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

Tuesday, the Thirty First day of July Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

CRL OP(MD) Nos.8060,8997,8998 and 6737 of 2018

LEKHA @ REKHA ... PETITIONER/ACCUSED No.7 IN CRL OP(MD)No.8060/2018

SANTHI KUMARI ... PETITIONER/ACCUSED No.12 IN CRL OP(MD)No.8997/2018

USHAKUMARI ... PETITIONER/ACCUSED No.10 IN CRL OP(MD)No.8998/2018

JEYA ... PETITIONER/ACCUSED No.9 IN CRL OP(MD)No.6737/2018

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE,
ECONOMIC OFFENCES WING II,
NAGERCOIL,
KANYAKUMARI DISTRICT.
(CRIME NO.1 OF 2017) ... RESPONDENT/COMPLAINANT IN ALL THE PETITIONS

For Petitioner : MR.RAMESH, Senior Counsel for MR.K.K.VIJAYAN, Advocate IN ALL THE PETITIONS

For Respondent : MR.A.ROBINSON, Government Advocate (Crl.Side) IN ALL THE PETITIONS

For Intervenor : MR.SC.HEROLD SINGH, Advocate IN ALL THE PETITIONS

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

ORDER : The Court Made the following order :-

Heard the learned Senior Counsel for the petitioners and the learned counsel for the intervenor/depositors and the learned Government Advocate (Crl.Side) appearing for the State.

2.These Criminal Original Petitions have been filed by some of the accused in Crime No.1 of 2017 on the file of the Inspector of Police, Economic Offences Wing II, Nagercoil, Kanyakumari District seeking anticipatory bail. They apprehend arrest at the hands of the respondent police for the offences punishable under Sections 406, 420, 120(B) of IPC and Section 5 of Tamil Nadu Protection of Interests of Depositors (in Financial Establishment) Act, 1997 and Section 4 and 5(a) of Prize Chits and Money Circulation Schemes (Banning) Act, 1978. All the four petitioners are women. Their family has been running Nirmal Krishna Nidhi Ltd, Palukal Krishna Chits Private Ltd., Nirmal Krishna Chit Private Ltd., The said financial establishments had committed default. The total number of depositors exceeds 7100. The default liability is also likely to exceed 550 crores of rupees. The establishments were primarily run by one Nirmalan who is the husband of the petitioner in Crl.OP(MD)No.8060 of 2018. He was arrested and remanded to judicial custody. He came out only on statutory bail.

3.As rightly contended by the learned Senior Counsel appearing for the petitioners, no purpose will be served by arresting the petitioners herein. It is true that they are members of the family which was running these three financial establishments. But then, this Court cannot lose sight of the fact that the husband of the seventh accused who is also the brother of the other petitioners herein was mainly running the establishments and the present petitioners did not really have any say in the running of these establishments. But then, this Court keeping in mind the interest of depositors, suggested to the learned counsel on either side to come out with a formula for fast tracking the entire recovery mechanism. The suggestion mooted by this Court was readily agreed to by the learned Senior Counsel for the petitioners. They also circulated a draft scheme which would liquidate the liabilities of the financial establishments to a good extent. They also filed an affidavit disclosing the details of the assets that are being held by the various family members. They have also made a categorical submission that if any other item belonging to the family is discovered, the authorities can very well proceeded against the same. This undertaking is placed on record.

4.It appears that the properties belonging to the promoters' family lie not only in Tamil Nadu but also in the neighbouring State of Kerala. The financial establishments appear to have incurred liabilities in Kerala also. Therefore, an insolvency petition was originally filed. But then, the same has being returned for re-presentation. This Court is of the view that a limited scheme may be evolved for bringing the unencumbered properties belonging to the promoters' family that are situated in Tamil Nadu to sale. This would be without prejudice to the rights of the authorities to proceed against the remaining properties.

5.Since such a fair stand has been taken by the petitioners herein, this Court is of the view that the anticipatory bail can be granted to all the four petitioners herein. Since all their properties have been now brought into a common pool to meet the claims of the depositors, they can be granted bail by the court below on their own bond. Accordingly, they are ordered to be released on bail in the event of arrest or on their appearance before the learned Special Court under TANPID Act Cases, Madurai and on further condition that they shall appear before the respondent police as and when required for interrogation. They shall comply with the conditions stipulated under Section 438 Cr.P.C, scrupulously and they shall appear before the concerned Magistrate within a period of 15 days from the date on which the order copy made ready, failing which, the petition for anticipatory bail shall stand dismissed. The Special Court will certainly take note of the conduct of the petitioners herein as a mitigating circumstance at the time of issue of sentence is taken up.

6.There are totally 21 accused in this case. A1 to A3 are the financial establishments. Out of the remaining 18, 10 belong to the promoters' family and their properties have now been offered for liquidation and settlement of the depositors' claims. These 10 persons are A4-Nirmalan, A5-Raveendran, A6-Ajith Kumar, A7-Lekha, A8-Sekaran Nair, A9-Jeya, A10-Usha Kumari, A11-Rama Devi, A12-Santhi Kumari and A19-Narayanan Nair. These 10 persons agreed to execute a power of attorney either individually or collectively in favour of Raveendran who has been shown as the fifth accused in this case. This shall be done forthwith. The said Raveendran will represent these 10 accused and execute whatever documents that are required for conveying title in respect of the schedule mentioned items in favour of the depositors.

