



Crl.OP(MD)Nos.12455 and 12486 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Dated: 17/07/2023

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)Nos.12455 and 12486 of 2023

Subramanian : Petitioner/ Accused No.23
in Crl.OP(MD)No.12455 of 2023

Suresh : Petitioner/ Accused No.27
in Crl.OP(MD)No.12486 of 2023

Vs.

1.State represented by
The Inspector of Police,
EOW,
Sivagangai District,
Madurai Region.
(In Crime No.7 of 2022)

: Respondent/ Complainant
in both cases

2.Subbaiah :Petitioner/3rd party
in CRL MP(MD)Nos.10078& 10079 of 2023

For Petitioner : Mr.A.Balaji, Advocate
(in both cases)

For Respondent : Mr.B.Nambiselvan,
Additional Public Prosecutor



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For Intervenor : Mr.M.Solaisamy, Advocate
(in both cases)

PETITIONS FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C.

PRAYER:-For Anticipatory Bail in Crime No.7 of 2022 on the file of the Respondent Police.

COMMON ORDER: The Court made the following order:-

The petitioners, who are arrayed as A23 and A27 apprehend arrest at the hands of the respondent police for the offences punishable under sections 406, 420, 468, 471, and 120(b) IPC and section 5 of the Tamil Nadu Protection of Interest of Depositors Act, 1997, in Crime No.7 of 2022 on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution is that the de-facto complainant lodged a complaint stating that one New Raise Alayam Small Finance Company is functioning in and around Karaikudi and other areas, since in 2019. They received deposits from the public and promised to pay higher interest. They also represented that they are running other Companies as mentioned in the FIR. They also stated that more than 14 Directors are in the company. Believing the words of the above said persons, the de-facto complainant and others deposited more than Rs.350 Lakhs. They have also



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issued bonds for the above said deposits. But failed to pay higher interest as promised. At one point of time, the Managing Director promised to return the money within a week. But later, they closed the Company and absconded. On further enquiry, it was revealed that the accused persons closed the above said Company and cheated the depositors to the tune of Rs.300 crores. It was also revealed that one Madhavan, one of the Directors of the above said Company purchased properties worth about several crores in the name of their family members. On the basis of the complaint, the case was registered as stated above.

3. Seeking anticipatory bail, these petitions have been filed by one Subramanian, who is arrayed as A23 and Sunresh, who is arrayed as A27.

4. Heard both sides.

5. Before we go into the other aspects, the undertaking that was given by the petitioners is required to be placed on record.

6. The learned counsel appearing for the petitioners without prejudice to his defence, would submit that at the time of trial, they are ready to deposit



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Rs.9,00,000/-, which was received by them from the above said Company as dividend. So, this undertaking may be taken into account at the final stage of this order.

7.Now the case of the petitioners is that even before the date of registration of the FIR, they resigned from the Directorship of the Company. After that, they invested their retirement benefit in the above said Company itself. At that time, the then Directors added them as one of the Directors stating that all the investors will be added as Directors without undertaking any financial liability. They agreed to become the Directors. Even though, they deposited more than one crore, they received dividend as Rs.9,00,000/-. Because of the default committed by the Company, now they also become victims. However, the dividend amount, that was received by them will be deposited, if court orders so.

8.Per contra, the learned Additional Public Prosecutor would submit that on the date of the above said deposit by the victims, these petitioners were also Directors, so also when the default was committed by the Company. Only subsequent to that, they resigned from the Directorship. So, according to him, they cannot disown their criminal liability.



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9.Perusal of the records also shows that on the date of the deposit, these petitioners were also one of the Directors, so also when the above said default was committed by the Company. Before registration of the case against the Company, they resigned from the Directorship, later they deposited the amount. So, they added as Directors.

10.Now the question arises for consideration is whether this will absolve them on the criminal liability.

11.But I am of the considered view this will not. Since huge amount is involved and several thousands of innocent victims have been cheated, the petitioners, who are the Directors, at the relevant point of time, must also take up the responsibility. They cannot take advantage their change of position, soon-after the registration of the FIR. They have also shared the profit of crime. So, any amount of undertaking given by the petitioners will not compensate the innocent victims.

12.So, I am of the considered view that this is not the fittest case to exercise the discretionary power in favour of the petitioners. On that sole ground, these two petitions are liable to be dismissed.



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13.In the result, both the criminal original petitions are dismissed.

sd/-
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/08/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO
1.THE INSPECTOR OF POLICE,
EOW,
SIVAGANGAI DISTRICT, MADURAI REGION.

2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.M.SOLAISAMY, Advocate (SR-10881[I] dated 18/07/2023)

ORDER
IN
CRL OP(MD) No.12455 of 2023
Date :17/07/2023

RK /VRS(18/08/2023) 6P / 4C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023