Crl.O.P.Nos.1622 & 1625 of 2023

Reserved on : 13.02.2023

Pronounced on : 28.02.2023

G.K.ILANTHIRAIYAN, J.

The petitioner in Crl.O.P.No.1622 of 2023, who was arrested and remanded to Judicial custody on 21.03.2022 for the alleged offences punishable under Sections 120B, 419, 420, 409, 467, 468, 471 of IPC and under Section 13(1)(a) r/w. 13(2) of Prevention of Corruption Act, 1988 in Crime No.RC 032/2020/A0006, on the file of the respondent police, seeks bail.

2. The petitioner in Crl.O.P.No.1625 of 2023, who was arrested and remanded to Judicial custody on 09.08.2021 for the alleged offence punishable under Section 120B, 419, 420, 409, 467, 468, 471 of IPC and under Section 13(1)(a) r/w. 13(2) of Prevention of Corruption Act 1988 in Crime No.RC 032/2020/A0006, on the file of the respondent police, seeks bail.

3. The case of the prosecution is that on 29.07.2020, the Deputy General Manager/Zonal Manager, Indian Bank, Zonal Office,

Chennai North, 66, Rajaji Salai, Chennai – 600 001, has lodged a complaint as against N. Ganesh, Manimozhi, being private persons, Sermathiraja, Branch Manager, Indian Bank, Koyambedu Branch and other unknown public servants and private persons for committing criminal offences such as, criminal conspiracy, impersonation, fabrication of false documents, submission of forged documents, criminal misappropriation, criminal breach of trust, fraudulent transactions etc. and thereby causing wrongful loss of public money to the tune of Rs.45,40,65,000/- and corresponding wrongful gain to themselves. The respondent police also filed one preliminary charge sheet and three supplementary charge sheets as against 30 accused persons including the petitioner, which is pending for trial in C.C.No.16 of 2022 on the file of the IX Additional Special Judge for CBI Cases, Chennai.

4. During the course of investigation, the respondent police has collected several documents and material objects from the bank officials and other suspected persons and several searches were conducted at different places at Chennai, Nagercoil & Tirunelveli and seized various incriminating documents and material objects concerned with regard to fraudulent transactions.

5. The allegations as against the accused is that the fixed deposits created in the name of M/s.Chennai Port Trust were fraudulently pre-closed and the amounts were deposited in the fake account of Chennai Port Trust General Insurance Fund, which was created by the accused persons. From the said account, the money was fraudulently transferred into several accounts and withdrawn as cash by the accused. A1 had approached the other accused persons, viz., A5 & A6, for getting surplus funds from any Government Organization for creating fixed deposits in any Nationalized Bank with the intention to swindle the said investments. A1 and A6 had approached A3, the then Branch Manager, Indian Bank, Koyambedu Branch, by furnishing the Board resolution copies of Jalandhar Central Co-operative Bank for the investment of Rs.300 crores. However, it was not processed as it belongs to different State.

6. Again, A1 along with A4, A5 and A6 98 pursuing the same motive approached A26 i.e., the petitioner herein Crl.O.P.No.1622 of 2023. The 1st accused with the help of A21 created bogus documents, such as Board Resolution, Authorization Letter in the name of Chennai Port Trust along with the forged Employees ID Card in respect of A4 with the

individual PAN Card, Aadhaar Card and GST Registration Certificate of CPT as KYC for the purpose of opening the Current Account in the name of Chennai Port Trust General Insurance Fund by A4, impersonating himself as Deputy Director, Finance Department of Chennai Port Trust. The said fake account was opened for the purpose of parking the investment amount received from Chennai Port Trust before creating the fixed deposit and also to deposit the amount received from pre-closure of fixed deposit receipts. From the said account, the money was further fraudulently transferred to various accounts and withdrawn the amount in cash.

