Crl.O.P.No.16905 of 2023

C.V.KARTHIKEYAN, J.

The petitioners herein seek anticipatory bail in Crime No.2 of 2023 registered by the respondent Police for the offences under Section 5 of Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997.

2. It is the case of the learned counsel instructed on behalf of the petitioners that it was the father of the first petitioner, Mohanraj, who was running the finance company in the name of 'Vadivelan Bankers'. It is stated that the defacto complainant had invested Rs.9,50,000/- and that was not returned back. A complaint was therefore lodged and on that basis, FIR was registered. The first petitioner is the daughter of the deceased Mohanraj and the second petitioner is the son-in-law/husband of the first petitioner. It is contended on behalf of the petitioners that Mohanraj died in the year 2020 and the petitioners have nothing to do with the business after his death. It is also contended that there are several properties available and therefore, it is stated that the respondent and the persons who deposited their money are free to sell those properties and realise from the sale consideration the amounts deposited by them.

3.On the side of the respondent, a status report had been filed, wherein, as on date, it is stated that 200 depositors had deposited Rs.35/- crores in the said finance company. During one of the hearing dates, my learned predecessor had directed that the sources from which the defacto complainant could have deposited the amount should also be investigated. In the status report, it is very specifically stated that the defacto complainant and also the other depositors had produced the original receipts and cheques and therefore, it is stated that all the claims are genuine. At any rate, the issue before this Court is only to grant or not to grant anticipatory bail and not to conduct a roving enquiry about the manner in which the business was conducted. The petitioners are also liable for the debts incurred by the father of the first petitioner.

4.It is also contended that the second petitioner had come into the family as a son-in-law and he has nothing to do with the business directly or indirectly. However, it is also contended on the side of the respondent and by the learned counsels for the intervenor/defacto complainant that subsequently, after the year 2018, properties had been purchased not only in the name of the first petitioner, but also in the name of the second petitioner.

Though it is stated by the respondent that steps have been taken to attach the property under the TNPID Act, 1997, that exercise has to be carried out by the concerned Court where the FIR has been pending. The offences are compoundable, but there must be bonafide on the part of the petitioners herein and they cannot shift their burden on the shoulders of the depositors and state that it is for the depositors to sell the properties and realise the money. Th depositors are not expected to fall at the feet of the petitioners to sell the properties. They have paid their money and they have a right to recover their money. It is the duty of the petitioners to repay the money in cash, having received the same in cash. So far as the present case of anticipatory bail is concerned, investigation is at a very nascent stage. The trail of monies which had been deposited and received by the father of the first petitioner have to be examined and whether the petitioner have benefited from the said deposit, since there is a specific statement that properties are purchased in the name of the petitioners herein have to be examined. Investigation can never commence in the absence of the petitioners herein.

5.The learned counsel for the petitioners on instructions further stated that the first petitioner is in the family way and in advanced stage of pregnancy. That may be a limiting factor for the first petitioner, but certainly not a primary factor to be considered. Status report reveals that there had been active collection of money from the depositors to the finance company by the petitioners herein without any intention to repay. In effect, the defacto complainant and the depositors have been left with high and dry without repayment of even a single paisa. The petitioners are pointing out a string of properties and asking them to sell those properties and realise the money. This attitude of the petitioners cannot be accepted by this Court. The offence is made out. Investigation must be done. Investigation is possible only if the petitioners co-operate for the investigation.

6.In view of all these facts, I am not inclined to grant anticipatory bail to the petitioners. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions, if any, are also closed.

03.11.2023

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C.V.KARTHIKEYAN, J.

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