7.The properties and assets belonging to these 10 accused and the financial establishments can be categorised into five. The A Schedule will contain the list of vehicles. The B Schedule will contain the other movable items such as jewels, finished products, machinary etc., The C schedule will contain the list of immovable properties in Tamil Nadu in the names of these accused. The D schedule will contain the details regarding the seized cash and frozen bank accounts and the E schedule will contain the receivables. Such a consolidated list will be filed by Thiru.Raveendran (A5) before the learned Special Judge within ten days from the date of receipt of a copy of this order. Such a list was already filed before this Court. But a fresh list will be filed before the Special Judge in the above format.

8.The Tamil Nadu Protection of Interests of Depositors (in Financial Establishment) Act, 1997 was brought in to protect the interests of the depositors. The statute contains a scheme for attaching the properties of the financial establishments and provides for sale of the attached properties, realisation and distribution of the sale proceeds. On account of the offer made by the petitioners' counsel, this Court can bye-pass the entire stage of attachment. This Court is also conscious of the fact that if the properties are attached, it has a dampening effect on the sale value and that would ultimately hit the depositors' interest only. It has been agreed that when ever the borrower is identified, the named power agent Raveendran/A5 will execute the sale deed or the deed of conveyance or the sale invoice on the dotted lines.

9.This Court constitutes a Committee which will assist the competent authority/District Revenue Officer, Kanyakumari @ Nagercoil in carrying out his function set out under Section 7(4) of the Act. The Committee shall comprise Thiru.Bhasikumaran Nair, Ashokan, S.John Alexandar and Mrs.Agnes, the Inspector of Police, Economic Offence Wing-II, Kanyakumari District @ Nagercoil. This Court makes it clear that Mrs.Agnes, the Inspector of Police, EOW-II will not be transferred or disturbed for a period of one year from the date the Committee starts functioning. The Committee members except the Inspector of Police will be entitled to a remuneration of Rs.15,000/- each per month. This amount shall be paid to them on the first working day of every month.

10.The District Revenue Officer, Kanyakumari @ Nagercoil will bring all the assets set out in the five scheduled items to sale in appropriate stages. Priority will be given to the movable items. The A schedule vehicles will be sold within a period of one month from the date of issuance of this order copy. The Committee will ensure that the cost of publication remains as low as possible. The Committee shall open a Web-site. The details of the auction, sale price etc., will be available in the said website. Since there are about 7000 depositors, the Committee shall open social media accounts such as Whats App, Facebook page. They shall be activated and operated to give maximum publicity to the auction details and the activities of the Committee. The Government departments also shall prominently publish the auction notice in their notice boards. The Public Relation Officer shall also give regular press releases.

11.The Committee will fix the minimum sale price and place the written proposals before the competent authority. It is open to the authority to modify the proposals given by the Committee and thereafter it will be placed before the Special Court. After getting clearance from the Special Court, the Schedule items will be brought for sale. It is made clear that no auction notice will be notified or published without approval from the Special Court. The Special Court shall take a decision one way or the other, but within one week from the date when it is submitted. If the accused are of the view that the sale price has been fixed below the market value, it is open to the accused to bring or identify a buyer for purchasing the property in question at a higher value. If the bidders quote the same rate, the one who is a depositor will be given preference. If among the affected depositors the same rate is quoted, the one who had deposited more will be given preference.

All the sale proceeds will be credited to the account of Crime No.01 of 2017 before the Special Court. As and when the sale proceeds reaches rupees 10 Crore, the learned Special Judge shall immediately commence disbursement on a pro-rata basis among all the depositors. The Committee shall collect all the bank account details of all the individual depositors so that the remittances can be made in online bank transfer mode.

12.Krishna Niwas, Mathempala, Palugal Post – 629 170, Kanyakumari District shall be the office from where the committee shall function. Wide publicity is to be given so as to receive applications from the various depositors. 31.10.2018 will be the cut-off date for receipt of applications from the depositors. The depositors will have to furnish proof of their claims.

13.Section 14 of the TNPID Act, 1997 has a overriding clause. If any order of attachment has been made, the Committee will have the power to take out appropriate applications for getting them raised. The frozen accounts can be de-frozen and it shall be credited into the account specially opened by the Special Court. The said account can be opened by the Committee for managing their day to day expenses. The competent authority as well as the Special Court shall bear in mind that extreme austerity measures are to be followed and that every paise will have to be accounted. The statement of accounts shall be submitted before the Special Court every month for the preceding four weeks. The Registration Department, Survey Department and other government departments are specifically directed by this Court to give their fullest co-operation to the Committee constituted by this Court as well as the competent authority for effective implementation of this scheme.

14.This order is a starting point and is not intended to fetter the powers of the competent authority or the Special Court. Far from it. It is only to enable a speedy sale and consequential disbursal to the affected parties. The learned Special Judge shall take the call and keep in mind the statutory mandate. The learned Special Judge is at liberty to invoke the relevant provisions of the statute to ensure the effective implementation of this scheme.

15.With these directions, these criminal original petitions are allowed.

sd/-
31/07/2018

/ TRUE COPY /

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

TO

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

2 THE INSPECTOR OF POLICE
ECONOMIC OFFENCES WING II, NAGERCOIL,
KANYAKUMARI DISTRICT.

3 THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+4. CC to M/S.K.VIDYA, Advocate SR.Nos.14733

ORDER
IN
CRL OP(MD) Nos.8060,8997,
8998 and 6737 of 2018
Date :31/07/2018

PK/VR/SAR-1/20.08.2018 : 6P/8C