IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.4209 of 2023
in
Crl.A.No.307 of 2023

P.Vijayabharathi ... Petitioner

/vs/

The State represented by
Inspector of Police,
Economic Offences Wing-II,
Namakkal.
(Cr.No.1 of 2014) .. Respondent

Prayer : Criminal Miscellaneous Petition filed under section 389(1) of Cr.P.C., to release the petitioner on bail by suspending the sentence imposed in C.C.No.4/2015, dated 06.3.2023 on the file of the Special Judge, Special Court under TNPID Act, Coimbatore, pending disposal of the above appeal.

For petitioner ... Mr.S.Shankar for
Mr.S. Mothilal Nehru

For Respondent ... Mr.A.Gokulakrishnan
APP

ORDER

This Criminal Miscellaneous Petition has been preferred seeking to release the petitioner on bail by suspending the sentence in C.C.No.4 of 2015, dated 06.03.2023 on the file of the Special Judge, Special Court under TNPID Act, Coimbatore, pending disposal of the above appeal.

2. The trial court, by its judgment dated 06.03.2033 made in C.C.No.4 of 2015 convicted and sentenced A2 to A7 as follows;

Accused	***Provision under which convicted***	***Sentence***
A2 to A7	U/s.120B r/w.420 IPC	To undergo RI for 7 years and each to pay a fine of Rs.7000/-(7000 x 6 accused x 45 counts=Rs.18,90,000/-), in default in payment, to undergo further one and half years RI for each count.
	U/s.420 IPC	To undergo RI for 7 years and each to pay a fine of Rs.7000/-(7000 x 6 accused x 45 counts=Rs.18,90,000/-), in default in payment, to undergo further one and half years RI for each count.
	U/s.406 IPC	To undergo RI for 7 years and each to pay a fine of Rs.7000/-(7000 x 6 accused x 45 counts=Rs.18,90,000/-), in default in payment, to undergo further one and half years RI for each count.
	U/s.5 of TNPID Act,	To undergo RI for 7 years and each to pay a fine of Rs.7000/-(7000 x 6 accused x 45

<table>
<tr><th>Accused</th><th>Provision under which convicted</th><th>Sentence</th></tr>
<tr><td></td><td>1997</td><td>counts=Rs.18,90,000/-), in default in payment, to undergo further one and half years RI for each count.</td></tr>
<tr><td colspan="3">Total fine amount is Rs.75,60,000/-, (A2 to A7 have to pay Rs.12,60,000/- each) out of the said fine of Rs.75,60,000/-, a sum of Rs.74,41,384/- shall be distributed to the victims a per their respective dues mentioned in the final report proportionately, after appeal time is over.</td></tr>
<tr><td colspan="3">The sentence of imprisonments imposed on the accused were ordered to run consecutively.</td></tr>
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3. Aggrieved over the judgment of conviction and sentence imposed, the petitioner who is A6 in C.C.No.4 of 2015, has filed the present criminal appeal, along with the instant miscellaneous petition, seeking suspension of sentence and bail.

4. The learned counsel for the petitioner submitted that the judgment of the trial court is contrary to law, weight of evidence and probabilities of the case. As per the case of prosecution, in A1-Financial Establishment, which is represented by A2 and A3 as Managing Director and Working Partner, A4 to A7 acted as Agents and A2 to A7 conspiring and colluding together, collected Rs.74,41,384/- from various depositors in the name of A1 company and defaulted payment of assured monthly returns and the deposit

amounts. The petitioner/A6 is not an active partner in A1 company. Further, the trial court, in its impugned judgment itself in paragraph 44 has observed that the prosecution had not produced any evidence to show that the petitioner has acted as an agent for A1 company. He further submitted as she is neither a partner, nor an agent of A1 company; she has not received any benefit from A1 company and in fact, she was also one of the depositors of A1 company. But the trial court, without considering the above aspects, erroneously convicted and sentenced the petitioner as stated above with a fine of Rs.12,60,000/- (to be paid by A2 to A7) and the same is not yet paid. In such circumstances, there is an arguable point in favour of the petitioner and the petitioner has every chance to succeed in this appeal. Thus, he prayed for granting suspension of sentence imposed on the petitioner by the trial court pending disposal of the criminal appeal.

5. The learned Addl. Public Prosecutor appearing for the respondent, supporting the impugned judgment, objected to suspend the sentence imposed on the petitioner. However, he fairly conceded that in paragraph 44 of the impugned judgment, the trial court observed that the prosecution has not produced any document or evidence to show that the petitioner/A6 along with A4 to A7, has introduced any depositor and acted as an agent for A1

company.

6. Heard the learned counsel appearing for the petitioner and the learned Addl. Public Prosecutor appearing for the respondent and perused the materials available on record.

7. On perusal of records, in the impugned judgement, in paragraph 44, the learned trial judge has held as follows;

> *"44. Except the said DW1 to DW4/A4 to A7, no other depositors received such huge amount from A1. Admittedly, the investigating officer did not produce any evidence to prove that A4 to A7 are agents; he did not produce any document to show that A4 to A7 introduced the depositors to A1; he did not seize the distributor forms from A1; and he did not compare the bank statements of A4 to A7 with A1 bank accounts. A4 to A7 did not sign any receipts. However, PW1 Ramasamy, PW16 Laksmi, PW25 Lakshmi, PW30 Ranjitham, PW31 Subramani, PW32 Kannan and Rajithkumar stated that A4 Saravanakumar was their agent. PW1, PW16 and PW25 stated that A5 Mathaiyan was their agent. PW49 Investigating Officer also admitted that in view of the statement of the said depositors, he included A4 Saravanakumar as agent of A1. He also stated that A4 received commission of Rs.3,56,532/-; A5 received*

commission of Rs.13,71,751/-; A6 received and A7 received commission of Rs.13,82,323/-."

8. Considering the accusation levelled against the petitioner as well as absence of any evidence produced by the prosecution to show that the petitioner acted as an agent of A1 company and there is no evidence to show that the petitioner has received any benefit from A1 company, this court is of the view that the petitioner has raised substantial grounds in the appeal which require detailed appraisal and there are arguable points in favour of the petitioner. Further, the appeal is not likely to be taken up in the near future and the petitioner is in judicial custody from 6.3.2023 onwards. In such view of the matter, this Court is inclined to grant the relief of suspension of sentence and bail to the petitioner.

9. Accordingly, the relief of suspension of sentence and bail is granted to the petitioner on the following conditions:

> (i) The petitioner is ordered to be released on bail on their executing a bond for a sum of Rs.10,000/-(Rupees ten thousand only) along with two sureties, each for a like sum, to the satisfaction of the Special Judge, Special Court under TNPID Act, Coimbatore.

(ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bonds and the abovesaid Court may obtain a copy of their Aadhaar card or Bank pass Book to ensure their identity; and;

(iii) The petitioner shall surrender before the trial Court as and when required.

27.03.2023

msr

To

1. The Special Judge, Special Court under
TNPID Act, Coimbatore.

2. The Inspector of Police, Economic Offences Wing-II,
Namakkal.

3. The Public Prosecutor, High Court, Madras.

4. The Superintendent, Central Prison,
Coimbatore.

V. SIVAGNANAM, J.

msr

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