Crl.O.P.No.3168 of 2023

RESERVED ON : 27.02.2023

DELIVERED ON : 03.03.2023

G.K.ILANTHIRAIYAN, J.

The petitioner, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 120B, 420, 406 of IPC, r/w Section 3 and 5 of Banning of Unregulated Deposit Schemes Act, 2019 and Section 58B of Reserve Bank of India Act, 1934, in Crime No.7 of 2022, seeks anticipatory bail.

2. The case of the prosecution is that the Deputy Superintendent of Police, Economic Offence Wing, Chennai, has suo motu registered the present complaint as against the petitioner and other accused alleging that the first accused Company viz., M/s. Aarudhra Gold Trading Private Limited has collected deposits from the general public with a false promise of paying exorbitant interest at the rate of 10% to 30% per month. Further, it is alleged that the Company, in its official website, has promised incentives of gold coin and payout at every month, referral income of 2% to 5 Lakhs deposits at various levels. The Managing Director of the first accused Company failed to produce any detail of the deposited money, the details of revenue generated by the

Company to give exorbitant interest to the depositors and the license to collect deposits from the public from the regulatory authorities including RBI. Hence, the complaint.

3. Mr.G.Prabakaran, the learned counsel for the petitioner submits that there are totally 21 accused, in which the petitioner is arrayed as A14. One of the accused i.e, Rajasekar had approached the petitioner about his business project of purchasing of Gold and also purchasing old Gold and selling the same and liquidating Gold for persons who are unable to redeem from huge interest burden. He also offered the petitioner to work for him by opening an outlet at Kancheepuram. Thereafter, the petitioner was inducted as Honorary Director of the Company M/s Arudhra Gold Trading Private Limited. The petitioner should take care of the business of Kancheepuram area. But, he was not offered any share or was neither inducted as share holder of the company. He was only made as Director to work for the company. In the month of March 2021, the said Rajasekar also started to advertise in newspapers and other modes about inviting customers to invest in the company for the purpose of business expansion. The petitioner also mobilized the funds from his own savings and also from his family and friends and had invested a sum of Rs.8 crores with the

main accused. Therefore, separate ID was created by the company in the name of the petitioner through which only the amount can be sent. Since the payments were prompt, the petitioner referred to his friends and associates to invest their money. The entire payment of the customers were routed through the banks i.e, M/s Fin Corp Bank and M/s Kotak Mahindra Bank. So far the Kancheepuram Branch is concerned, 600 customers have invested money to the tune of Rs.64 Crores, which includes the sum of Rs.8 Crores invested by the petitioner independently. The company has returned back the amount which was invested by the petitioner through his bank independently, both through Fincare and also Kotak Mahindra Bank. Further, the case of the prosecution is that the petitioner was given Rs.7 Crores approximately from the crime proceeds, in which the petitioner had purchased a house and a car.

4. As stated above, whatever the amount which was invested by the petitioner, was returned personally to the petitioner. In fact, all the depositors were duly repaid the principal amount with interest. Thereafter, the petitioner suspected the activity of the main accused i.e, Rajasekar and the petitioner offered to resign the post of Director and requested him to take over the business. Accordingly, on 02.12.2021, the petitioner had sent a mail. But, there

was no response from the said Rajasekar. Thereafter, on 20.05.2022, the present FIR has been registered as against all the accused. The petitioner had taken all the pain to settle the money to the entire depositors. Accordingly, he had settled to all the investors. He further submitted that the earlier petition was dismissed on the ground that the petitioner is also one of the Director of the Company and he is one of the founders of the scheme. From the total crime proceeds, a sum of Rs.7.14 Crores was transferred to the account of the petitioner. From the said crime proceeds, the petitioner had purchased a car and a property, thereby misappropriated the public funds. He also failed to co-operate while disbursing the deposit amount to the depositors. He vehemently contended that the entire amount has been settled to the depositors through bank transfer. No single claim is pending in respect of Kancheepuram branch. He had also produced the resignation letter dated 02.12.2021. Based on the resignation letter, his DIN number was also cancelled and host is no longer available for deposit.

