BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 22/08/2023
PRESENT

The Hon`ble Mr.Justice G.ILANGOVAN

CRL OP(MD). Nos.13071, 13465 & 14119 of 2023

1. Neomax Properties Private Limited,
rep. by Balasubramanian, 85,
Subramanianya Pillai Street
Rikki Tower, 2nd Floor,
By Pass Road,S.S Colony,
Madurai District.. ... 1st PETITIONER/ACCUSED 1 in Crl.O.P.(MD).No.13071 of 2023

2. Garlando Properties Private,
Limited Represented by P.Palanisamy,
7- B, Dhayabaran Street
Murugankuruchi,
Palayamkottai.. ... 2nd PETITIONER/ACCUSED 2 in Crl.O.P.(MD).No.13071 of 2023

3. Transo Properties Private Limited,
Represented by Ashokmetha Panchai,
Door No.66H/F, First Floor,
Vasantham Nagar,Perumal Puram.. ... 3rd PETITIONER/ACCUSED 3 in Crl.O.P.(MD).No.13071 of 2023

4. Tridas Properties Private Limited,
Represented by M.Charles,
No.334/2 Part KM Colony,
Melur Road,
Sivagangai District – 630561.. ... 4th PETITIONER/ACCUSED 4 in Crl.O.P.(MD).No.13071 of 2023

5. Glomax Properties Private Limited,
Represented by Thiyagarajan,
52/12,Sriram Nagar 4th Street,
Mandhithoppu Kovilpatti.. ... 5th PETITIONER/ACCUSED 5 in Crl.O.P.(MD).No.13071 of 2023

6. Kamalakannan, ... 6th PETITIONER/ACCUSED 6 in Crl.O.P.(MD).No.13071 of 2023

7. Balasubramanian, ... 7th PETITIONER/ACCUSED 7 in Crl.O.P.(MD).No.13071 of 2023

8. Narayanasamy, ... 8th PETITIONER/ACCUSED 9 in Crl.O.P.(MD).No.13071 of 2023

9. Manivannan, ... 9th PETITIONER/ACCUSED 10 in Crl.O.P.(MD).No.13071 of 2023

10. Chellammal, ... 10th Petitioner/Accused 11 in Crl.O.P.(MD).No.13071 of 2023

D.Veerasakthi, ... Petitioner/Accused 8 in Crl.O.P.(MD).No.13465 of 2023

Selvakumar, ... Petitioner/Accused Rank Not Known in Crl.O.P.(MD).No.14119 of 2023

Vs

The Inspector of Police,
Economic Offences Wing-II,
Madurai District.
Crime No.3 of 2023. ... Respondent/Complainant in all petitions

For Petitioners: M/s.ASWIN PRASANNA.AS.,
Advocate.
In Crl.O.P.(MD).No.13071 of 2023

For Petitioner : M/s.T.LAJAPATHI ROY, Senior Counsel,
for M/s.LAJAPATHI ROY AND ASSOCIATES
In Crl.O.P.(MD).No.13465 of 2023

For Petitioner : M/s.N.DILIP KUMAR, Advocate
for Mr.M.MAHARAJA, Advocate.
In Crl.O.P.(MD).No.14119 of 2023

For Respondent : Mr.S.RAVI, Additional Public Prosecutor
in all petitions.

For Intervenors: Mr.K.N.GURU, Advocate.
Mr.J.YOGESWARAN, Advocate.
Mr.S.RAMASAMY, Advocate.
Mr.A.KATHIRESAN, Advocate.
Mr.ABISHEK DHEERAJ RAWAL, Advocate
Mr.R.TAMILAMUTHAN, Advocate.
Mr.G.NAVEENKUMAR, Advocate.
Mr.H.MAHAMED HUSSAIN, Advocate.
Mr.S.SURESH, Advocate.
Mr.P.BALAN, Advocate.
Mr.TK.SIDDHARTHAN, Advocate.
Mr.M.VASANTHAN, Advocate.
Mr.M.JAYAKUMAR, Advocate.
Mr.S.RAMSUNDARVIJAYRAJ, Advocate.
Mr.P.SURYA, Advocate.
Mr.P.VENKATESAN, Advocate.
Ms.A.RAJINI, Advocate.
Mr.R.SELVAM, Advocate.
Mr.B.DEEPAK, Advocate.
Mr.K.YASAR ARAFATH, Advocate.
Mr.S.M.A.JINNAH, Advocate.
Mr.H.ARUMUGAM, Advocate.
Mr.N.SARAVANAN, Advocate.
Mr.T.SIVAKUMAR, Advocate.
M/s.M.VIJAYARATHINAM, Advocate.
Mr.A.BALAJI, Advocate.
Mr.D.RAMESHKUMAR, Advocate.
Mr.S.C.HEROLD SINGH, Advocate.
Mr.M.NATARAJAN, Advocate.
M/s.V.SADHANA, Advocate.
Mr.K.SEEMARAJ, Advocate.
Mr.R.RAJAMOHAN, Advocate.

