



(1)CrI.OP(MD)No.12369 of 2023:-

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Dated: 22/09/2023

THE HON'BLE MR JUSTICE G.ILANGO VAN

CrI.OP(MD)Nos.12369 and 12496 of 2023

(1)CrI.OP(MD)No.12369 of 2023:-

1.Karunakaran

2.Rama

... Petitioners/ Accused Nos.3 & 4

Vs.

State rep. by

The Inspector of Police,

Economical Offence Wing,

Madurai, Madurai District.

(Crime No.2 of 2023)

... Respondent/ Complainant

For Petitioners : Mr.K.Vinayagan, Advocate

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

(2)CrI.OP(MD)No.12496 of 2023:-

1.Pandiyarajan

2.Sivakami

... Petitioners/ Accused 5 to 6

Vs.

State rep. by

The Sub Inspector of Police,

Economical Offence Wing,

Madurai District.

(Crime No.2 of 2023)

... Respondent/ Complainant

For Petitioners : M/s.Nila, Advocate

For Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor



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PETITIONS FOR ANTICIPATORY BAIL Under Sec.439 of Cr.P.C.

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COMMON PRAYER:- For Anticipatory Bail in Crime No.2 of 2023 on the file of the Respondent Police.

COMMON ORDER: The Court made the following order:-

The petitioners/ A3 to A6, who apprehend arrest at the hands of the respondent police for the offences punishable under sections 406, 420, 120-B IPC and section 5 of the Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997, in Crime No.2 of 2023 on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution in brief:-

A1 approached the de-facto complainant stating that along with A3, they are running a Company called 'Champion Cards'. They are printings the Cards and if money is deposited, huge interest will be given. They also induced them to purchase share certificates. Rs.5,00,000/- was paid as deposit. Receipt was also issued for Rs.4,50,000/-. For Rs.50,000/-, they also issued a share certificate. When the money was demanded back along with benefit, he came to know that without proper permission from the Reserve Bank of India, deposits have been received by the Company from the public.

3.Further enquiry reveals that out of the above said deposit amount, they have also purchased immovable properties in various places. They also started another Company called 'Madura Cards'. On the basis of the complaint given by the de-facto



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complainant, a case in Crime No.2 of 2023 was registered for the offences stated above.

4. Seeking anticipatory bail, these petitions have been filed by the A3 to A6.

5. Heard both sides.

6. At the time of hearing, the main argument that was advanced by the learned counsel appearing for the petitioners is that the Company called 'Champion Cards' is a registered private Limited Company. They invited shares from the public. They have not involved in the business of collecting deposits and paying interest or benefit as the case may be. He would further submit that now the Company ran into loss and now, liquidation process is underway. They have also initiated proceedings. They have also produced the relevant documents. So, according to him, the offence under section 5 of the Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997 is not attracted and the respondent has no jurisdiction to take up the investigation also.

7. But contra, it was contended on behalf of the de-facto complainant and the learned Additional Public Prosecutor that apart from issuing the share certificates, they have also invited deposits from the public and thereby cheated.

8. Perusal of the records also shows that the deposit receipts have also been issued.



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9.The learned counsel appearing for the petitioners would submit these are not deposit receipts, but only share certificates. But in the complaint itself, it has been clearly stated by the de-facto complainant that out of Rs.5,00,000/- given, Rs.4,50,000/- was taken as deposit and the remaining Rs.50,000/- was treated as share amount, for which, separate deposit receipt and share certificate has been issued.

10.It is also further stated that without proper permission from the Reserve Bank of India, the Company involved in collecting deposits from the public. So according to them, prima facie case has been made. Since money has not been returned, they are liable to be prosecuted and they are not entitled for anticipatory bail also.

11.Section 5 of the Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997, reads as follows:-

“5.Default in repayment of deposits and interest honouring the commitment. -Notwithstanding anything contained in Chapter II, where any Financial Establishment defaults the return of the deposit or defaults the payment of interest on the deposit, or fails to return in any kind, or fails to render service for which the deposit has been made, every person responsible for the management of the affairs of the Financial



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Establishment shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to one lakh of rupees and such Financial Establishment is also liable for a fine which may extend to one lakh of rupees.

