HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.13830 OF 2018

ORDER:

The petitioners are accused Nos.5 to 9 in crime No.170 of 2018 of CCS, DD, Hyderabad, registered for the offences punishable under Sections 406 & 420 IPC and Section 5 of Telangana Protection of Depositors of Financial Establishments Act, 1999 (for short 'the Act 1999') and also Sections 3 to 6 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 (for short 'the Act 1978') and they are now seeking anticipatory bail under Section 438 Cr.P.C.

The crime was registered from the report of Smt. Farzanaunisa Begum W/o. Mohammed Khaja of Hyderabad dated 10.09.2018, which allegations in the report in registration of the crime reads (originally it appears crime No.870 of 2018 registered on 10.09.2018 by Banjara Hills Police Station for the offences other than under the Act 1978 and later entrusted to the Assistant Commissioner of Police, CCS, DD, Hyderabad, Division-A for investigation from transfer to CCS police by re-registration of the FIR in crime No.170 of 2018 dated 04.10.2018 supra) that her husband named supra a heart patient with hypertension who is working abroad and invested Rs.25,00,000/- in Heera Retail Private Limited and Heera Textile Private Limited by cheque bearing No.649216 dated 18.06.2018 and they issued a purchase receipt No.HG2013SA151526 of even date, whenever her husband calls the customer care of M/s. Heera entity supra to block her IBG and refund the money which is not invested, they were sending mails with false response and she and her husband went to Heera Gold at Banjara Hills on 07.07.2018 and given a written letter to give back their amount which was not invested lying with them and Mr. Jaweed, employee of entity Heera supra received the same saying they are going to refund by 45 days and issued letter to that effect with stamp and signature on behalf of the entity and after 45 days on 27.08.2018 when they went they were made to sit till evening during the whole day by assuring of they are transferring of their money back and while closing the office at 5 PM everybody left saying one or other left and asked to come on 31.08.2018 so that to transfer the amount to their account and on that day when they went they forcibly asked her to accept and sign the document to refund in 2 months by 30.10.2018 else by threat that if she goes to the police station they will not refund any money and there is also threat from the accused entity to the life of her and her husband. They have no permission of RBI in accepting deposits much less from SEBI and they were calling bouncers and rowdies in threatening her and now Heera Shaik and her associates advertised of she is MD of Heera Group of Companies induced the halal policy on Islamic religious law in assets management real estate, securities, stocks, bonds, shares and mutual funds asking gullible public to invest minimum of Rs.50,000/- for 6 months on assured benefit of 40%, 20% towards taxes to the Government with indemnity to return in cash or gold and their associates Thomas, Mouli, Amer are taking care of Banjara Hills office and fake promises and not even paying any profits and not responding to the calls to refund, they cheated and misappropriated the amount which are hard earned money and savings of them and there is big hawala racket with money laundering in cheating the innocent public of the whole country.

The contentions in the bail application vis-à-vis oral submissions of the learned counsel for the petitioners Sri DH Shaik represented by senior counsel Sri CV Mohan Reddy are that under Heera Group of Companies, there are several companies incorporated under the Companies Act and of whom Heera Gold Exim Limited is one such, said company initially incorporated in 2010 as a private limited company later converted into public limited company in 2011, with the objects "to carry in India or elsewhere the business to buy, sell, import, export, wholesale, retail and to act as agent, broker, job worker, consignor, contractor, vendor, collaborator, stockiest, distributor or otherwise to deal in all shapes, sized, varieties, designs, applications, combinations and uses of apparel, ornaments, gems, jewelleries, goods, watches, clocks, cutleries, articles and materials thereof made partly or wholly of gold and other related business activities."

