IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2020

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THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

Crl.O.P.No.9850 of 2020

Rajesh ... Petitioner

Vs.

The State rep. by,
The Inspector of Police,
Economic Offences Wing-II,
Erode District. ... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of the Code of Criminal Procedure, to enlarge the petitioner on bail pending trial in C.C.No.24 of 2013 on the file of the Special Court under TNPID Act, Coimbatore.

For Petitioner : Mr.D.Arun

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

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ORDER

The petitioner, who is facing trial in C.C.No.24 of 2013 pending before the learned Special Court under TNPID Act, Coimbatore, has filed the bail petition. Earlier, the petitioner had filed a bail application in Crl.O.P.No.8696 of 2020 and the same was dismissed, by this Court on

15.06.2020. This is the second bail application.

2.The case of the prosecution is that M/s.Ashok Farms and Coparas/A1, collected money for a scheme of monthly payments. The petitioner/A2 is the Director of the said Company. The accused company and the petitioner, in repayment of the invested amounts as promised by them, cheated 89 persons, who are victims in this case. The petitioner had collected a sum of Rs.1,38,25,550/-. One of the victim namely E.Chidambaram, lodged a complaint before the Gobi Police Station on 01.11.2012 against the company/A1 and the petitioner/A2, which was registered in Crime No.727 of 2012, for offence under Section 420 IPC. Later, the case was transferred to the Economic Offences Wing-II, Erode. The investigating officer on completion of investigation filed charge sheet against A1 and the petitioner/A2 on 30.08.2013. In this case, the cash of Rs.3,21,867/- in DRO, Account and immovable properties worth around Rs.25 lakhs, were attached.

3.The petitioner on 21.10.2013 appeared before the trial Court and copies were furnished to him. On 06.12.2013, he had filed a discharge petition in C.M.P.No.2315 of 2013 and the same was dismissed on 07.07.2014. On 09.07.2014, the petitioner did not appear before the trial Court and NBW was issued. Thereafter, 126 witnesses were examined. The petitioner had been dragging on the proceedings on one pretext or other. The petitioner submitted that he is ready for settlement. On that score, the case was prolonged. On 21.06.2016, again NBW was issued against the petitioner. On 11.07.2016, the respondent has filed a petition in Crl.M.P.No.1935 of 2016, for examination of additional witnesses. Again on 08.11.2016 for non appearance of the petitioner, NBW was issued. On 23.02.2017, the trial Court directed the petitioner as well as prosecution, to file written arguments. On 07.03.2017 written arguments was filed by the prosecution side. Subsequently, oral arguments were also completed. At that time, the petitioner filed a petition in Crl.M.P.No.1019 of 2017 to reopen the prosecution witnesses on 24.03.2017. From 06.09.2018, the petitioner failed to appear before the trial Court and again NBW was issued against him. Since there was no representation on the side of the petitioner, the trial Court closed the evidence on 08.07.2019. The case was posted for judgment on 16.07.2019. Again a recall petition was filed by the petitioner, it was allowed. Despite the same, the petitioner failed, to cross examine the witnesses and he remained absent. Thereafter, on 18.12.2019 again NBW was issued against him and the petitioner was secured on 20.01.2020. Thus, the petitioner had been successfully dragging on the proceedings for the past seven years on one pretext or other. NBW issued on five occasions, would clearly reflect the petitioner's intention and non cooperation of trial.

4.The learned counsel for the petitioner submitted that the petitioner was unable to attend the trial Court due to ill health of his age old parents. Further, due to the petitioner incarceration, he is unable to give sufficient and effective instructions to the counsel for the trial of the case. Since the commencement of trial was fully cooperating and as many as 80 witnesses were examined on the side of the prosecution, the evidence was closed on 27.11.2015. Thereafter, the case was posted for questioning the accused under Section 313 Cr.P.C. At the instance of the prosecution, the case was reopened and 12 additional witnesses were examined. It was the respondent, who had at two instances reopened the case, when the case was reserved for judgment on 24.03.2017. The petitioner was not objected for reopening the case and he had cooperated with the trial. The petitioner's continuous confinement is a penetrative measure even before the conclusion of the trial of the case.

5.The learned counsel for the petitioner further submitted that immovable and movable propeties of the petitioner, to the value of Rs.40 lakhs, were attached. Further, from A-Diary extracted and uploaded in the official website of District Court (E-COURTS), it is seen that the case was not in progress, due to connectivity issues of the video conference facilities and the Courts have been closed due to COVID-19 pandemic. Hence, non appearance of the petitioner, on the particular day, was neither wilful and nor wanton. Hence he prayed for bail.

6.The learned Additional Public Prosecutor filed written submissions wherein he has narrated about 5 incidents, on which, NBWs were issued against the petitioner and also the petitioner dragging on the proceedings on one pretext or other. On two occasions, the petitioner had promised to settle the deposits, but everything remained in words. It is true that the case was argued and posted for judgment. At that time, 12 more depositors left out were examined. Hence, the petition was filed and thereafter, the depositors were examined as additional witnesses. In this case, the petitioner had cheated the public to the tune of Rs.1,38,25,550/, of which only immovable property worth of Rs.25 lakhs and a cash of Rs.3,21,867/-, could be attached. The rest of the amount siphoned out by the petitioner is yet to be recovered. The petitioner through the scheme had lured 81 victims and collected their money with an intention to usurp the same. The petitioner has been successfully dragging on the proceedings for the past seven years, defeating the purpose for which the special enactment and Special Court formed. Further, the written arguments have been filed and arguments have been completed on the side of the prosecution, the petitioner is yet to complete his arguments. If the petitioner is orderd to be released on bail, he would abscond and the case cannot reach its logical conclusion.

7.This Court has considered the rival submissions and perused the materials available on record.

8.It is seen that on 15.05.2020, this Court had dismissed the earlier bail application of the petitioner, wherein finding that the petitioner is the cause for delay and dragging the case. After dismissal of the bail, there is no change of circumstances. The petitioner's contention that he is not the cause for delay, is not correct, as could be seen from the petitioner on earlier five occasion, had not appeared before the trial Court. Thereafter, NBW has been issued and with great difficulty, secured the petitioner. Now, the case is posed for arguments on the side of the petitioner/accused.

9.Considering the antecedents of the petitioner and the stage of the case, this Court, is not inclined, to grant bail to the petitioner. However, the trial Court, is directed, to take effective steps to conclude the trial, at the earliest.

23.07.2020

Index: Yes/No
Internet: Yes/No

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M.NIRMAL KUMAR, J.

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To

1.The Inspector of Police,
Economic Offences Wing-II,
Erode District.

2.The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.9850 of 2020

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