IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2020

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.7324 of 2020

1. Money Deal Trading Solutions
2. Senthil Kumar ... Petitioners

/Vs/

The State rep by
The Inspector of Police,
Economic Offences Wing,
Namakkal.
(Crime No.1 of 2019) ... Respondent

Prayer: Criminal Original Petition filed under section 439(1)(b) of Cr.P.C., to set aside the Condition No.1 to 5 imposed by the Honourable Special Judge, TNPID Act, Coimbatore in Crl.M.P. No.763 of 2020 dated 02.04.2020 and modify the condition and release the petitioner on own bond.

For Petitioners : Mr.Sundar Mohan for Mr.K.R.Venkatesan

For Respondent : Mr.C.Iyyappa Raj Additional Public Prosecutor

* * * * *

ORDER

This petition has been filed by the petitioners, to set aside the Condition No.1 to 5 imposed by the Honourable Special Judge, TNPID Act, Coimbatore in Crl.M.P. No.763 of 2020 dated 02.04.2020 and modify the condition and release the petitioner on own bond.

2. The case of the prosecution is that M/s.Money Deal Trading Solutions is a limited company and one Senthil Kumar is its managing director, he had introduced six schemes namely 1) Money Deal 2) MD Accounts 3) MD Realtors 4) Market Deal 5) MD online Deal and 6) MD plan and other schemes. One Devi and her husband Ramachandran are the other two directors in this trading company. By virtue of various schemes collected huge investments from the various persons and these persons were promised higher returns in interest, bonus and other benefits. On seeing the advertisements the defacto complainant one Kaliyappan deposited money on various dates from 08.06.2018 to

27.05.2019 to the tune of Rs.12,57,000/-. The petitioners repaid as profit and bonus amount to the defacto complainant to a tune of Rs.6,36,959/- and the balance money of Rs.6,20,041/- was not paid. When the defacto complainant asked for the same, the petitioners were delaying the payment and later absconded, finally the business was closed. It is found there are 163 depositors. The defacto complainant lodged a complaint and thereafter, a case in Crime No.1 of 2019 under Sections 120(b), 420 of IPC and Section 5 of TNPID Act, 1997 read with Section 3, 4, 5 and 21 of banning of Unregulated Deposits Scheme Ordinance 2019 was registered by Namakkal (Economic Offences Wing-II, Namakkal) against the petitioners on 20.12.2019.

3. The contention of the petitioner is that the petitioner coming to know about the registration of the case voluntarily surrendered on 28.01.2020. Thereafter, he was remanded to judicial custody on the same day. During investigation, the petitioners business establishment, bank accounts and properties were attached. The petitioners office and house were searched and their laptop, computer, all electronic devices were seized by the respondent police. The petitioner has disclosed all the facts known to him. The petitioner was granted statutory bail under Section 167(2) of Cr.P.C in Crl.M.P.No.763 of 2020 by order dated 02.04.2020. The lower Court while granting bail directed the petitioners to execute own bond for a sum of Rs.5 Crores with 9 conditions ordered as follows:

> "In the result, the petitioners are ordered to be released on bail on his executing an own bond for a sum of Rs.5 Crores (Rupees Five Crores only) today and on further conditions that:-
>
> 1. The petitioner/A2 shall deposit Rs.5 Crores (Rupees Five Crores only) in to the court within 30.04.2020;
>
> 2. The petitioner shall produce two sureties, each for Rs.5 Crores (Rupees Five Crores only) to the satisfaction of this Court after 15th April 2020 and before 30.04.2020;
>
> 3. The sureties shall produce solvency certificates issued by the Tahsildar of their respective properties for Rs.5 Crores (Rupees Five Crores only) each;
>
> 4. The sureties shall affix their photographs and Left Thumb Impression in the surety bound;
>
> 5. The accused and his sureties shall produce a copy of their Aadhar cards or Bank pass Book to ensure their identity;
>
> 6. The petitioner shall appear before this court on 60 working days at 10.30 a.m., and thereafter 1st working day of every succeeding month until final report is filed;

7. The petitioner shall not abscond either during investigation or trial;

8. The petitioner shall not tamper with evidence or witness either during investigation or trial; and

9. On breach of any of the aforesaid conditions or If the accused thereafter abscond, a fresh FIR can be registered under Section 229A of I.P.C."

