IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THURSDAY ,THE TWENTY NINETH DAY OF APRIL TWO THOUSAND AND TWENTY ONE

:PRESENT:

THE HONOURABLE JUSTICE G SRI DEVI

CRIMINAL PETITION NO: 2764 OF 2021

Between:

1. Abhilash Thomas, S/o Thomas
2. Prem Kumar P. S/o R.Parthasarathy
3. Mandalanen Subramanyam, S/o M.Ramachandran
4. Imdadulla Shariff, S/o Ahmedulla Shariff
5. CK. Sujid, S/o Mohummed
6. NoorMohammed, S/o Khamosha Saheb
7. Mulugu Venkatesh, S/o Lachayya
8. Maale Ranga Reddy, S/o M.Penta Reddy
9. Konda Srinivasulu, S/o Venkateswarulu
10. Namireddy Ashok Reddy, S/o Sathyanarayana Reddy
11. KCS Sharma, S/o Madhan Mohan Sarma
12. Kasani Shesha Rao, S/o Anjaneyulu
13. G.Ramakrishna, S/o Ramesh
14. Narayanam Pavan Kumar, S/o Narsimha Charyulu
15. Ranganathan Suresh, S/o Ranganathan
16. Mannepu Hariprasad, S/o Venkateswar Rao
17. Boga Suryanarayana, S/o Yadagiri
18. B.Uppender, S/o Subharao
19. B.Srinivas Reddy, S/o Madhava Reddy
20. Kurapati Balasaradhi, S/o K.Venkateshwarlu
21. Baddela Soujanya, W/o Upender
22. Kesagani Nagalaxmi, W/o Shasha Rao
23. Mulugu Nagadevi, W/o Venkatesham
24. Mannem Renuka, W/o Hariprasad

(All the Petitioners are lodged in Jail, therein represented by their next friend Nishad S/o. M. Moideen Koya, Aged about 42 years, R/o.Madampoli House, Parambil Bazar, Kuruvattur, Kozhikode, Kerala

Petitioner/Accused 1,2,4,6 to 26

AND

The State of Telangana, Represented by its Public Prosecutor, Through P.S. Gachibowli (EOW-CCS), High Court for the State of Telangana At Hyderabad.

Respondent

Petition under Section 437 r/w 439 of Cr.P.C, praying that in the circumstances stated in the grounds filed in support of the Criminal Petition, the High Court may be pleased to enlarge the petitioners on bail in connection with FIR. No. 124 of 2021 dated. 20.02.2021 on the file of PS. Gachibowli (E0W-CCS)

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and upon hearing the arguments of N NAVEEN KUMAR Advocate for the Petitioners, THE PUBLIC PROSECUTOR for the Respondent and the Court made the following.

ORDER

THE HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No. 2764 of 2021

ORDER:

This Criminal Petition is filed, under Sections 437 and 439 of the Code of Criminal Procedure, 1973, seeking to grant bail to the petitioners/A-1, A-2, A-4 and A-6 to A-26 in Crime No.124 of 2021 of Gachibowli Police Station, Cyberabad, which was registered for the offences punishable under Sections 406 and 420 of I.P.C. and Sections 3 to 6 read with Section 2 (C) of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

The case of the prosecution, in brief, is that from the investigation done by the police and the evidence collected on record, it is revealed that A-1, A-4 and A-5 established a company M/s. Indus Viva Health Sciences Private Limited and joined the known persons in the up line as promoters and with these promoters conducted meetings/seminars all over India at various hotels/resorts, attracted and motivated the innocent people with their Ponzy Schemes and Binary Schemes and collected huge amounts about 1500 Crores as investment. Thereafter, the company did not pay any commissions and return back the invested amount to them and the bank transactions between the promoters and company also clearly establishes the same. Hence, the Company, Directors and Promoters committed misappropriation, cheating towards the victims/innocent people. It is also stated that the accused in the name of M/s. Indus Viva Health Sciences Private Limited Company have involved in other two cases i.e. Crime No.1285 of 2017 of Palativattom Police Station, Ernakulam District, Kerala State and Crime No.20 of 2019 of Bhangagarh Police Station, Assam State.

