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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.20793 of 2023

M.Eswarappan,
S/o.Muthusamy

..Petitioner

vs.

The State represented by
Deputy Superintendent of Police,
Economic Offences Wing II,
Ashok Nagar, Chennai.
(Crime No.08 of 2022)

..Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crl.M.P.No.3222 of 2023 on the file of the learned Special Judge for cases under Tamil Nadu Protection of Interests of Depositors Act, 1997, at Chennai and to examine the same and to set aside the order dated 30.08.2023 and to enlarge the petitioner/2nd accused on bail.

For Petitioner : Mr.G.Prabhakaran

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

**ORDER**

This Criminal Original Petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner seeking for statutory bail under section 167(2) of the code of Criminal Procedure.

2. Heard Mr.A.Damodaran, learned Additional Public Prosecutor and Mr.G.Prabhakaran, learned counsel for the respondent.

3. The respondent police registered an F.I.R. in Crime No.08 of 2022 for offence under section 5 of Tamil Nadu Protection of Interests of Depositors Act, 1997 (hereinafter called as the TANPID Act) and 420 of I.P.C. on 21.07.2022, based on the complaint given by one V.Sundaram wherein, he stated that he had deposited money with the company and the same was not repaid back/ refunded after maturity. Similar such complaints started piling up before the respondent police and ultimately, 1368 complaints were received by the respondent police and it came to light that the company and its directors did not return back more than Rs.104,42,88,227/-.

4. There are totally six accused persons in this case and the petitioner has been arrayed as A2 and he is one of the director of the



company.

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5. In the course of investigation, an alteration report was filed by the respondent police and the offence under section 409 of I.P.C. was also added to the F.I.R. This was done on the 53rd day i.e on 13.07.2023 after the registration of F.I.R.

6. The petitioner earlier filed an application under section 167(2) of Cr.P.C. on the ground that no final report was filed even after the expiry of 60 days and that the alteration report itself was filed only to defeat the right of the petitioner to be considered for release under section 167(2) Cr.P.C. The application filed by the petitioner in CrI.MP. No.2798 of 2023 came to be dismissed by the Court below by an order dated 24.07.2023 on the ground that the altered charge under section 409 of I.P.C. was brought in even before the expiry of 60 days and if at all, the petitioner has a right to seek for statutory bail, it can be done only on the completion of 90 days in view of the altered offence.

7. Subsequent to the above order, 90 days time also expired and the petitioner therefore filed an application in CrI.MP.No.3222 of 2023 seeking for statutory bail. In the meantime, a final report came to be filed



by the respondent police on 16.08.2023, which is well within the 90 days period. The petitioner took a stand that an incomplete final report has been filed by the respondent police and it has been filed only with an intention to defeat the indefeasible right of the petitioner to be considered for being released on statutory bail under section 167(2) Cr.P.C. The Court below on considering the facts and circumstances of the case and after taking into consideration the fact that the final report has been filed in time and the same is under the consideration of the Court, dismissed the application by an order dated 30.08.2023. Aggrieved by the same, the present Criminal Original Petition has been filed before this Court.

8. The short issue that arises for consideration is as to whether the final report that has been filed by the respondent police can be considered to be a complete final report or is it an incomplete final report which has been filed only to defeat the right of the petitioner to be considered for release on statutory bail under section 167(2) Cr.P.C.

9. There is no quarrel on the preposition of law that an incomplete charge sheet without completing the investigation cannot be put against the accused persons and the indefeasible right under section 167(2) Cr.P.C. cannot be taken away. Useful reference can be made to the Judgment of the



Hon'ble Apex Court in **[Ritu Chhabaria Vs. Union of India and others]** in

2023 Vol.II Madras Weekly Notes Crl 1. It is clear from the above

Judgment that filing of a charge sheet without completing the investigation will not deprive the accused from invoking for default bail and the same must be acted upon by the Court under section 167(2) of Cr.P.C.