5A.Compounding of offence.-(1) An offence punishable under section 5 may, before the institution of the prosecution, be compounded by the Competent authority or after the institution of the prosecution, be compounded by the Competent authority with the permission of the Special Court, on payment of the entire amount due to the depositors with or without interest.

(2)Where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken or continued against the offender, in respect of the offence so compounded and the offender, if in custody shall be discharged forthwith."

12.Reading of the above said provision makes it clear that even a private Limited Company involved in financial activity is covered. So, the contention on the part of the petitioners that the respondent has no jurisdiction to entertain the complaint is out of place and cannot be taken into account at all.



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13.For better understanding of the position, let me extract the relevant order passed by this court in Crl.OP(MD)Nos.13071, 13465 and 14119 of 2023, dated 22/08/2023 (Neomax Properties Private Limited and others Vs. The Inspector of Police, Economic Offences Wing-II, Madurai District). By relying upon the Hon'ble Division Bench of this court made in WA No.1227 of 2015 in the case of M/s.Helios and Matheson Information Technology Ltd., Rep. by its Authorized Signatory Mr.D.Sathasivam Vs. The State rep. by the Deputy Superintendent of Police, DOW-II, Anna Nagar, Chennai-600 040, the following observation has been in the above said order.

“21.The interplay between the companies Act, 1956, coupled with the RBI Act and the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, was elaborately discussed. Facts may not be elaborated, since it is a famous case and authoritative pronouncement on this point. But, in short, for better understanding, it may be mentioned that a plea was raised by the company stating that when Section 58 A of the companies Act is involved, automatically the present Act, 1997, has no application. In that case, simultaneously, proceedings before the companies court were initiated and FIR has also been registered against the Company and Directors under Section 5 of the



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Act, 1997 and Section 420 of IPC.

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22.Para 54 of the judgement is extracted hereunder.

“54. After holding that the field of operation of the provisions of the Companies Act, 1956, and the Companies (Acceptance of Deposits) Rules was quite different from the field of operation of the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997 and also after holding that the object behind Section 58-A of the Companies Act, 1956 was completely different from the object of the Tamil Nadu Act, the Full Bench pointed out in paragraph 82 of its decision that at the most, the Tamil Nadu Act can be said to have trenched into the central Law to a small extent incidentally and that the same has to be understood in the light of the pith and substance of the legislation.”

23.Para 60 is also extracted hereunder.

“60. In simple terms, the definition of the expression "financial establishment" under TNPID Act, 1997, covers a company incorporated under the Companies Act, 1956 "carrying on the business of receiving deposits under any Scheme or Arrangement or in any other manner". The question as to whether a company is carrying on the business of receiving deposits under any Scheme or Arrangement or in any other manner, is a



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question of fact into which this Court exercising jurisdiction under Article 226 cannot go, especially when the relief sought is to quash a First Information Report. It is needless at this distance of time to cite any authority for the proposition that a First Information Report cannot be quashed by a Court under Article 226, on the basis of any evidence or material other than what is reflected in the First Information Report itself."

14.In the light of the above said observation, objection that has been made by the petitioner can also be negatived.

15.Considering the facts and circumstances of the case and also the money involved, I am of the considered view that it is not a fittest case to entertain the anticipatory bail.

16.In the result, all the criminal original petitions are dismissed.

sd/-
22/09/2023

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/10/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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To

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1 THE INSPECTOR OF POLICE, ECONOMICAL OFFENCE WING,
MADURAI, MADURAI DISTRICT.

2 THE SUB INSPECTOR OF POLICE, ECONOMIC OFFENCES WING,
MADURAI DISTRICT.

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

ORDER
IN

CrI.OP(MD)Nos.12369 and 12496 of 2023

Date :22/09/2023

RS/VRS/SAR-(12.10.2023) 9P 4C

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