THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

<u>Criminal Petition No.11354 of 2018</u>

<u>ORDER</u>:

This Criminal Petition, under Section 439(2) of the Code of Criminal Procedure, 1973, is filed by the petitioner-State of Telangana, requesting to cancel the regular bail granted to the respondent-accused, vide order, dated 24.10.2018, passed in Crl.M.P.No.3229 of 2018 in Crime No.170 of 2018 of PS CCS, DD, Hyderabad, by the Metropolitan Sessions Judge, Hyderabad.

2. Heard the submissions of Sri C.Pratap Reddy, learned Public Prosecutor for the state of Telangana representing the petitioner-State and perused the record. A memo, vide USR No.92248 of 2018 was filed by the petitioner-State of Telangana, which reflects that the respondent-accused refused to take the notice issued in this case. Under these circumstances, notice on the respondent-accused is held sufficient.

3. The learned Public Prosecutor for the State of Telangana would submit that the respondent-accused, being the Managing Director of 'Heera Gold Exim Limited', collected huge deposits from number of victims with a promise to pay exorbitant rate of interest on the said deposits. As per the Memorandum of Association and Articles of Association of the said company, it is only authorised to deal in gold by way of buying and selling. The said company has no valid permission under the Banking Regulation Act or from the Reserve Bank of India for collecting money in the form of deposits from the public. The collection of huge amount in the form of

deposits from the public attracts the provisions of Section 5 of the Telangana State Protection of Depositors of Financial Establishments Act, 1999 (for short, 'TSPDFE Act'), and the petitioner, being the Station House Officer, CCS, DD, Hyderabad, has the authority to investigate into the matter. It is further submitted that the Court of Session was carried away by the contention made on behalf of the respondent/accused that under Section of 212(2) of the Companies Act, 2013, where any case has been assigned by the Central Government agencies to the Serious Fraud Investigation Officer for further investigation under the Companies Act, no other investigating agency or Central Government or any State Government shall proceed with investigation in such case in respect of any offence under the said Act, and in case any such investigation has already been initiated, it shall not proceed further with and the concerned agency shall transfer the relevant documents and records in respect of such offence under the said Act to the Serious Fraud Investigating Agency. The learned Public Prosecutor further contends that the aforementioned provision of law has no application to the instant case. The respondent-accused is being proceeded under Section 5 of the TSPDFE Act. The Court of Session, relying on the provisions of Sections 212(2) and 221 of the Companies Act, 2013, granted bail to the respondent-accused, which is erroneous. Huge amount running into crores of rupees has been collected from the public by the said Company in violation of the provisions of the Banking Regulation Act. The respondent-accused is an influential person. She is facing investigation in similar offences in the States of Andhra Pradesh, Karnataka, Kerala, Maharashtra and other states across the country ultimately prayed to cancel the bail granted to the respondent-accused.

4. In view of the submissions made by both sides, the point that arises for determination is, whether the bail granted to the respondent-accused by the Metropolitan Sessions Judge, Hyderabad, vide order dated 24.10.2018 in Crl.M.P. No.3229 of 2018 can be cancelled?

5. The material placed on record reveals that the respondent-accused is the Managing Director of 'Heera Group of Companies', which is incorporated under the Companies Act to deal with purchase and sale of gold. The said company has no authority to collect money in the form of deposits from the public. In the course of investigation, it has come up that the respondent-accused is the Managing Director of 15 more companies, namely, (1) Hira Gold Exim Limited (2) Heera Retail (Hyderabad) Private Limited, (3) Heera Foodex Private Limited, (4) Heera Textiles Limited, (5) Heera Building Material Imports & Exports Private Limited, (6) Heera Hallmarking Centre Private Limited, (7) Heera Ice Drop Private Limited, (8) Heera Haj Services Private Limited, (9) Heera Fincapital India Limited, (10) Heera News Media Private Limited, (11) Heera Developers (Hyd) Private Limited, (12) Heera Medical City Private Limited, (13) Heeragold Foodex Private Limited, (14) Heeragold Fabrics Private Limited, and (15) HG Gold Private Limited and other companies. The respondent-accused collected crores of rupees in the form of deposits in different modes/schemes from thousands of investors/customers/public by engaging market agents (DSAs). Altogether, 106

