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

Wednesday, the Twenty Seventh day of April Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN

CRL MP(MD) No.4288 of 2022
in
Crl.A(MD)No.260 of 2022

1. V.RAVIBALAN
2. V.RAMESH KUMAR ... PETITIONERS/APPELLANTS/ ACCUSED NOS.4&5

Vs

THE STATE REP. BY,
THE DEPUTY SUPERINTENDENT OF POLICE,
ECONOMIC OFFENCE WING - II,
DINDIGUL.
(IN CRIME NO. 03 OF 2012). ... RESPONDENT/RESPONDENT/ COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the execution of sentence in C.C No. 33/2013 dated 03.03.2022 on the file of the Hon'ble Special Court under TNPID Act 1997, Madurai enlarge the Petitioners/Appellants/Accused on bail pending disposal of the above appeal.

PRAYER IN CRL.A(MD) No.260 of 2022 :

Pleased to call for the records from the file of the trial court (Special Court under Tamilnadu Protection of Interest of Depositors (in Financial Establishment) Act 1997, Madurai), hear the submissions of the Appellants/Accused 4 and 5 and the prosecution, set aside the judgment of the trial court passed in C.C.No.33/2013 dated 03^{rd} March 2022 by allowing this appeal and acquit the Appellants/Accused 4 and 5.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.GOPALAN T.K., Advocate for the petitioner and of M/S.M.AASHA, Government Advocate (Crl.Side) on behalf of the Respondent, the court made the following order:-

This petition has been filed to suspend the sentence imposed on the petitioners by the learned Special Judge, Special Court under TNPID Act Cases in C.C.No.33 of 2013, dated 03.03.2022.

2.The case of the prosecution is that the accused No.2 is the only Managing Director of Subhashree EMU Farms India (P) Limited Company. The Company got registered as financial establishment. A2 and A3 established the Company. A2, A3, A4 and A5 conspired together at Dindiglul between 22.03.2016 to 14.11.2012 and they entered into an agreement with common intention to collect huge amount from the public in the name of A1/Company with the intention to swindle the amount themselves. To make them believe and to get the deposits from the public, A2 to A5 have canvassed the public with scheme-I, II, III with attractive higher rate of interest for the deposit (at the rate of 85%, 90%, 79%) knowing fully well that they are not going to repay any amount to the depositors.

3.As per the scheme I, accused had promised and canvassed the public to deposit in A1/Company and the accused will supply 6 EMU birds and they will construct sheds and they will provide foods and they will provide free insurance and they will provide free medical check up and they will pay Rs.9,000/- p.m for 24 months and they will also pay Rs.15,000/- as yearly bonus for 2 years and they will refund the deposit amount Rs.1,50,000/- after two years.

4.As per scheme II, accused had promised to allot 6 EMU birds and they will maintain the birds and they will pay Rs.10,000/- pm for 24 months and they will pay Rs.15,000/- as years bonus for two years and they will also refund the deposit amount of Rs.1,50,000/- after 24 months.

5.As per scheme III, the accused had promised to supply 24 Goats and they will construct the shed and they will provide foods and they will provide free insurance, free medical check up and they will pay Rs.9,000/- pm for 2 years and they will also pay Rs.10,000/- as yearly bonus for 3 years and they will refund the deposit of Rs.1,00,000/- after three years.

6.The accused had mad the scheme with wide publicity and they have received a sum of Rs.4,00,29,000/-, Rs.24,00,000/- and Rs.40,80,000/- from the depositors in the name of A1/Company and all the amount were utilized for the benefit of A2 to A4 and they have converted the money as assets and spent the money as they liked. After the period of maturity, accused have closed A1 establishment and absconded and all the depositors were left on the street.

7.On receipt of the complaint from one C.Karuppiah, S/o.Chinnasamy, the Inspector of Police EOW-II, Dindigul had registered the case in Cr.No.03 of 2012 and conducted the investigation and filed the final report and also supplementary final reports. The part played by A4 and A5 were also investigated by the Investigation Officer and found that A4 and A5 have made publicity for the schemes, through News Paper, Pamphlets, Magazine and they have printed their names in the visiting cards, notices, account books and further A5 had received huge amount from A2 for no reason (to show some fraudulent transaction between A2 and A5 by forged documents) and A4, A5 have involved in the affairs at A1.