7. The accused persons approached the Chennai Port Trust officials for getting the surplus funds of Chennai Port Trust in the form of fixed deposits with the conspiracy of the bank officials, since the bank was made to quote higher rate of interest in order to get deposits. Thus, the Indian Bank, Koyambedu Branch, has obtained Rs.100,57,50,000/- from Chennai Port Trust through the BGL Account of Indian Bank, Koyambedu Branch, Chennai. It was parked in the fake current account opened in the name of Chennai Port Trust by the accused persons and fixed deposits was created. The A3, the Bank Manager of the Indian Bank, had created fixed

deposits with the lesser interest rate than the quoted rate and handed over the fixed deposit receipts to the fraudsters rather than delivering the same to Chennai Port Trust directly. They created fake fixed deposit receipts with the quoted interest rate and handed over to the Chennai Port Trust.

8. Having possession of the original fixed deposit receipts, the fraudsters submitted the same with a pre-closure request and in criminal conspiracy with the bank officials the fixed deposit receipts were pre-closed. The said amount was deposited in the fake current account and transferred to various accounts of the beneficiaries known to the accused persons, thereby a sum of Rs.15.25 crores were withdrawn as cash by A2, A5 and A6 from the current account opened in Indian Bank, Koyambedu Branch, in the name of Chennai Port Trust General Insurance Fund by the fraudsters. Thus, finally a sum of Rs.100,57,50,000/- were transferred from SBI, SME, Rajaji Salai Branch and SBI, CAG Branch of Chennai of CPT to the account of Indian Bank, Koyambedu, Chennai, in the account opened by the fraudsters. The amount to the tune of Rs.45,40,65,000/- were pre-closed and fraudulently transferred to various accounts. The remaining amount of Rs.55,16,85,000/- has been frozen by the investigation agency.

9. The learned counsel appearing for the petitioner in Crl.O.P.No.1625 of 2023 submitted that the petitioner is arrayed as A2. The allegation as against the petitioner is that A5 and A6 used to visit the place of A1 to get his signature in the fixed deposit receipts and handed over the same to the petitioner herein. The petitioner had received around nine fixed deposit receipts from Indian Bank, Koyambedu Branch and handed over the same to A7. Further allegation is that the petitioner had withdrawn the amount credited from Chennai Port Trust by using the cheques signed by A1 along with A4 and A6. The petitioner and A6 had received a sum of Rs.30 Lakhs as commission for withdrawal of Rs.15 Crores by using the cheques singed by A1. He also conspired with the other accused persons and opened 45 number of fixed deposit receipts to the tune of Rs.100,57,50,000/- by submitting forged documents and fraudulently opened current account in the name of Chennai Port Trust General Insurance Fund. Totally, the petitioner had received a sum of Rs.5 Crores as commission for withdrawal amount of Rs.45 Crores. Thereafter, he had financed to P.Logu and Justin by getting the signatures of them in blank agreement and cheques and gave Rs.2,20,00,000/- and Rs.2,00,000/- to them.

10. After completion of investigation, the respondent filed preliminary charge sheet on 02.11.2021, thereby citing 184 witnesses, 1485 documents, 97 material objects, 5 cash seized list and 1 foreign currency seized list. A supplementary final report was filed on 17.12.2021 and cited another 4 witnesses and 7 documents. Again on 25.02.2022, the respondent filed second supplementary final report and cited 14 witnesses and 15 documents. On 24.05.2022, the respondent once again filed third supplementary final report and cited 334 witnesses, 904 documents and 18 material objects. Thereafter, again supplementary final report filed on 26.05.2022 and cited 502 witnesses and marked 2411 documents with 115 material objects.

11. He further submitted that the respondent ought to have filed final report within a period of 90 days i.e., on or before 07.11.2021, in order to proving the entitlement for statutory bail, the respondent in a haste and harried manner filed a preliminary final report on 02.11.2021. Therefore, it is clear that the preliminary final report is an incomplete charge sheet. Therefore, the petitioner is entitled to default bail. The statutory right to bail under Section 167(2) of Cr.P.C is a fundamental right

under Article 21 of the Constitution of India. The petitioner is in custody from 09.08.2021 and the respondent failed to complete the investigation in time and failed to file final report in time. He also submitted that sofar A10, A19, A20, A21 and A27 were granted bail.

