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

Reserved on	Pronounced on
09.04.2021	21.04.2021

PRESENT
The Hon`ble Mr.Justice G.CHANDRASEKHARAN

CRL OP(MD). Nos.4619 and 4620 of 2021

Rakesh Singh Narwaria ... Petitioner /Accused No.3 in Crl.O.P.(MD)No.4619 of 2021

Ahibaran Singh ... Petitioner/Accused No.4 in Crl.O.P.(MD)No.4620 of 2021

K.N.Ramachandran ... Petitioner/Depositor/Intervener in Crl.MP.3025/21 IN Crl.OP.4619/2021

Vs

The Joint Director of Police,
Central Bureau of Investigation(EOW Branch),
III Floor, EVK Sampath Building,
College Road, Chennai.
Crime No.RC0692018E0008
... Respondent/Complainant in both petitions

For Petitioner in Crl.O.P.(MD)No.4619 of 2021 : Mr.V.Kathirvelu Senior Counsel for M/s Ankit Anandharaj Shah

For Intervener in Crl.OP(MD)No.4619/2021 : Mr.S.Thirupathy

For Petitioner in Crl.O.P.(MD)No.4620 of 2021 : Mr.P.Venkatean Advocate

For Respondent in both cases : Mrs.Victoria Gowri Assistant Solicitor General of India

PETITIONS FOR BAIL Under Sec.439 of Cr.P.C

COMMON PRAYER :-
For Bail in Crime No.RC0692018E0008 on the file of the respondent police.

COMMON ORDER : The Court made the following order :-
The petitioners, who were arrested by the respondent police on 19.01.2021, for the offences punishable under Sections 120-B r/w 406 and 420 I.P.C., and Section 5 of the TNPID Act, 1997 in Crime No.RC0692018E0008, on the file of the respondent police, seek bail.

2. The petitioners are A.3 and A.4. The case of the prosecution is that the first accused is M/s Parivar Dairies and Allied Limited Company and other accused are holding various positions in the first accused Company and some of them are involved in managing the affairs of the Company. The allegations against the accused in this case is that the petitioners and other accused entered into criminal conspiracy during the year 2002 at Gwalior and other places for the purpose of getting wrongful gain for themselves by cheating innocent public by way of collecting deposits/investments from them dishonestly and fraudulently, without obtaining any approval or registration from the Reserve Bank of India (RBI) or Securities and Exchange Board of India (SEBI) and with false promise to pay very high return on such deposits/investments and collected deposits/investments from 17379 depositors to the tune of Rs.49,76,53,691/-(Rupees Forty Nine Crores, Seventy Six Lakhs, Fifty Three Thousand, Six hundred and ninety one only). Instead of returning the deposited amount on maturity, the petitioners along with other accused said to have misappropriated the said amount for their personal gain. The petitioner in Crl.O.P.(MD)No.4619/2021/A.3, was one of the promoter directors of M/s Parivar Dairies and Allied Limited and he has 60% of the shares of the Company. The Memorandum of Association and Articles of Association of M/s Parivar Dairies and Allied Limited have no provisions for soliciting deposit from the general public. However, the accused floated various fraudulent schemes such as Installment Payment Plan (IPP), Recurring Deposit (RD) and Down Payment Plan (DPP) and collected huge sum of money from the general public.

3. The defacto complainant in this case is one of the investors in the scheme introduced by the first accused Company. From the FIR., it is seen that the defacto complainant invested a sum of Rs.1,07,000/- in his name, in the name of his wife and his sister. Repeated request for payment of money on maturity, did not yield any result and when he went again on 14.12.2015, he found the Company premises closed. Therefore, he gave the present complaint and on that basis, the present case came to be registered.

