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Crl.M.P.No.4379 of 2022 in Crl.A.No.370 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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1. M/s.Sree Nithya Emu & Poultry Farms

2. M/s. Sree Nithya Emu and Poultry Farm
India Private Limited,
Door No.36 C & 36 C/1, Sree Chakra
Complex, First Floor,
Near Balli Hospital,
Opp. Royal Theatre,
Erode District rep. by A3 & A4

3. M.Muniyan @ Pandiyan @ Murugavel

4. M.Mariyammal @ Latha

... Petitioners

Versus

State rep. by Inspector of Police,
Economic Offences Wing II,
Erode.

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(2) of the Code of Criminal Procedure to release the petitioners on bail by suspending the sentence appealed against in C.C.No.7 of 2013 on 11.02.2022 on the file of Special Judge, Special Court under the Tamil Nadu Protection of Interests of Depositors Act Cases, Coimbatore, pending disposal of the above appeal.

For Petitioners : Mr.G.Murugendran



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For Respondent : Mr.S.Vinoth Kumar
Government Advocate (Crl. Side)

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ORDER

Today, for the purpose of deciding the suspension of sentence application, since an averment was made that a huge sum is lying to the account of the accused in this matter and the majority of the amount can be settled with that amount, this Court requested the Competent Authority to be present before this Court. *Mrs.C.Santhoshini Chandra*, District Revenue Officer/Competent Authority, Erode is present before this Court and the learned Government Advocate (Crl. Side) has filed a communication, dated 20.07.2022 along with the bank statement, in and by which, it is seen that a sum of Rs.39,26,564/- is available in the account which can be disbursed to the depositors.

2. On a perusal of the judgment of the Trial Court, it is seen that the Trial Court itself has listed 242 depositors in paragraph No.66 and has also mentioned the depositors with whom the petitioners have settled the amount in the tabular column in the judgment itself. Now, when this Court calculated what is the balance due to the remaining 220 depositors, as listed by the Trial Court in paragraph No.66, the total amount due is Rs.3,36,50,000/-, as per the calculation mentioned in the last column of the tabular column by the Trial Court.



3. In this background, the Competent Authority present before this Court and expresses a doubt that since she does not have that much amount to the credit in bank account, the case cannot be compounded under Section 5(A) of the T.N.P.I.D Act. In this background, the learned Counsel for the petitioners submits that the said sum available, which is admitted by the Competent Authority, i.e., Rs.39,26,564/- can be disbursed to the 220 or 222 depositors as the case may be on pro rata basis and he has no objection for this. He would submit that if this Court suspends the sentence even for a period of six months, the petitioners will make every endeavour to settle the balance amount for all the 220 or 222 depositors as the case may be and make an attempt to compound the issue and he would submit that in the event of their failure, this Court can again consider the matter to commit him into the prison even pending the appeal to undergo the sentence.

4. The learned Government Advocate (Crl. Side) would submit that the offence, being under the T.N.P.I.D Act, even the endeavour of the prosecution as well as the Competent Authority is to realise the amount due for the hapless victims and therefore, some amount can also be ordered to be deposited by the petitioners at the stage of release itself.



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5. I have considered the rival submissions made on behalf of both the sides. Firstly, the learned Counsel appearing on behalf of the petitioners has no objection for the disbursal of the sum of Rs.39,26,564/- lying to the credit of the Indian Overseas Bank Account No.101501000010752 on pro rata basis to all the 220 or 222 victims as the case may be. In this regard, even though an apprehension is raised by the Competent Authority that the same cannot be disbursed by virtue of Section 5(A) of the T.N.P.I.D Act, I am of the opinion that Section 5(A) of the Act comes into play whenever there is a compounding of an offence. But, the Competent Authority, appointed under the T.N.P.I.D Act, can simultaneously proceed with the attached amount and the procedure thereof is laid down in Section 4 of the T.N.P.I.D Act. Once the amount is realised, under Section 4(5) of the T.N.P.I.D Act, the Special Court is entitled to issue such direction for disbursal of the said amount. But, in this case, since the petitioner has no objection and this Court is sitting on appeal, the learned Counsel, instead of moving the Trial Court under Section 4(5) of the T.N.P.I.D Act, on the no objection of the petitioners, this Court itself is entitled to exercise the said power under Section 4(5) of the T.N.P.I.D Act and accordingly, it is ordered that the said amount of Rs.39,26,564/- to be disbursed by the Competent Authority on



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6. Therefore, it is ordered as follows:-

(i) The Competent Authority shall, after going through the statement made by the Trial Court in paragraph No.66 of its judgment, first draw up the list of the balance depositors, who have to be settled. Thereafter, calculate the pro rata amount due to them by taking into the available amount of Rs.39,26,564/- and shall directly issue cheque in their respective names by verification of their respective identities in the presence of the Investigating Officer. At the time of disbursal, it is open for the accused or the learned Counsel for the petitioners to be present for the purpose of raising any dispute as to the identity alone. Therefore, the said exercise shall be carried out by the Competent Authority within a period of four weeks from the date of receipt of a copy of the order. The Competent Authority shall fix a date of disbursal in one session or repeated sessions as per the convenience of both the Competent Authority as well as the victims to approach the office and receive the cheque and such time will be intimated to the Investigating Officer as well as the accused.

(ii) The sentence of the petitioners is suspended and the petitioners are enlarged on bail for a period of six months from today;



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(iii) The sentence is temporarily suspended for a period of six months on further condition that the petitioners shall make all the endeavours to arrange for the money and they will also be entitled to negotiate with the prosecution witnesses/victims to arrive at a full and final settlement and to intimate, if and when any compounding is made, to the Competent Authority who, upon prima facie agreement, will file a status report before this Court and this Court will consider the same in accordance with law;

(iv) Apart from the above, the petitioners shall also deposit a sum of Rs.5,00,000/- each within a period two weeks, from the date of their release from the prison, with the Competent Authority, which amount can also be included in the pro rata distribution and the entire amount i.e., Rs.39,26,564/- and Rs.10,00,000/- in all totally amounting to Rs.49,26,564/- shall be distributed on pro rata basis.

21.07.2022

Index : yes/no

Speaking order/Non-speaking order
grs

To

1. The Special Judge,
Special Court under the Tamil Nadu



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Protection of Interests of Depositors Act Cases,
Coimbatore.

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2. The Public Prosecutor,
High Court of Madras.
3. The Superintendent of Police,
Central Prison,
Coimbatore.
4. The Inspector of Police,
Economic Offences Wing II,
Erode.



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D.BHARATHA CHAKRAVARTHY. J.,

grs

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