12. The learned counsel appearing for the petitioner in Crl.O.P.No.1622 of 2023 submitted that even according to the prosecution he has received illegal gratification of Rs.5,00,000/- from the approver Mr.Esaki and received another sum of Rs.1,20,000/- in his bank account from A5 and A6. In fact, A21 was released on bail and the petitioner has also standing in the same footing. He is in judicial custody from the date of his arrest i.e., 21.03.2022. Now, the respondent completed the investigation and filed final report and the same has been taken cognizance by the Trial Court in C.C.No.16 of 2022 on the file of the IX Additional Special Court for CBI Cases, Chennai.

13. A perusal of the counter filed by the respondent reveals that the petitioner is acted as a mediator between A3, A5 and A6 for the fraudulent opening of current account in the name of Chennai Port Trust

General Insurance Fund. It was signed by A4 and A5. He also colluded with A3, A5, A6 and A24 and facilitated to open the FDR dated 09.03.2020 in the name of A24 which was used as model FDR for creating the forged FDRs and handed over the same to Chennai Port Trust to make them believe the forged FDRs and swindle the tune of Rs.45,40,65,000/- from the purported account in the name of the Chennai Port Trust General Insurance Fund vide Account No.6867825525. He also colluded with A3 and deposited the challan for Rs.45,00,000/- without physical cash in his account, which was fraudulently adjusted for withdrawal of Rs.6 Crore from the Chennai Port Trust account by A3. He invested Rs.2.32 Crore from the agreement proceedings and lend the same to Logu and Justin as hand loan. Totally he received to the tune of Rs.4,65,00,000/- from the agreement and invested the said amount.

14. As far as the petitioner in Crl.O.P.No.1622 of 2023 is concerned, he is arrayed as A26. He was the employee of Finance Department. He conspired with A1, approver Easakki, A6, Accounts Officer and Assistant Superintendent of Securities Section of Chennai Port Trust and gathered information from the Finance Department of Chennai

Port Trust regarding rate of interest from the last bidding rate. He conspired with other accused persons facilitated to drop the quotation for getting FD from the Chennai Port Trust to Indian Bank, Koyambedu Branch as well as to hand over the three fake FDRs of 4th investment to Chennai Port Trust, when the arrival of private person is strictly restricted during the time of COVID-19 Pandamic. He received a sum of Rs.6,20,000/- as commission.

15. The learned counsel for the petitioners relied upon the Judgment of the Hon'ble High Court of Delhi reported in ***2022 SCC Online Del 3124*** in the case of ***Chitra Ramkrishna Vs. Central Bureau of Investigation (CBI) through the Investigating Officer,*** which is held that the accused is entitled for default bail under Section 167(2) of Cr.P.C, since the respondent filed incomplete charge sheet. The CBI failed to obtain prosecution sanction before filing the final report and no cognizance can be taken on the charge sheet. Whereas, in the case on hand, a preliminary charge sheet has been filed within a period of 90 days, in which as against the second accused, the investigation has been completed and filed final report implicating other accused persons. The supplementary report was

filed, in which A26 has been implicated as an accused. Only thereafter, he was arrested i.e., on 21.03.2022. Therefore, the above Judgment is not applicable to the case on hand. This Court had already dismissed the bail application filed by A2 in Crl.O.P.No.11344 of 2022 by an order dated 13.07.2022. In fact, the petitioner in Crl.O.P.No.1622 of 2023 who is arrayed as A26 bail application was dismissed on 07.09.2022.

16. Considering the above facts and circumstances of the case, this Court finds that there is no change of circumstances to consider the bail applications filed by the petitioners. Therefore, this Court is not inclined to grant bail to the petitioners. Accordingly, these Criminal Original Petitions stand dismissed.

28.02.2023

Lpp

G.K.ILANTHIRAIYAN, J.

Lpp

Pre-delivery order in

Crl.O.P.Nos.1622 & 1625 of 2023

28.02.2023