Mr.P.MANI ANAND, Advocate.
Mr.K.JEYARAJ, Advocate.
Mr.G.ARAVINTHAN, Advocate.
Mr.A.K.BASKARAPANDIYAN, Advocate.
Mr.MARUTHAM, Advocate.
Mr.S.M.ANANTHA MURUGAN, Advocate.
Mr.R.ANAND, Advocate.
Mr.R.BALAKRISHNAN, Advocate.
Mr.T.INDRACHITHU, Advocate.
Ms.R.VENNILA, Advocate.

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

PRAYER :- For Anticipatory Bail in Crime No.03 of 2023 on the file of the respondent police.

COMMON ORDER : The Court made the following order :-

The petitioners/Accused, apprehending arrest at the hands of the respondent police for the alleged offences punishable under Sections 406, 420 and 34 of IPC and Section 5 of Tamil Nadu Protection of Interest of Depositors (in Financial Establishment) Act, 1997, in Crime No.3 of 2023, on the file of the respondent police, seeking anticipatory bail.

2.The case of the prosecution as per the defacto complainant's version is that one Chellammal, Narayanasamy and Manivannan approached him, on knowing that they are having money and informed that Neomax Properties Private Limited is functioning at Madurai as Head Quarters. In the above said company one Kamalakannan, Balasubramanian and Veerasakthi and others are directors.

According to them, they were the agents. They informed him that they also have invested money and benefited. If money is deposited, it will become double in 2 ½ years. They have also stated that they are offering high interest rate. So he and his mother were taken by the above said Chellammal, Narayanasamy to the Head quarters of the above said company. At that time, one Kamalakannan, Balasubramanian and Veerasakthi and others were present. They have shown some video clippings and explained various schemes introduced by them. They have also promised that they offer interest at the rate of 12% to 30%. He was also informed that several branches are functioning in several places and other companies also conduct this business. And also informed that they purchased various properties in various villages and after forming lay out and developing the same they used to sell the properties and the money will be returned to him with double amount. For acknowledgement of the money, they are giving certificates.

3.Believing the words of the above said persons, he and his mother Janaki deposited various amounts on various dates as detailed in the complaint. They also mentioned the amount deposited, date of deposit, date of maturity and maturity amount details. In token acknowledgement of the above said deposit they have issued Bonds. But from 15.02.2023, the money deposited through the Agent Chellammal was neither returned nor interest paid. When he approached the above said Office, there was no proper reply. Later, he came to know that they have been cheated. Totally Rs.73.50 Lakhs was deposited.

4.On the basis of the above said complaint, case was registered in Crime No.3 of 2023 for the offences punishable under Sections 406, 420, 34 of IPC and Section 5 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997, (herein after referred to as 'the Act, 1997') on 20.06.2023. Originally 11 persons have been shown as accused. The first accused is Neomax Properties Private Limited; the second accused is Garlando Properties Private Limited; the third accused is Transco Properties Private Limited; Tridas Properties Private Limited has been arrayed as fourth accused; The fifth accused is Glowmax Properties Private Limited; All other accused are individual persons working in various capacities in the above said companies.