8.The petitioners/A4 & A5 have been convicted by the Trial Court for the alleged offences punishable under Section 5 of the TNPID Act and sentenced them to undergo rigorous imprisonment for a period of ten years each and to pay a fine of Rs.1,00,000/- each, in default, each to undergo simple imprisonment for a period of one year and for the offence under Section 120(B) of IPC and sentenced them to undergo rigorous imprisonment for a period of ten years each and to pay a fine of Rs.1,00,000/- each, in default, each to undergo simple imprisonment for a period of one year and for the offence under Section 406 of IPC and sentenced them to undergo rigorous imprisonment for a period of three years each, to pay a fine of Rs.10,000/- each, in default, each to undergo simple imprisonment for a period of three months and for the alleged offence under Section 420 of IPC and sentenced them to undergo 7 years rigorous imprisonment and each to pay a fine of Rs.10,000/- in default, each to undergo simple imprisonment for a period of six months and for the offence under Section 468 of IPC and sentenced them to undergo 7 years rigorous imprisonment and each to pay a fine of Rs.10,000/-, in default, each to undergo simple imprisonment for a period of six months and for the offence under Section 471 of IPC and sentenced them to undergo 7 years rigorous imprisonment each and each to pay a fine of Rs.10,000/-, in default, each to undergo simple imprisonment for a period of six months.

9.The learned counsel for the petitioners would submit that as for as the petitioners are concerned, they are not partners to the first accused Company and the prosecution failed to produce any piece of evidence to show that they are employees of A1 Company and they are also victims and they never collected any money from any of the depositors and as such the offence under Section 5 of the TNPID Act is not at all made out as against the petitioners. Insofar as the offence under Sections 468 and 471 r/w 120(B) of IPC are concerned, they never collected any money from the general public and never indulged in fabrication of any document in the first accused Company's accounts. In fact, the prosecution also failed to produce any evidence to show that they fabricated the documents before the trial Court. Therefore, there are arguable points in the appeal and as such he prayed for suspension of sentence.

10.On perusal of records revealed that there are totally five accused and the petitioners are arrayed as A4 and A5. The crux of the complaint is that all the accused persons promised and canvassed the general public that they will supply 6 EMU birds and they will provide foods and also provide free insurance and provide free medical check up. Further they assured them that they will pay Rs.9,000/- per month for 24 months and they will also pay Rs.15,000/- as years bonus for two years. Thereafter, they will refund the deposited amount of Rs.1,50,000/- after 24 months. They have collected a sum of Rs.4,00,29,000/-, Rs.24,00,000/- and Rs.40,80,000/- from the depositors in the name of first accused Company. Thereafter, they failed to pay any amount as assured by them and committed the offence under Section 5 of the TNPID Act and Sections 120(B), 406, 420, 468 and 471 of IPC. As far as the petitioners are concerned, though they are not partners of the first accused firm, they actually participated in the activities of the first accused Company and assured the general public by collecting the deposits from them and failed to repay the amount as promised by them. That apart, they involved in preparation of fabric agreement documents and made the depositors to believe such documents are genuine and induced them to deposit the amount in the first accused Company. Therefore, the petitioners failed to make out *prima facie* for suspension of sentence and this Court is not inclined to suspension of sentence imposed by the trial Court. That apart they were convicted and sentence and undergo imprisonment only on 03.03.2022.

11.In view of the above, this Criminal Miscellaneous petition is dismissed.

sd/-
27/04/2022

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23/05/2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE SPECIAL JUDGE,
   SPECAIL COURT UNDER TNPID ACT CASES, MADURAI.

2. THE SUPERINTENDENT,
   CENTRAL PRISON, MADURAI.

3. THE DEPUTY SUPERINTENDENT OF POLICE,
   ECONOMIC OFFENCE WING - II, DINDIGUL.

4. THE ADDITIONAL PUBLIC PROSECUTOR,
   MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.T.K.GOPALAN, Advocate (SR-3910[I] dated 27/04/2022)

ORDER IN
CRL MP(MD) No.4288 of 2022
in
Crl.A(MD)No.260 of 2022
Date :27/04/2022

vsd
USK/SVR/SAR-II/20.05.2022/4P/6C