4. The learned Counsel appearing for the petitioner in Crl.O.P.(MD)No.4619 of 2021 submitted that the petitioner is no way involved in the present case. In fact he resigned as a Director from M/s Partivar Dairies and Allied Limited on 20.08.2008. His resignation was accepted and sent to the Registrar of Companies. Thereafter, he had no relationship with M/s Partivar Dairies and Allied Limited. The day to day affairs of the Company was managed by one Mr.B.L.Sharma. The petitioner is not involved in collection of deposit or any investment from the general public. Therefore, no case can be made out against the petitioner under Sections 120-B r/w 406 and 420 I.P.C., and Section 5 of the TNPID Act, 1997.

5. The learned Counsel appearing for the petitioner in Crl.O.P.

(MD)No.4620 of 2021 submitted that he was a mere sleeping Director of M/s Parivar Dairies and Allied Limited and he is no way connected with day to day affairs of the Company. He has not either personally or through agency collected or received any money from the general public. This is a false case foisted against him.

6. It is submitted on behalf of both petitioners that they are in judicial custody from 19.01.2021. The investigation in this case is over and their custody is no more required. It is further submitted that originally the case was registered by the Economic Offences Wing, Madurai and thereafter, the same was transferred to the CBI. In fact, the Economic Offences Wing, Madurai has filed final report before the concerned Court. In view of the completion of investigation and the fact that the petitioners are in judicial custody from 19.01.2021 and also the fact that they are no way responsible for collection of deposits/investments from the general public, the learned Counsel appearing for the both petitioners prayed this Court to grant bail to the petitioners.

7. The learned Assistant Solicitor General of India appearing for the respondent submitted that originally this case was registered by the Economic Offences Wing, Madurai and subsequently vide order of this Court, dated 11.09.2018, in Crl.O.P.(MD)Nos.10036 and 11021 of 2016, the case was transferred to CBI for investigation. While ordering for investigation of the cases by CBI, it was observed that magnitude of the problem is also very high, since it involves lakhs of investors, who have been cheated to several crores of Rupees and it was also observed that this case involves the interest of lakhs of innocent depositors, who have lost their hard earned money. The accused persons having cheated such a large number of people and are moving around freely without any effective action being taken against them. Therefore, the CBI had taken over the investigation. The investigation found that the petitioners/Directors of the first accused Company along with other accused have collected huge deposits from innocent public numbering 17379 to the tune of Rs.49,76,53,691/-(Rupees Forty Nine Crores, Seventy Six Lakhs, Fifty Three Thousand, Six hundred and ninety one only), thereby causing wrongful loss to the depositors and wrongful gain to the petitioners. The deposit amounts were collected without getting proper approval from the Reserve Bank of India (RBI) or Securities and Exchange Board of India (SEBI) and against the provisions governing the Company's Memorandum of Association and Articles of Association. The act of collecting money in any form without prior licence or approval from the general public is illegal act. In view of the large scale of cheating from large number of public in various places in Tamil Nadu and out of Tamil Nadu, the investigation is under way and every depositor has to be enquired and only then, the investigation would come to completion.

8. The learned Assistant Solicitor General of India further submitted that the petitioners have collected deposits under various schemes not only in Tamil Nadu alone, but they have also started branches in other parts of India and also collected huge money from the innocent public. If they are released on bail, there is every possibility of their abscondance from investigation and they will not appear for trial and there will be absolutely no possibility of

getting the hard earned money of general public.

9. Further the learned Assistant Solicitor General of India brought to the notice of this Court the judgment of the Honourable Supreme Court of India in ***Nimmagadda Prasad Vs. Central Bureau of Investigation*** reported in ***CDJ 2013 SC 420***, for the proposition that in a white-collar crime like this, this Court should be cautious in granting bail or anticipatory bail. It is relevant to extract hereunder the relevant portion of the judgment of the Honourable Apex Court:

" 26) Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fiber of the country's economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In State of Gujarat vs. Mohanlal Jitamalji Porwal and Anr. (1987) 2 SCC 364 this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under:-

"5.....The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest…."

27) While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

28) Economic offences constitute a class apart and need to be visited with a different approach in the matter of *bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."*

Therefore, the learned Assistant Solicitor General of India, prayed for dismissal of these petitions.