5.Seeking anticipatory bail, these three petitions have been filed by the accused persons. Apart from common ground that has been made in these petitions, the eighth accused viz., Veerasakthi has also produced some medical records stating that he is suffering from some ailment involving liver. So far as Crl.O.P.(MD).No.14119 of 2023, it was submitted by the learned counsel that no specific allegation has been made against this petitioner in the FIR. When these petitions moved, on the very first hearing itself, the learned Senior counsel Mr.N.R.Ilango appearing for the petitioners submitted that they are ready to settle the entire issue. So either a Honourable Retired Judge of this Court or some other Responsible Officer may be appointed as One Man Committee to resolve the issue. Some of the victims, who appeared on that hearing were also willing to settle the issue, but some others were not. So this Court made an observation that if the victims want to make compromise or settle the issue, they can do the same out of the Court. And pendency of this petition or investigation shall not be a bar for making the above said compromise. Even one of the learned Senior Counsel Mr.T.Lajapathi Roy, has submitted that since many of the victims have come on record, let the details of the victims be collected and one or two persons may be appointed as representatives of the parties, appearing before this Court. So that they can make negotiations with the company.

6.So far the appointment of a Retired Judge or other competent person is concerned, it was objected not only on the side of some of the victims, but also on the side of state, on the ground that it may go beyond the scope of this petition and this Bench may not also have any jurisdiction to entertain such request. They also cited Division Bench Order of this Court and as well as the Honourable Supreme Court of India.

7.After the above said discussion, some of the petitioners moved the co-ordinate Bench of this Court by way of filing writ petition in W.P.(MD).No.18991 of 2023, seeking appointment of commission. Now, the matter has been seized by the Co-ordinate Bench of this Court and posted to 22.08.2023 for response from the State and Victims.

8.So it may not be proper on the part of this Court to make any observation or discussion on the above said request. Even though Mr.A.S.Aswin Prasanna, learned counsel, appearing for one of the accused was constantly and repeatedly prayed this Court that, not to pass any adverse order till the above said matter is decided by the Co-ordinate Bench, I am unable to accept the request for the simple reason that anticipatory bail application cannot be kept pending endlessly. What is going to happen in proceedings before the Co-ordinate Bench may not be known. Independently, all these matters must be decided and disposed off. On that ground, I directed the parties to advance their arguments. Accordingly, arguments were advanced.

9.One of the petitioner's Senior Counsel Mr.T.Lajapathi Roy, made preliminary argument regarding the very maintainability of the registration of the FIR and the investigation undertaken by the respondent. He would submit that even as per the allegation that has been made in the FIR and the documents given or issued by the company in favour of the persons, are not deposits per se. According to him, only an advance amount or investment were made by the public in the company for the purpose of purchasing house plots. According to him, the amount has to be paid in installments. The public were also paying the money in installments. After the entire amount is paid, it was agreed on the side of the petitioners that they will execute sale in favour of the investors. So according to him, even perusal of the above said receipts, booking confirmation and execution of sale deeds in favour of some of the investors will show that what was paid by the victims are only sale price in installments. All the intervenors will not come under the category of the depositors, so as to bring it under purview of the definition of deposit defined under Section 2 of the Act, 1997. For better understanding of his argument, let me extract the definitions in 1) Section 2 (2) of the Act, 1997 2) Section 2 (31) of Companies Act 3) Section 2 (4) of Banning of Unregulated Deposit Schemes Act, 2019 .

> "2.Definitions:(In TNPID Act 1997)
>
> (2) "deposit" means the deposit of money either in one lump sum or by installments made with the Financial Establishment for a fixed period, for interest or for return in any kind or for any service;"
>
> 2.Definitions: (In Companies Act 2013)
>
> (31)"deposit" includes any receipt of money by way of deposit

or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.

2.Definitions: (In BUDS Act)

(4) "deposit" means an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include--

(a) amounts received as loan from a scheduled bank or a

co-operative bank or any other banking company as defined in

section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(b) amounts received as loan or financial assistance from the

Public Financial Institutions notified by the Central Government in consultation with the Reserve Bank of India or any non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) and is registered with the Reserve Bank of India or any Regional Financial Institutions or insurance companies;

(c) amounts received from the appropriate Government, or any amount received from any other source whose repayment is guaranteed by the appropriate Government, or any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature;

(d) amounts received from foreign Governments, foreign or international banks, multilateral financial institutions, foreign Government owned development financial institutions, foreign export credit collaborators, foreign bodies corporate, foreign citizens, foreign authorities or person resident outside India subject to the provisions of the Foreign Exchange Management Act, 1999 (42 of 1999) and the rules and regulations made thereunder;