In the course of its business activities Heera Gold Exim Limited announced a scheme inviting the purchasers to buy the gold units @ Rs.25,000/- per unit to utilize the amount by the company for purchase and sale of gold in conducting gold trade and the gross trade declaration will be generated every quarterly viz., August, November, February and May of every year and gross trade declaration derived will be shared between the company and the customer in the ratio of 60:40 and there is lock-in period of one year for getting the benefit of gross trade declaration and any customer willing to withdraw the money within the lock-in period will be allowed for withdrawal remittance after 5th month from the date of purchase of gold unit, without the benefit of gross trade declaration, the entire transactions relating to purchase of gold units or withdrawal remittance will be through online bank transaction, the process of confirmation of purchase of gold units will be done by the company within one month from the date of remittance of purchase money from customer, for each purchase, the customer will be issued a valid receipt and the withdrawal remittance also should be made online. The defacto-complainant's husband purchased 100 gold units from Heera Gold Exim Limited on 18-06-2018 by issued cheque for Rs.25,00,000/- and he was issued a purchase receipt by the company and even before confirmation of said purchase, started demanding for withdrawal orally without making any request for withdrawal remittance online and lodged complaint on 10-09-2018 with untrue averments. The defacto-complainant herself was one of the customers who purchased 62 gold units on 14-02-2018 and she was benefited with gross trade declaration and the amounts transferred to her periodically and she and her husband knows the procedure and the terms and conditions of purchase of gold units and having aware started demanding for refund and chosen to give complaint for reasons best known, that too falsely though there are remedies available under law to enforce any civil rights in appropriate civil forum and the giving of police complaint with publicity and created panic among other customers is untenable. It is also contended that even on face value of the allegations no offence made out and police without conducting preliminary enquiry registered the crime. The accused No.1 as the Managing Director of the company was arrested on 15-10-2018 and later was granted regular bail in Crl.M.P.No.3229 of 2018 by Metropolitan Sessions Judge, Hyderabad, and by virtue of the registration of other crimes, she was produced on PT warrants in other Courts and bail granted in Crl.M.P.No.3229 of 2018 was cancelled by another bench of this Court in Crl.P.No.11354 of 2018 and SLP(Crl).No.10285 of 2018 filed by A.1 before the Apex Court was dismissed on 14-12-2018 and while stood thus, the petitioners and another by name Molly Thomas were issued notices by the C.C.S., D.D., Hyderabad police under sections

91/160 Cr.P.C. on 06-11-2018 and they filed Crl.M.P.No.3464 of 2018 for anticipatory bail and Molly Thomas pursuant to the notice appeared was arrested and she was remanded to judicial custody and her anticipatory bail became infructuous and the application of the petitioners was dismissed by the learned Sessions Judge on 03-12-2018. The offences for which the crime registered under Sections 406 & 420 IPC and Section 5 of the Act, 1999 and Sec.3 to 6 of the Act, 1978 no way applies to the facts on hand much less against the petitioners who are Directors of the company and if all they are also being arrested, the entire business activities of the company become stand still which may lead to forcible winding up, which is impermissible under law. It is also contended that in the year 2012, crime No.154 of 2012, dated 14-08-2012 registered by the C.C.S. police under section 420, 406 r/w section 34 of IPC against accused No.1 on the complaint of one Member of Parliament dated 01-08-2012, where accused No.1 was granted anticipatory bail by the Metropolitan Sessions Judge, Hyderabad in Crl.M.P.No.3460 of 2012 by order dated 27-09-2012 and later the company activities continued all through and several customers benefited by purchase of gold units and the company is lawfully carrying the business activities. The learned Sessions Judge did not properly consider the facts supra in dismissal of the anticipatory bail application referred supra and there is no any illegal activities to register any crime for the sin of pursuing the business activities as part of fundamental right and the company never cheated its customers and the allegations of the defacto complainant are untrue and the police under the guise of issuing notices are bent upon to arrest on appearance. If at all there is any offence there are penal provisions under Sections 211 & 212 of the Companies Act 2013 and the present crime no way survives and as such, the petitioners are entitled to anticipatory bail.

