of collecting deposits as non-banking Financial Institutions and are not notified Nithi Company under Section 620-A of the Companies Act, 1956 and also have not obtained any approval from the Ministry of Corporate Affairs.

3. The innocent Public were lured to deposit amount in the said Companies individually by giving a false promise that they would pay higher rate of interest for the deposit. On the complaint made by one V.S.Jeyakumar, an FIR has been registered in Crime No.4 of 20114, under Section 5 of TNPID Act (F & E), 1997 and under Sections 406, 420 and 120(b) of IPC., and Sections 4 and 5 of Price Chits and Money Circulation Schemes (Banning) Act, 1978, on 17.10.2014. On culmination of investigation, the accused collected staggering amount of Rs.10,00,00,000/- from 4500 depositors without obtaining any permission either from Reserve Bank of India or Stock Exchange Board of India and till 14.09.2015, complaints were received from 2777 depositors to the tune of Rs.46,63,54,763/-. Charge sheet and Additional Charge sheet were filed on different dates arraying 17 accused in Crime No.4 of 2014 and was taken on cognizance and was pending as C.C.No.11 of 2015 on the file of learned Special Court for TNPID Act Cases, Madurai.

4. As per the Writ Appeal No.1267 of 2014 of the Principal Bench of this Court, preferred by the petitioner, a committee was constituted by the Government of Tamil Nadu Properties of the Companies procured out of the amount deposited were identified and six proposals have been sent to the Government of Tamil Nadu and two Government Orders were issued ordering interim attachment of Bank Account amounting to Rs.19,58,11,896.90 and attaching the frozen Bank account of Rs.91,79,256.04 and other four proposals are pending with the Government of Tamil Nadu.

5. Steps have been taken by the competent Authority under Sections 4 and 7 of TNPID Act. During the course of the investigation which was found out that the Directors of MRDT Group of Companies are collecting the original documents from the depositors and they are given acknowledgement for receipt of the original bonds in the name of "Raise India Reality Private Limited", Chennai and 9 others Companies and a case was registered in Crime No.8 of 2016, under Sections 406, 420, 120(b) of IPC and Section 5 of TNPID Act. The petitioner was arrested in Crime No.4 of 2014 on 02.10.2016 and was remanded and he was formally arrested in Crime No. 8 of 2016, on 14.10.2016. After the arrest of the prime accused, complaints are pouring and the properties worth about to Rs.1,50,00,000/- were identified in the name of petitioner and other accused and also in the name of MRDT Company. Hence, the Investigating Officer in this case filed a petition seeking further time to file the final report and in the meanwhile, the petitioner approached the trial Court and obtained statutory bail under Section 167(2) of Cr.P.C., with a condition that a sum of Rs.10,00,000/- is to be deposited to the credit of the Crime No.8 of 2016 and also to execute a bond for Rs.50,000/- with two sureties for a like sum each and to appear before the respondent Police at 10.00 a.m., and 6.00 p.m., every day, until further orders. Aggrieved by the order of the deposit amount of

Rs.10,00,000/-, as a condition for release of the petitioner, the present Revision is filed for the aforesaid relief.

6. Mr.T.Amjad Khan, the learned counsel appearing for the petitioner would submit that in any case, the statutory right that is accrued in favour of the petitioner due to failure on the part of the prosecution to file the final report within the statutory period of 60 days cannot be defeated by imposing conditions to deposit the amount of Rs.10,00,000/- as onerous one particularly, knowing about the financial background of the petitioner, which is illegal and cannot be sustained in the eye of law; that imposing a condition to deposit cash of Rs.10,00,000/- is nothing but denying bail to the petitioner, which absolutely illegal; that no incriminating evidence pertaining to any accumulation of wealth was found, except the seizure of small gold and silver articles brought by his wife at the time of their marriage about 25 years back from the house of the petitioner and that the petitioner has no means and no conditions of such deposit can be imposed to defeat the statutory right of the petitioner.

7. Mr.B.Pughalendhi, the learned Additional Advocate General appearing for the respondent would submit that on instruction and also the averments made in the counter statements of the respondent that the Special Court is well within the ambit of power imposed conditions by taking into consideration of the enormity of the offences charged against the petitioner; that the petitioner is the man of means, since an amount of liquid cash Rs.5,68,000/- was seized from the Bank account and silver and gold ornaments worth about Rs.11,42,346.11 were seized from his bank locker and a sum of Rs.51,58,100/- was settled by the petitioner within two months of 2014 through a house in Kavian Apartment, Madurai. He would further submit that the petitioner appeared before the respondent Police upto 07.03.2015 and from 08.03.2015 he absconded and in this connection a case in Crime No.301 of 2015, under Section man missing was registered by S.S.Colony Police Station, Madurai and hence, his abscondence cannot at all be ruled out and the petitioner is in judicial custody in Crime No.4 of 2014, on the file of the respondent police and hence, the petitioner cannot come out on bail.

