IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 2.2.2022

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.M.P.No.14354 of 2021

in

Crl. Appeal No.715 of 2021

1. Suthi Emu Farms
2. Suthi Emu Farms Private Limited
3. Suthi Emu Farms & Hosieries
   rep. by A4,
   Door No.169/3, Erode Road,
   Old Bus Stand, Perundurai,
   Erode District 638 052.

4. S.Tamizhnesan ... Petitioners

vs.

State by
The Deputy Superintendent of Police,
Economic Offences Wing-II Unit,
Erode, Tamilnadu. ... Respondent

PRAYER: The Criminal Miscellaneous Petition is filed under Section 374 read with section 389 of the Code of Criminal Procedure, to suspend the execution of the sentence against the petitioner/A4 in C.C.No.21 of 2012 dated 5.8.2021 on the file of the Special Judge, Special Court under TNPID Act, Coimbatore and enlarge him on bail.

For Petitioners : Mr.C.Iyyapparaj

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

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ORDER

This Criminal Miscellaneous Petition has been filed by the Petitioners, seeking suspension of sentence of imprisonment, imposed by the learned Special Judge, Special Court under TNPID Act, Coimbatore in C.C.No.21 of 2012 and enlarge the petitioner/A4 on bail.

2. The fourth petitioner herein/A4 alongwith two other persons ranked as A5 and A6, as persons running A1 to A3 Firms were charged for offences punishable under Sections 120(b), 420 IPC and Section 5 of TNPID Act, 1997. The allegations levelled against them are that A4 to A6 oprated Financial Establishments viz., A1 M/s.Suthi Emu Farms, registered as a Firm on 14.11.2011 vide regitration No.685/11 with the Registrr of Firms, District Registrar, Karungalpalayam, Erode District, A2 Suthi Emu Farms Private Limited, registered as a Company on 6.1.2012 vide Registration No.U01222TZ010PTC017764 with the Registrar of Companies, Tamil Nadu and A3 Suthi Emu Farms & Hosieries, an unregistered Firm or Company situated at Door No.169/3 Erode Road, Old Bus Stand, Perundurai, Erode District since 14.11.2011; A4 Tamizhnesan and A6 Vasu are the partners of A1 M/s.Suthi Emu Farms; A4 is the Managing Director and A6 is the Director of A2 M/s.Suthi Emu Farms Private Limited; A5 Yuvaraj is the key person, who was also looking after the day to day administrative and financial affairs of A1 to A3 regularly by canvassing and receiving deposits, issuing receipts and agreement deeds, which were signed by A4 Tamizhnesan, with an intention to cheat the depositors, A4 to A6 canvassed and explained about their two schemes to the depositors, who approached the accued financial establishments A1 to A3, and had collected deposits in one lumpsum for a fixed period by giving false promises that they would give higher rate of interest and after collecting the deposits, A4 to A6 had dishonestly misappropriated the deposit amounts and converted the same for their own use and had wilfully caused sufferings and loss to the public and they had defaulted to repay the deposit amount as well as the interest amount to the depositors even after maturity date and thereby, they had defaulted to repay the deposits collected from January 2012 to July 2012 to the tune of Rs.2,69,80,550/- and thereby they had committed offences punishable under Sections 120(b), 420 IPC and Section 5 of TNPID ACT, 1997.

3. The Trial Court, having found the accused guilty, convicted and sentenced them as under:-

"A1 Suthi Emu Farms, A2 Suthi Emu Farms Private Limited and A3 Suthi Emu Farms & Hosieries, each to pay fine of Rs.10,000/- for each offences and each counts under Section 420 IPC and Section 5 of TNPID Act (Rs.15,000 x 110 counts x 3 company x 2 offences = Rs.99,00,000/-);

A4 Tamilnesan and A6 Vasu shall pay the fine amount of Rs.66,00,000/- imposed on the 1st and 2nd Accused Firms, namely each Rs.33,00,000/-, in default of payment of fine by A4 and A6, they shall undergo further period of one year simple imprisonment for each offences;

A4 Tamilnesan, A5 Yuvaraj and A6 Vasu each shall pay the fine amount of Rs.33,00,000/- imposed on the 3rd Accused Firm, namely A4 to A6 each to pay each Rs.11,00,000/- in default of payment of fine by A4 to A6, they shall undergo further period of one year simple imprisonment for each offences;

A4 to A6 each to undergo two years simple imprisonment and to pay fine of Rs.15,000/- for each counts (Rs.15,000 x 110 counts x 3 accused= Rs.49,50,000/-) under Section 120B of IPC, in default of payment of fine to undergo further one year simple imprisonment;