Whereas the learned Public Prosecutor in opposing the anticipatory bail application filed counter affidavit in support of it also produced the case diary on the progress of investigation and submits that A1 among others involved in as many as 19 crimes within the State of Telangana, Maharastra and Karnataka having furnished the said crime numbers, but for the one of 2012 supra all others are of 2018 from their activities operating across the country and even abroad and the present petitioners are A.5 to A9 there is criminal conspiracy among all the accused persons with this modes operandi of advertising through online and print and electronic media and A.1 is MD of 15 and odd Heera Group of Companies operating engaged in about 181 Marketing Executives and 2050 Direct Selling Agents by inducing umpteen customers in luring huge amounts with the pretence of deposits in different modes monthly, yearly and with different lock-in periods and by making initial returns as if profits to gain confidence and to invest more with deception in gaining wrongfully from that cheating several customers which prima facie attracts the penal offences supra and A6 received Rs.95,00,000/-, A7 received Rs.2,71,000/- from Heera Group of Companies bank accounts and A8 executed transactions to a tune of Rs.14,00,000/- and apart from that approximately Rs.2 crores transferred from A6 account to SA Builders Account and details of several transactions to be investigated to elicit the truth and the scam and approximately Rs.1.93 crores transferred from Heera Group of Companies bank accounts that is from Heera Foodex Private Limited, Heera Gold Exim Limited, Heera Retail (Hyderabad) Private Limited, Heera Gold Exports and Imports to the account of A9 with Axis Bank and A5 also transferred Rs.27,19,000/- from his personal account of Axis Bank to the account of A9 in Axis Bank and crores of amounts collected shown embezzled and in most money circulation and deposits schemes in an unsustainable business module, creating confidence and later become falter in bursting bubble in ultimate resulting of thousands of customers among public to injustice and loss in crores of rupees by such luring from exploitation under the guise of business investments and it is not even the case of the petitioners that under Section 212 of the Companies Act in serious fraud investigation taken up by the Central Government Agency to question the continuation of the investigation proceedings of the present crime. It is also contended the petitioners are intentionally absconding and failing to cooperate even notices served for early and fair investigation to unearth the truth and they are not entitled to the concession of bail that too from the seriousness of the crime involvement with conspiracy and from cancellation of bail of A1 by another bench of this Court confirmed by the Apex Court and sought for dismissal of the anticipatory bail application.

Heard and perused the material on record.

Needless to say, FIR need not be an encyclopedia and it is not a crime pending under investigation confining to the facts of case of complainant alone though the crime registered is from the facts referred supra and from the above it involves magnitude of the crime in deceiving several customers involving crores of rupees under guise of profitable investments and its embezzlement from what the investigation material discloses. Thereby and that too as the crime is in the nasal stage of investigation and from their involvement with other crimes as referred supra from their bail application averments at ends lines of Para 10 itself indicates that they as Directors in participation of the affairs of the company. Further, as observed by the Apex Court, magnitude of the crime and conspiracy are also relevant factors in setting aside the grant of bail by the Sessions Court and High Court, vide **C.B.I Vs. V.Vijay Sai Reddy**[1]**,** where the Apex Court held at Paras 9 & 26 as follows:

> "09……………….If there is specific allegation by the prosecution that the accused in question was a party to the criminal conspiracy, neither the Special Court nor the High Court is justified in granting bail to the said person. These principles have been reiterated vide **State of U.P. through CBI vs. Amarmani Tripathi**, (2005) 8 SCC 21, para 31, **Dinesh M.N. (S.P.) vs. State of Gujarat**, (2008) 5 SCC 66, para 27, **Narendra K. Amin (Dr.) vs. State of Gujarat and Another**, (2008) 13 SCC 584 para 27, **State of Maharashtra and Others vs. Dhanendra Shriram Bhurle and Others**, (2009) 11 SCC 541, para 8, **Central Bureau of Investigation, Hyderabad vs. Subramani Gopalakrishnan and Another**, (2011) 5 SCC 296, para 25.
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> …………………..
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> 26) Finally, though it is claimed that respondent herein (A-2) being only a C.A. had rendered his professional advise, in the light of the various serious allegations against him, his nexus with the main accused A-1, contacts with many investors all over India prima facie it cannot be claimed that he acted only as a C.A. and nothing more. It is the assertion of the CBI that the respondent herein (A-2) is the brain behind the alleged economic offence of huge magnitude. The said assertion, in the light of the materials relied on before the Special Court and the High Court and placed in the course of argument before this Court, cannot be ignored lightly."

Having regard to the above, the petitioners are not entitled to the concession of anticipatory bail.

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[1] (2013) 7 SCC 452

Accordingly and in the result, this Criminal Petition is dismissed.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 21.02.2019
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