8. Perused the materials on record and heard and considered the rival submissions advanced by either side.

9. Admittedly, the petitioner is the Director of the Financial Institution and one of the accused in Crime No.8 of 2016 registered by the respondent Police under Section 406, 420 and 120 (b) of IPC r/w Section 5 of TNPID Act. The petitioner was formally arrested in this crime number on 14.10.2016 and he is still in judicial custody. Since the respondent Police failed to file the final report within the statutory period of 60 days, the petitioner was ordered to be released on statutory bail under

Section 167(2) of Cr.P.C., and even after granting statutory bail to the petitioner, the petitioner is still in custody because of the impugned order passed by the learned Special Judge for TNPID Act Cases, Madurai, directing the petitioner to deposit a sum of Rs.10,00,000/-, to the credit of the said crime number, as a pre-condition for his release from the prison. The petitioner is also an accused in Crime No. 4 of 2014, under Section 5 of TNPID Act, under Sections 420, 120(b) IPC and Sections 4 and 5 of Price Chits and Money Circulation Schemes (Banned) Act, 1978, in which the petitioner was also arrested on 02.04.2016 and was remanded to judicial custody and is pending as C.C.No.11 of 2015, on the file of the Special Court for TNPID Act Cases, Madurai.

10. The learned Additional Advocate General would further contend that the Hon'ble Supreme Court in Crl.A.No.730 of 2013 arising out of SLP(Crl) No.3404 of 2013 in Y.S.Jegan Mohan Reddy Vs. Central Bureau of Investigation observed that " Economic offences constitute a clause apart and need to be visited with a different approach in the matter of bail. The economic offences, having deep rooted conspiracy and involving huge loss of public funds, need to be viewed seriously and considered as grave offences affecting the economy of the Country as a whole and thereby posing serious threat to the financial health of the country". He further states that the Hon'ble Supreme Court in 'Sathiyan Case' as well as in the recent "Sahara Case" formulated bench-marks to treat the offenders involved in economic offences in isolation by taking into consideration of the fraud committed by them, which has to be weighted against the society at large. The petitioner is charged in this case committing economic offences stating that the accused in this case have committed cheating more than 10,000 innocent depositors and defaulted to the tune of Rs.70,05,00,000/- and hence, the impugned order passed by the learned Special Judge for TNPID Act Cases is perfectly legal and not liable for interference.

11. It is well settled principle that, when an application for default bail is filed the merits of the matter are not to be gone into as per the principle laid down by the Hon'ble Apex Court in Union of India Vs. Tamilarasi reported in (1995 (4) SCC 190). The learned Single Judge of this Court in the case of Baskar and Others Vs. State by the Inspector of Police reported in (2001 (1) L.W. Crl.88) in which it is held that once the bail application is filed after the expiry of the prescribed period and before the challan is filed, the Court has no business to look into the gravity of the crime committed to justify the judicial custody beyond the prescribed period under Section 167(2) of Cr.P.C., Once the petitioner is entitled for statutory bail, the Court cannot by imposing onerous conditions make that person not to come out from judicial custody by considering the gravity of the offence. Accused has indefeasible right to be released on bail, if the Investigating Officer has failed to file the charge sheet within a period of 60 days.

12. The language used in Proviso(a) to Section 167(2) of the Cr.P.C. makes is abundantly clear that every person released on bail under Section 167(2) shall be deemed to be so released under the provisions of Chapter XXXIII for the purpose of that Chapter. Therefore, while releasing an accused on bail, the Court may impose conditions in exercise of powers under Section 437(3) of Cr.P.C.

13. The Petitioner seeks in this revision to set aside the impugned order in entirety though he specifically objecting the condition of Rs.10,00,000/- ordered in the impugned bail order. The respondent also stated in his counter statement that the properties to the worth of Rs.27,96,02,803/- (GAP Value Rs.42,08,91,196.52) were seized and a sum of Rs.27,96,02,803/- was frozen. The proposals are going to be submitted to the Government for ad-interim attachment of the properties of the accused in this case. According to the petitioner, he has no means to deposit the amount, as ordered. The respondent has also stated that an amount of Rs.5,68,000/- was seized from his Bank Account and Silver and Gold ornaments worth about to Rs.11,42,000/- were also seized from the Bank locker of the petitioner.

14. Considering the above facts and circumstances of the case, this Court is inclined to set aside the order passed by the learned Special Judge for cases under TNPID Act, Madurai, vide its order dated 23.01.2017 in Cr.M.P.No.166 of 2017, by deleting the deposit of Rs.10,00,000/- and modifying as Rs.3,00,000/-.

15. In the result, this Revision is partly allowed and the order passed by the learned Special Judge for cases under TNPID Act, Madurai, dated 23.01.2017 in Cr.M.P.No.166 of 2017 is set aside. The direction to deposit of Rs.10,00,000/- before the said Court, is deleted. The petitioner is directed to deposit a sum of Rs.3,00,000/- with two sureties for the like sum of each to the satisfaction of the learned Special Judge for the Cases under TNPID Act, Madurai. The petitioner is further directed to appear before the respondent Police at 10.00 a.m., on every Monday and Wednesday, until further orders. Further, the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any Police Officer or tamper with evidence.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Special Court for cases under TNPID Act,
   Madurai,

2. The Inspector of Police,
   EOW - Unit II,
   Madurai.

3. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

4. The Record Keeper,
   Criminal Section,
   Madurai Bench of Madras High Court.
   Madurai-23.

+1cc to M/S. N.ANATHA PADMANABAN, Advocate, SR.No.59031.

Pre-Delivery Order made in
Crl.RC(MD)No.135 of 2017
08.06.2017

SDS/SV/SAR 1/13.06.2017/6P/6C