10. In the instant case, admittedly, there were 1368 complaints received by the respondent police. Therefore, the completion of investigation can happen only if the investigation is complete with regard to all the 1368 complainants. Admittedly, the 161 statement of only 54 complainants have been recorded and the documents have been collected from them. The learned Additional Public Prosecutor, on instructions submitted that the 161 statements of all the 1368 complainants was not able to be recorded within the statutory period.

11. In a case of this nature, where depositors are involved, it is always possible for the police to receive even subsequent complaints after the registration of F.I.R. and even after the filing to the final report in a case. Once that happens, it is always left open to the investigation officer to file further report / supplementary reports under section 173(8) of Cr.P.C.

The law on this issue is now too well settled by this Court.



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12. This is a case where there were 1368 complaints even at the inception of the investigation and therefore, the investigation can be taken to be complete only if a final report is filed covering 1368 complaints. It must be borne in mind that it is not necessary for the respondent police to file the full set of documents along with final report. The full set of documents that has been referred under section 173(5) of Cr.P.C. that has to be filed along with final report is only directory and it is not mandatory and therefore, that will not entitle an accused person to seek for default bail under section 167(2) of Cr.P.C. and what has to be seen by the Court is as to whether the final report filed by the respondent police is in conformity with Section 173(2) of Cr.P.C. The law on this issue was settled by the Hon'ble Apex Court in **[Narendra Kumar Amin Vs. Central Bureau of Investigation and others]** reported in **2015 3 SCC Page 417**. This Judgement was subsequently followed by this Court in **[Kokila Vs. The State Rep. by the Inspector of Police, Korattur Police Station, Chennai]** in **2015 2 Madras Weekly Notes CrI 396**. Applying the above law to the facts of the present case, if the respondent police / investigation officer had recorded the 161 statements of all the complainants and had completed the investigation with regard to all the complaints, the final report that is filed must be taken to be complete and in conformity with Section 173(2) Cr.P.C.



Even if the respondent police had not filed the full set of documents as contemplated under section 173(5) of Cr.P.C., that will not give a right to the accused person to seek for statutory bail under section 167(2) Cr.P.C. In the instant case, the dispute is not with regard to whether the complete set of documents were filed along with the final report and the actual dispute is as to whether the respondent police had recorded the 161 statement of all the complainants based on which the investigation was commenced. Admittedly, that has not been done and therefore, the final report that has been filed before the Court below cannot be taken to be in conformity with section 173(2) of Cr.P.C. and it is an incomplete final report in the eye of law. Under such circumstances, the judgment of the Apex Court in **Ritu Chhabaria** case referred supra will come into operation and the petitioner will be entitled to seek for the indefeasible right guaranteed under section 167(2) Cr.P.C.

13. In the light of the above discussion, the order passed by the Court below in CrI.MP.3222 of 2023 dated 30.08.2023, is liable to be interfered by this Court and accordingly, the same is hereby set aside. This Court holds that the final report that was filed by the respondent police by only recording the statements of 54 depositors and filing documents pertaining to them, cannot be considered to be a complete final report



satisfying the requirements under section 173(2) of Cr.P.C. Hence, this Court has to necessarily release the petitioner under section 167(2) of Cr.P.C.

14. This Criminal Original Petition is allowed in the following terms:-

a) The petitioner shall execute a bond for a sum of Rs.25,000/- along with two sureties for a like sum within a period of one week from the date of receipt of the copy of this order. The petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and give photocopy of their Aadhar Card or Bank pass book to ensure their identity.

b) The petitioner shall report before the respondent police daily at 10.30 a.m. and 5.30 p.m. until further orders. This condition can be relaxed only by this Court and relaxing of this condition cannot be considered by the Court below.

(c) the petitioner shall not tamper with evidence or witness either during investigation or trial.

(d) the petitioner shall not abscond either during investigation or trial.

(e) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed



and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala((2005) AIR SCW 5560).

(f) if the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

11.09.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order
rka

Note : Issue order copy on 12.09.2023

To

1. Deputy Superintendent of Police,
Economic Offences Wing II,
Ashok Nagar, Chennai.

2. The Public Prosecutor,
High Court of Madras,
Madras.



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N. ANAND VENKATESH,. J.
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