10. The learned Counsel appearing for the intervenor in Crl.M.P.(MD)No.3025 of 2021 in Crl.O.P.(MD)No.4619 of 2021 towed to the arguments advanced by the learned Assistant Solicitor General of India. He further submitted that the petitioner/A.3-Rakesh Singh Narwaria had similar case pending in Madhya Pradesh in Crime No.255/2011, dated 28.05.2011, in Gole Ka Mandir Police Station, Gwalior for the offences under Sections 3(1)(2)(4) of the Adhiniyam of 2000 and Section 45-5/58(B)(5A) of the RBI Act, 1934. Therefore, he also prayed for dismissal of the petitions.

11. Heard the learned Counsel appearing for the petitioners, learned Assistant Solicitor General of India and the learned Counsel appearing for the intervenor and perused the materials placed on record.

12. Considering the rival submissions, it is seen from the submissions made that there is a *prima facie* case against the petitioners and other accused and they have collected the deposits and investments to the tune of Rs..49,76,53,691/-(Rupees Forty Nine Crores, Seventy Six Lakhs, Fifty Three Thousand, Six hundred and ninety one only) from 17379 depositors. The petitioners have not denied the establishment of M/s Parivar Dairies and Allied Limited and that they were holding the position of Directors in that Company. Though the petitioner/A.3 in Crl.O.P.(MD)No.4619 of 2021 claimed that he resigned the post of Director in the year 2008, it is seen from the case of the respondent police that the petitioners and others had involved in this crime from the year 2002. Therefore, the alleged resignation of the petitioner/A.3- Rakesh Singh Narwaria in the year 2008 will not exonerate him from the criminal prosecution.

13. It is seen that the petitioners and others opened branches at Chennai, Thanjavur, Tiruttani, Theni, Erode, Virudhunagar, Ramanathapuram, kancheepuram etc., for mobilizing the deposits from the public and issued deposit receipts. They also lured the general public and agents by prompt payments of commission and awards to the performance of the agents, disbursing promised maturity amount to the depositors in respect of initial years of deposits matured by 2011-2012, from the amount which was mobilized from the subsequent deposits. Thereafter, no amount was returned to the depositors.

14. Considering the enormity of collection of deposits/investments under various schemes in various parts of Tamil Nadu, this Court finds that the contention of the learned Assistant Solicitor General of India is that the respondent police requires

reasonable time to complete the investigation. There is also substance in the submissions of the learned Assistant Solicitor General of India that if the petitioners are released on bail, there is a possibility of their abscondance from investigation and also depriving the possibility of recovering atleast some portion of the amount deposited. It is also shown that the petitioner/A.3-Rakesh Singh Narwaria had similar case pending in Madhya Pradesh in Crime No.255/2011, dated 28.05.2011, in Gole Ka Mandir Police Station, Gwalior for the offences under Sections 3(1)(2)(4) of the Adhiniyam of 2000 and Section 45-5/58(B)(5A) of the RBI Act, 1934.

15. For all the reasons above stated, taking note of the observations of the Honourable Supreme Court in the aforementioned judgment with regard to Economic Offences, and in the interest of justice, this Court is of the considered view that the releasing the petitioners would definitely affect proper investigation and prosecution. Therefore, this Court is not inclined to grant bail to the petitioners. Accordingly, both the Criminal Original Petitions are dismissed.

sd/-
21/04/2021

/ TRUE COPY /

/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO
1. The Joint Director of Police,
   Central Bureau of Investigation(EOW Branch),
   III Floor, EVK Sampath Building,
   College Road, Chennai.
2 The Superintendent,Central Prison, Madurai.
3. The Assistant Solicitor General of India,
   Madurai Bench of Madras High Court, Madurai.

+2. CC to Mr.P.SIVACHANDRAN, Advocate SR.No.3309

ORDER
IN
CRL OP(MD)Nos.4619 & 4620/2021
Date :21/04/2021

SMA/30.04.2021 : 6P/6C