4.The petitioners aggrieved with regard to Clause No.I, II & III. Further it is stated that due to the condition imposed being onerous, the statutory bail granted under Section 167(2) of Cr.P.C which is a beneficial provision has been scuttled and the petitioner is still under confinement since the conditions are unrealistic and the petitioner would never be in a position to comply the same. The petitioner would be in continuous incarceration. The petitioners relied upon the following cases:-

(i) Uma Devi Vs State reported in 2019(1) L.W.(Crl) 687;

(ii) Pragati Thakoor Vs State of Maharastra, reported in 2011 (10) SCC 445;

(iii) Uday Kumar Vs State reported in 2017 (15) SCC 67.

5.He further submitted that Courts granting bail should not be carried away by the enormity of the offences and not to impose onerous condition thereby indirectly denying bail to the petitioners/accused.

6.The learned Additional Public Prosecutor submitted that the petitioner was granted bail under Section 167(2) of Cr.P.C, the investigation is yet to be completed and the charge sheet is not filed. The petitioners along with other accused had swindled and cheated huge sums of money running several crores, so far 163 complaints had received. It is expected that there would be approximately 500 depositors who were cheated to a tune of ten Crores. Only one property of the petitioners could be attached so far. Further the petitioner is tight-lipped and not disclosing as how and where such huge money have been siphoned. It is seen that the petitioners was having online business transactions and all these transactions have now erased with great difficulty, the retrieval process is going on. The petitioner in a well-planned manner, misappropriated and swindled the hard earned money of the depositors. The initial amount paid to the depositors was only to gain confidence and thereby gaining confidence of other prospective depositors and cheated to the tune of Rs.10 Crores. The petitioners cheated the general public/depositors and the lower Court imposing such condition is proportionate to the offence committed by the petitioner. The imposition of such condition is not onerous one and opposed this modification petition.

7.Considering the submissions, it is admitted that the petitioner were granted bail under Section 167(2) of Cr.P.C in Crl.M.P.No.763 of 2020 on 02.04.2020. It is also to be seen that Section 167(2) of Cr.P.C provision is a beneficial one and the right to the accused is an accrued and indefeasible right, the Apex Court as well as this Court in a catena of judgments have clearly stated that the condition should not be so onerous that the accused is unable to comply with thereby directly or indirectly denying the accused/petitioner right of bail. While granting statutory bail the merits of the case need not be to looked into. In the case of bail under Section 167(2) of Cr.P.C. the gravity of the offence may not be a relevant consideration while granting bail, the Court to be satisfied that the accused has got roots in the community and not likely to abscond and the conditions to be reasonable taking into consideration of the facts and circumstances of the case. Further the fundamental concept of seeking surety and security is for the purpose the accused appeared as per the charge on the specific time and place. This fundamental concept should not be swayed by the gravity of the offence.

8.Keeping with the above principles of law in mind, this Court is inclined to modify the condition as follows:-

(a) the petitioner shall execute own bond for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) before the Superintendent of the concerned prison, in which the petitioner has been confined on his release;

(b) The petitioner/A2 shall deposit the document No.4164 of 2018 dated 10.12.2018, the property at Namakkal Town which is value around 15 to 20 lakhs before the lower Court while executing sureties.

(c) the petitioner shall execute two sureties for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) each, before the concerned Magistrate within a period of 15 days from the date of lifting of lockdown and commencement of regular functioning of Court below, failing which the bail granted by this Court shall stand dismissed automatically;

(d) the sureties shall produce solvency certificates issued by the Tahsildar of their respective properties for Rs.5 Lakhs (Rupees Five Lakhs only) each;

(e) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(f) the petitioner should appear before the respondent police daily until further orders.

(g) the petitioner shall not commit any offences of similar nature;

(h) the petitioner shall not abscond either during investigation or trial;

(i) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(j) on breach of any of the aforesaid conditions, the learned Judicial 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 petitioners 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];

(k) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

7. With the above modification, this Criminal Original Petition is allowed.

-sd/-
19/06/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SPECIAL JUDGE,
TNPID ACT, COIMBATORE.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE
ECONOMIC OFFENCES WING,
NAMAKKAL.

CC to M/S.K.R.VENKATESAN Advocate on payment of necessary charges

CRL OP.7324/2020

Date :19/06/2020

CS 29/09/2020