5. He had also produced the search report in order to substantiate the said contention. After his retirement, the FIR has been registered and as such he has nothing to do with the allegations as alleged in the FIR. He was only a

franchise of the main accused company in respect of the Kancheepuram branch and he was inducted as only Honorary Director of the Company and no shares were transferred in the name of the petitioner. Therefore, the custodial interrogation of the petitioner is not required in this case and prayed for grant of anticipatory bail to the petitioner.

6. Mr.A.Damodaran, the learned Additional Public Prosecutor filed a counter and submitted that there are totally 21 accused, in which the petitioner is arrayed as A14. His earlier petition was dismissed by this Court and there is absolutely no change of circumstances to consider the anticipatory bail petition once again. The Managing Director of M/s.Aarudhra Gold Trading Private Limited one Rajasekar failed to produce the details of the deposited money. The details of revenue generation by the company to give exorbitant interest to the depositors and the license to collect deposits from the public from the regulatory authorities including Reserve Bank of India. Therefore, the respondent had suo-moto registered the FIR in Crime No.7 of 2022 for the offences punishable under Sections 120B, 420, 406 of IPC, r/w Section 3 and 5 of Banning of Unregulated Deposit Schemes Act, 2019 and Section 58B of Reserve Bank of India Act, 1934.

7. The accused had received deposits from the general public to the

tune of Rs.2,500/- Crores from 1,09,255 depositors through 29 bank accounts, in the name of "Aarudhra Group of Companies" including the first accused company. The petitioner is also one of the founders and Directors of the accused company. The accused company would offer the depositors a promised high return at the rate of 25% to 30% interest for 10 to 12 months and gift of gold coin. After registering the FIR, the accused persons including the petitioner approached this Court for anticipatory bail. This Court had given interim protection and imposed some conditions. However, the petitioner did not comply the same and as such this Court dismissed the petition for anticipatory bail. The main accused person had flew away from India. Therefore, the search conducted in 54 premises of the accused and cash of Rs.5,57,26,968/-, gold jewelleries – 2245 gms, Silver Ornaments -1942 gms, 54 desktop computers, 12 laptops, 83 mobile phones, 6 cars, 2 two wheelers and several incriminatory digital evidences were seized. For the absconding accused Look Out circulars have been issued and it is pending.

8. Insofar as the petitioner is concerned, he had diverted huge amount of cash from the account of the first accused as his commission and he had no sources of income to invest such huge amount. He had paid very meagre

amount as income tax, till 2021. Only from the year 2021, he had paid income tax in lakhs. The petitioner was employed as Additional Director by offering Rs.5000/- spot commission and 1 gram gold coin for the collection of every one lakh to collect more deposits. The *modus operandi* of the first accused had been continuously motivating the agents with unimaginable offers and commission that would ensure the money circulations without any deadlocks. The petitioner, his associates and his friends did not deposit their own money as they do not have any source of income. But they collected deposits from the general public through direct cash and also online to avail commissions from the first accused. After inspection to Kancheepuram branch, the first accused company received a sum of Rs.210,25,49,639.65/- through Fincare Bank and Rs.84,83,84,550/- through Kotak Mahindra Bank. So far, the District Revenue Officer, Chennai, has received 14,700 claim petitions from Kancheepuram branch depositors, for which exact defaulted amount are yet to be ascertained. Investigation, revealed that the petitioner did not possess any immovable property before he became a Director of the company. After becoming the Director of the company, the petitioner, his family members, friends and associates gained huge amount of cash as illegal commission and amassed wealth. The petitioner and his wife diverted huge amount of cash to their personal gain from 10.08.2021 to

18.04.2022 to the tune of Rs.8.63 Crores. The petitioner also transferred his immovable properties in the name of his friends through power of attorney and sale deeds have been made for the purpose of escaping from the attachment of properties under Section 8 of BUDS Act. Hence, he prayed for dismissal of the anticipatory bail petition.

9. Considering the above facts and circumstances of the case, the custodial interrogation of the petitioner is very much required in this case. Further, there is no change of circumstances after the previous dismissal orders passed by this Court. Hence, this Court is not inclined to grant anticipatory bail to the petitioner.

10. Accordingly, this Criminal Original Petition is dismissed.

03.03.2023

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G.K.ILANTHIRAIYAN, J.

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To

1. The Inspector of Police,
   Economic Offences Wing(SZ),
   Chennai.

2.The Public Prosecutor,
   High Court of Madras.

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