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Crl.O.P.No.21437 of 2023

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Reserved on 21.09.2023	Pronounced on 27.09.2023
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G.CHANDRASEKHARAN, J.

This petition is filed to enlarge the petitioner on bail, pending investigation in Crime No.2 of 2020, on the file of the Commercial Crime Investigation Wing, Guindy, Chennai.

2.The case of the prosecution in brief is as follows:

The special unit of the Vigilance and Anti Corruption Department has conducted an inspection on 01.08.2018, at Anna Auto Transport Drivers Industrial Co-operative Society Ltd., Ind. 900, at No.242, Royapettah High Road, Chennai – 600 014. During the course of inspection on 01.08.2018, petroleum products worth Rs.7,16,432.50 was sold from 6.00 a.m. to 7.30 p.m. This was informed by the Accountant Mr.S.Raju and his assistant Mr.Karuppaiah, a daily wage worker. Perusal of the records shows that petroleum products worth Rs.8,40,353.54 was sold. Thus, it is clear that, on 01.08.2018, a sum of



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Rs.1,23,921.00 was misappropriated in the sale of petroleum products.

Further verification of the records shows that from the year 2014-15, accused in this case had indulged in committing the offence of criminal misappropriation to the tune of Rs.91,61,638/-. An enquiry under Section 81 of the Tamil Co-operative Societies Act,1983, was conducted. As per the enquiry report, a sum of Rs.91,61,638/- was misappropriated by the accused during the period from 11.02.2016 to 30.07.2017. Therefore, complaint was given and FIR was registered for the offences under Sections 408, 409, 477A, 420, 120B & 34 IPC.

3.The learned counsel for the petitioner submitted that petitioner has nothing to do with the alleged misappropriation of the amount. The allegation of misappropriation of amount is totally false. The enquiry under Section 81 of the Tamil Co-operative Societies Act was not properly conducted and it was a biased enquiry. The enquiry is being challenged before this Court. Petitioner initiated several writ proceedings against the enquiry. No opportunity was given for the petitioner to examine and cross examine the witnesses. Enquiry report was not furnished to him



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despite taking steps for getting the report under the Right to Information Act. The order dated 04.02.2021 is neither a show cause notice nor an impugned order and it is violative of the Tamil Co-operative Societies Act.

3.1.Petitioner was appointed as a bill clerk on 01.02.1979 and retired on 30.04.2012. At the request of the board of directors, he continued on daily wage basis with effect from 01.05.2012 and it was extended till 30.04.2018. His service was continued till 13.08.2018. Anna Auto Transport Drivers Industrial Co-operative Society Ltd. is operating a petrol bunk at No.242, Royapettah High Road, Chennai, in a leased premises, which originally belongs to Ramakrishna Aithala, owned by the management of Swagath Hotel and the eviction proceedings against HPCL is pending. The current landlord of the Society premises entered into a conspiracy with some personnel from the department of Industries and Commerce to evict the Society for monetary benefit. Seeing petitioner as a roadblock, the Deputy Director Mr.Kumaragurubaran, filed a false complaint with the department of Vigilance and Anti Corruption. Petitioner is in judicial custody from



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11.08.2023. He is ready to co-operate with the investigation and thus, seeks bail.

3.2.In support of his submissions, he produced the copies of the orders passed in (i) W.P.No.13321 of 2019, dated 29.04.2019, in S.Raji Vs. The Principal Secretary, Industries Commissioner, Department of Industries and Commerce, Thiru.Vi.ka.Industrial Estate, Guindy, Chennai – 600 032 and five others, (ii) W.P.No.14937 of 2019, dated 23.10.2019, in S.Raji Vs. The Principal Secretary, Industries Commissioner, Department of Industries and Commerce, Thiru.Vi.ka.Industrial Estate, Guindy, Chennai – 600 032 and three others (iii) W.M.P.No.6058 of 2020 in W.P.No.5128 of 2020, in M.Karuppaiya Vs. The Deputy Director (Industrial Co-operatives), Department of Industries and Commerce, CTAL Building, Guindy, Chennai 600 032. (iv) Summons issued under Section 81 of the Tamil Nadu Co-operative Societies Act and (v) Surcharge notice etc.

4.In response, the learned Additional Public Prosecutor strongly opposed this petition on the ground that petitioner along with the co-



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accused had actively involved in falsifying the accounts and misappropriated a sum of Rs.91,61,638/- and caused loss to the Society. Enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, was properly conducted. The enquiry report confirms the misappropriation of the money belong to the Society. It is for the petitioner to challenge the enquiry report before the appropriate tribunal. There exists a *prima facie* case from the materials available to show that petitioner had active role in the misappropriation of money. Thus, he opposed the release of the petitioner on bail.

5.As per the facts narrated above, it is a case of criminal misappropriation by falsifying the accounts to the tune of Rs.91,61,638/- by the accused in this case. The records produced by the petitioner, especially, the order passed by this Court in W.P.No.13321 of 2019, dated 29.04.2019, shows that petitioner has opposed the enquiry at every stage. He gave a representation dated 25.03.2019, seeking adjournment of the enquiry proceedings. When that petition was not considered, he filed W.P.No.13321 of 2019. This Court directed the first respondent to



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consider the petitioner's representation dated 25.03.2019 and dispose of the same on merits and in accordance with law, as early as possible, within a period of 10 days from the date of receipt of a copy of that order. Mean while, enquiry was kept in abeyance, till the passing of final order by the first respondent. Petitioner has filed a writ petition in W.P.No.14937 of 2019 for quashing the proceedings of the first respondent in R.C.No.21951/EG3/2018, dated 13.05.2019. This Court disposed the petition on 23.10.2019, holding that the second respondent is not a fit person to conduct enquiry and directed the first respondent to appoint a new enquiry officer and the new enquiry officer was directed to complete the enquiry within a period of 12 weeks from the date of receipt of a copy of that order. Thereafter, enquiry officer was appointed and he gave a report confirming the misappropriation of the amount by the accused in this case. The proceedings under the Tamil Nadu Co-operative Societies Act and the criminal proceedings are totally different. There are materials available to show that the petitioner and the other accused have involved in falsifying of accounts and misappropriation of Rs.91,61,638/-. Entire amount is not recovered. Investigation in this case is not



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completed. Petitioner is the main person in this act of criminal misappropriation of Society's money.

6.In the said circumstances, if the petitioner is released on bail, there is a possibility that he may tamper the evidence, influence the witnesses and abscond to avoid the trial. Investigation is not completed. Considering all these reasons, this Court is not inclined to grant bail to the petitioner. Accordingly, this Criminal Original Petition is dismissed.

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G.CHANDRASEKHARAN, J.



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Pre-Delivery Order in
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