A4 to A6 to undergo three years simple imprisonment and to pay fine of Rs.15,000/- for each counts (Rs.15,000 x 110 counts x 3 accused = Rs.49,50,000/-) under Section 420 of IPC., in default of payment of fine to undergo further one year simple imprisonment;

A4 to A6 to undergo ten years simple imprisonment and to pay fine of Rs.15,000/- (Rs.15,000 x 110 counts x 3 accused = Rs.49,50,000/-) under Section 5 of T.N.P.I.D. Act, 1997, in default of payment of fine to undergo further one year simple imprisonment. Total fine amount Rs.2,47,50,000/-, in which A4 and A6 each to pay Rs.93,50,000/- and A5 to pay Rs.60,50,000/-

Out of the total fine of Rs.2,47,50,000/-, a sum of Rs.2,45,00,000/- shall be distributed to the victims P.W.1 to P.W.110 as per their respective dues mentioned in the final report proportionately, after appeal time is completed."

4. The Trial Court had imposed a total fine of Rs.2,47,50,000/- and the petitioner/A4 was directed to pay a fine of Rs.93,50,000/-.

5. The learned counsel for the petitioner/A4 would submit that the Trial Court failed to take into consideration the fact that the petitioner/A4 and the company have repaid a sum of Rs.80,00,000/- to the depositors viz., P.Ws.1 to 110 and they have also admitted receipt of the same and there was absolutely no intention for the petitioner/A4 to cheat the depositors and the petitioners have also given a calculation with regard to the expenditure incurred by the Company. He would also submit that the evidence of PW4 and Ex.P354, which was marked through him, reveal that a sum of Rs.80,00,000/- was taken away by A5 in this case, who left the Company. The learned counsel would further sumit that despite the earnest efforts made by the petitioner/A4 to settle the depositors, he was unable to settle the amounts. He would further submit that without prejudice to the defence of the petitioner/A4, he also intends to compound the matter. He would submit that the petitioner/A4 is unable to raise the fine amount and thereby he is in prison from the date of his surrender on 30.11.2021 before the Trial Court. He would also submit that the petitioner/A4 is prepared to deposit a sum of Rs.25,00,000/- out of

the fine amount at the time of furnishing the sureties and he also undertakes that the balance fine amount would be paid by the petitioner/A4 within a reasonable time on coming out on bail. The learned counsel would also submit that the petitioner/A4 has filed an Affidavit contending that he would abide by any condition that may be imposed by this court.

6. Mr.S.Sugendran, learned Government Advocate (Criminal Side) would submit that the petitioner/A4 alongwith other accused had floated two Registered Firms and one unregistered Firm and had collected amounts to the tune of Rs.2-1/2 crores and odd and cheated the depositors. He would also submit that the prosecution has examined P.Ws.1 to 120 and marked Exs.P1 to P360 and proved its case beyond reasonable doubts and thereby he would oppose grant of suspension of sentence.

7. Taking into consideration the facts of the case and the submissions made by the learned counsel appearing for the petitioner/A4 and the undertaking given by him, this court is of the opinion that suspension of sentence and bail can be granted on certain conditions. Accordingly, till the disposal of the Criminal Appeal, suspension of sentence and bail are granted, on the following conditions :-

i.The petitioner/A4 shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only), with two sureties, each for a like sum to the satisfaction of the Trial Court.

ii.The petitioner/A4 shall deposit a sum of Rs.25,00,000/- to the credit of C.C.No.21 of 2012 on the file of the Special Court under TNPID Act, Coimbatore at the time of furnishing sureties.

iii.The petitioner/A4 shall deposit the balance fine amount of Rs.68,50,000/- to the credit of C.C.No.21 of 2012 on the file of the Special Court under TNPID Act, Coimbatore within a period of eight weeks from the date of coming out on bail and if the amount is not so deposited, the Trial Court shall take steps to secure the petitioner/A4 and commit him to custody to undergo the remaining period of sentence.

iv.The petitioner/A4 shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m., until further orders.

8. The Criminal Miscellaneous Petition is ordered accordingly.

-sd/-
02/02/2022

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,
SPECIAL COURT UNDER TNPID ACT, COIMBATORE.

2 DEPUTY SUPERINTENDENT OF POLICE,
ECONOMIC OFFENCES WING II, UNIT,
ERODE, TAMIL NADU.

3 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

C.C. to M/S.C.IYYAPPARAJ Advocate on payment of necessary charges

Order
in
CRL MP.14354/2021
in
CRL.A.715/2021

Date :02/02/2022

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CSK 02/02/2022