witnesses/depositors were examined in this case and their statements reveal that they have deposited about Rs.8.00 crores in HEERA GOLD EXIM LIMITED. The said company is not authorised to collect money from the public by way of deposits. As per the Memorandum of Association and the Articles of Association of the said company, the purpose of establishment of the said company is only to buy and sell gold and share the profits derived from it among the shareholders. It has no authority/licence to collect the deposits from the pubic and pay interest thereon. Further, investigation revealed that the investors/depositors of the said company made several representations for withdrawal of the principal deposits since April, 2018 to October, 2018. About 6558 withdrawal applications amounting to Rs.167,37,15,600/- are pending before the Heera Group of Companies, apart from online withdrawal applications.

6. It is apt to refer the decision of the Hon'ble Supreme Court in Dolat Ram and others vs. State of Haryana[1], wherein it is held as follows:

> "Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and delay with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking the grounds of cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in

[1] (1995) 1 SCC 349

any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

7. Section 5 of the TSPDFE Act reads as follows:

"Penalty for default:- Where any financial establishment defaults in the return of the deposit either in cash or kind or defaults in the payment of interest on the deposit as agreed upon, every person responsible for the management of the affairs of the financial establishment including the promoter, Manager or Member of the financial establishment shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to rupees one lakh and such financial establishment shall also be liable for fine which may extend to rupees five lakh."

8. The offences prescribed under the Companies Act, 2013, and the TSPDFE Act are distinct. Hence, the provisions under Sections 212(2) and 221 of the Companies Act, 2013, do not disable the petitioner from investigating the subject criminal case. The investigating officer has to provide the information or documents to the Serious Fraud Investigation Officer. The findings of the Court of Session that the petitioner/prosecuting agency has no authority to investigate the case is erroneous and granting bail to the respondent-accused on this ground is also erroneous. The allegations against the respondent-accused are specific and grave. Huge public money is involved in this crime. Number of material

witnesses and voluminous documents are required to be examined in the course of investigation. As per the submissions made by the learned Public Prosecutor appearing for the petitioner, several similar cases are registered in the States of Andhra Pradesh, Karnataka, Kerala, Maharashtra and other States across the country. When huge amount is involved and hundreds of crores of rupees are diverted to unknown destinations, the possibility of the respondent-accused fleeing away from justice and taking shelter in foreign countries cannot be ruled out. On this sole ground only, the bail is liable to be cancelled. If the respondent-accused is permitted to continue on bail, there is every possibility of her causing disappearance of the material documents and there is also possibility of threatening the witnesses.

9. In the course of submissions, it is brought to the notice of this Court that when the bouncers of the counsel for the respondent-accused have threatened the depositors, a case in Crime No.223 of 2018 of Nampally Police Station for the offences under Sections 352, 354, 290, 506, 195A read with 34 I.P.C. was registered against the said bouncers. It establishes that the respondent-accused is an influential person. Without adverting to the facts and circumstances of the case in totality, the Court of Session erroneously granted regular bail to the respondent-accused, vide order under challenge. In view of the above, the regular bail granted to the respondent-accused by the Court of Session vide order under challenge, is liable to be cancelled.

10. In the result, the Criminal Petition is allowed by setting aside the order under challenge. The regular bail granted to the

respondent-accused vide order, dated 24.10.2018, passed in Crl.M.P.No.3229 of 2018 in Crime No.170 of 2018 of PS CCS, DD, Hyderabad, by the Metropolitan Sessions Judge, Hyderabad, is cancelled. Since the respondent-accused is in judicial custody in other crimes, the petitioner/investigating agency is entitled to take seek the custody of the respondent-accused in accordance with law.

Pending miscellaneous petitions, if any, shall stand closed.

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Dr. SHAMEEM AKTHER, J

13th November, 2018

Note:-
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