Heard Sri S.Niranjan Reddy, learned Senior Counsel appearing on behalf of Sri N.Naveen Kumar, learned Counsel for the petitioners and learned Public Prosecutor, appearing for the respondent-State and perused the record.

Learned Counsel for the petitioners would submit that Indus Viva Health Sciences Private Limited (hereinafter referred to as "the Company"), registered under the Companies Act, engaged in the business of selling products through a direct selling distribution and marked as one of the leading direct selling companies in India for the last seven years at International Markets with wide gamut of Ayurvedic products, inclusive of iPulse, iCoffee, iGlow, iSlim, iCare, iCoffee Creamer, iCoffee Black therein obtaining drug licence from Department of Ayush for manufacturing the products. A-1 is the Chief Executive Officer, A-4 is the Director, A-6 is the Vice President and rest all the accused are Distributors of the Company. The petitioners, who are arrayed as A-1, A-2, A-4 and A-6 to A-26 are in judicial custody since 06.03.2021. He further submits that as per the complaint, the complainant himself came to the knowledge of the business model of the company only through his own sources and as such it is not the case that the representative of the Company approached the complainant and made him to join the business model and, therefore, no complaint under Section 420 of I.P.C. is maintainable. It is also submitted that there is no entrustment made by the *de facto* complainant to the petitioners for the purpose of attracting Section 406 of I.P.C. Therefore, the entire premise under which the FIR was registered and the petitioners were arrested is without any *prima facie* case against the petitioners. The allegations made in the complaint are vague and ambiguous and only allegation made therein is that after joining the membership, the complainant did not receive any commissions, but does not contain allegations of any wrongful act made by the company to cheat the *de facto* complainant. It is further submitted that the petitioners have always been cooperating with the investigating agency even when the petitioners were illegally detained. It is also submitted that during the course of investigation, the respondent police had seized the company accounts, examined the witnesses and obtained the id and passwords and bank account numbers, which were used for transaction with the company and also addressed letters to various banks freezing the petitioners' bank accounts. As the entire evidence is documented, there is no threat of the petitioners tampering with the evidence. The petitioners undertake that they did not commit any such act and further abide to do all acts in furtherance of cooperating with the investigation, if any. Though the petitioners were taken into custody on 04.03.2021, no incriminating material is being produced by the respondent police till date to show even a *prima facie* case against the petitioners. Under such circumstances, continuing the petitioners in the judicial remand without granting bail is seriously affecting the personal liberties of the petitioners. The petitioners are not charged of any grave and serious offences and the maximum sentence that may be imposed on the petitioners is only seven years if at all they are found guilty of the commission of the alleged offence, as such the petitioners are entitled for bail. The petitioners are law abiding citizens with deep roots in the society and have no criminal antecedents. A-21 to A-24 are women and their bail application may be considered under Section 437 (1) of Cr.P.C. as the said proviso empowers the Court to consider the bail application of women when the offence alleged to have been committed is not punishable with death or life imprisonment. He relied upon the judgment of the Apex Court in ***Kailash Gour and others v. State of Assam***[1].

Learned Public Prosecutor opposed the bail application stating that the petitioners are misrepresenting the facts about their pyramid enrolment scheme as if they indulged only in sales activity; that the petitioners herein did not place what is their actual

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[1] (2012) 2 SCC 34

scheme and they have placed half part of their scheme by misrepresenting their enrolment of members scheme, promise of huge commissions based on enrolment of members in the back end and collection of investment by inducing high returns on their investment. He further submits that investigation is under progress to analyze the data of rank holders, as to how much amount they received as commission and how they enrolled the members to become rank holder. He further submits that A-3, who is the Managing Director and A-5, who is the Director of the company are still absconding and if the petitioners are released on bail, they may escape and join with the absconding accused to tamper the evidence and both of them misappropriated the public amount. He further submits that the accused enrolled the huge number of members into the Ponzi scheme, in their left and right, as in binary system. He further submits that the company is indulging in money circulation schemes under the guise of direct selling entity flouting the direct selling guide lines issued by the Government of India in 2016 and also the direct selling guidelines issued by the State of Telangana in 2017. The accused appeared to have shifted the account books and amounts to some secrete places to screen the evidence and siphon off the amounts to foreign countries. He also submits that several unemployed youth, retired persons and house wives are approaching from several States against the illegal scheme of the company and their grievances have to be verified in this case. He further submits that during the police custody, the petitioners have not furnished the information completely and still some of the documents and data for analysis have to be collected and many witnesses have to be examined and hence if the petitioners are released on bail, they may threaten or cause harm to the witnesses. He also submits that the roles of the petitioners have been specifically attributed and they are in promotion of the illegal money circulation scheme. He also submits that giving commission comes within the purview of mischief of the Prize Chits and Money Circulation Scheme (Banning) Act. He further submits that total amount involved in this case is about 1500 Crores and nearly 9.4 lakhs of people have been affected.

I have carefully considered the rival submissions and perused all the relevant materials relied on by both sides.

As seen from the material on record, during the course of investigation, the respondent-police had already seized the company accounts, examined the witnesses and obtained the *id* and passwords and bank account numbers, which were used for transaction with the company and also made correspondence to various banks with regard to freezing of the bank accounts of the petitioners. Hence, there may not a chance of tampering with the investigation at this stage.

Having regard to the aforesaid facts and circumstances of the case and in view of the fact that the petitioners are in judicial custody since 06.03.2021 and also in view of the peculiar conditions of pandemic COVID-19 prevailing in the country, without adverting into the merits of the case, I am inclined to grant bail to the petitioners.

The Criminal Petition is allowed and the petitioners are directed to be released on bail, subject to the following terms and conditions:

(i) The petitioners shall be released on bail on their executing personal bond to the tune of Rs.2,00,000/- (Rupees Two Lakhs only) each with two sureties to the like amount each to the satisfaction of the I-Additional Assistant Sessions Judge-cum-Chief Metropolitan Magistrate, Ranga Reddy District at L.B.Nagar. Out of two sureties, one surety must be from the native place of the petitioners.

(ii) The petitioners shall not interfere with the investigation, intimidate or induce the material witnesses and shall cooperate with the investigating agency.

(iii) The petitioners shall not misuse the liberty granted to them.

(iv) The petitioners shall personally appear before the Station House Officer, Gachibowli Police Station, Cyberabad on every Saturday between 12.00 Noon to 2.00 P.M.

v) The petitioners shall deposit their passport before the concerned Court at the time of execution of bonds and they shall not leave the territory of India without prior permission of the Court. If the petitioners are not having any passport or if they have already submitted their passport in any case, they shall file an affidavit to that effect.

SD/- N CHANDRASHEKAR RAO
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The I Addl Asst. Sessions Judge-cum-chief Metropolitan Magistrate, Ranga Reddy District at LB Nagar.
2. The Superintendent, Central Prison, Cherlapalli Jail, Medchal District
3. The Superintendent, Central Prison, Chenchalguda Jail, Hyderabad
4. The Station House Officer P.S. Gachibowli (EOW-CCS) at Hyderabad. (by RPAD)
5. One CC to SRI. N NAVEEN KUMAR Advocate [OPUC]
6. Two CC's to Public Prosecutor, High Court for the State of Telangana at Hyderabad (OUT)
7. One spare copy

Avs

HIGH COURT

GSDJ

DATED:29/04/2021

ORDER

CRLP.No.2764 of 2021

HIGH COURT FOR THE STATE OF TELANGANA
SPECIAL CELL
29 APR 2021
* DESPATCHED *

BAIL