(e) amounts received by way of contributions towards the capital by partners of any partnership firm or a limited liability partnership;

(f) amounts received by an individual by way of loan from his relatives or amounts received by any firm by way of loan from the relatives of any of its partners;

(g) amounts received as credit by a buyer from a seller on the sale of any property (whether movable or immovable);

(h) amounts received by an asset re-construction company which is registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(i) any deposit made under section 34 or an amount accepted by a political party under section 29B of the Representation of the People Act, 1951 (43 of 1951);

(j) any periodic payment made by the members of the self-help groups operating within such ceilings as may be prescribed by the State Government or Union territory Government;

(k) any other amount collected for such purpose and within such ceilings as may be prescribed by the State Government;

(l) an amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business including--

(i) payment, advance or part payment for the supply or hire of goods or provision of services and is repayable in the event the goods or services are not in fact sold, hired or otherwise provided;

(ii) advance received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement;

(iii) security or dealership deposited for the performance of the contract for supply of goods or provision of services; or

(iv) an advance under the long-term projects for supply of capital goods except those specified in item (ii):

Provided that if the amounts received under items (i) to (iv) become refundable, such amounts shall be deemed to be deposits on the expiry of fifteen days from the date on which they become due for refund:

Provided further that where the said amounts become refundable, due to the deposit taker not obtaining necessary permission or approval under the law for the time being in force, wherever required, to deal in the goods or properties or services for which money is taken, such amounts shall be deemed to be deposits.

Explanation.--For the purposes of this clause,--

(i) in respect of a company, the expression "deposit" shall have the same meaning as assigned to it under the Companies Act, 2013 (18 of 2013);

(ii) in respect of a non-banking financial company registered under the Reserve Bank of India Act, 1934 (2 of 1934), the expression deposit shall have the same meaning as assigned to it in clause (bb) of section 45-I of the said Act;

(iii) the expressions partner and firm shall have the meanings respectively assigned to them under the Indian Partnership Act, 1932 (9 of 1932);

(iv) the expression partner in respect of a limited liability partnership shall have the same meaning as assigned to it in clause (q) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009);

(v) the expression "relative" shall have the same meaning as assigned to it in the Companies Act, 2013 (18 of 2013);

10.Per contra the learned Additional Public Prosecutor would submit that the word deposit encompasses the money received by the establishment either in lumpsum or by installments, either for interest or for return in any kind or in any form. According to him, money has been received by the company on the promise that, either to return the same in double of deposit or execution of the sale deed in respect of the plots, squarely covers under the definition.

11.For more better understanding, let me extract the format used by the company.

NEOMAX PROPERTIES PRIVATE LIMITED
RICKY TOWER - 2nd FLOOR
NO.85, SUBRAMANIA PILLAI STREET,
S.S.COLONY, MADURAI.

Date: 30.12.2018
Customer ID:
7104445

OFFICIAL RECEIPT

Customer(s) Name: P.Janaki Duplicate

PLOT DETAILS

PROJECT NAME : WISDOM CITY PHASE 3 VILLISERI-KOVILPATTI

Block Name : SAI BABA BLOCK Area in Square Feet: 600

Plot No; : 919a Date of Registration:

PAYMENT DETAILS

Land cost Amount
Paid on Registration : 1,50,000.00 Plot Cost (in RS.):3,00,000.00

Balance payable (by inst.) : 1,50,000.00 Payment Due Date : N/A

Current No. of Inst. : N/A Inst.Amount (in Rs.) : N/A

Amount Received Rs. Rupees. One Lakhs Fifty Thousand Only

Paid by : ______

Land Registration should be done anytime before 15-12-2019

91485/183-4710/1 NEOMAX PROPERTIES PRIVATE LIMITED
*Balance amt of Rs.1,50,000.00 is payable on or before 15.12.2019

S/g.XXXXX
Authorized Signatory

GARLANDO PROPERTIES PRIVATE LIMITED   Date: 26.09.2021
R7-b, dhayabaran street,
MURUGANKURUCHI, PALAYAMKOTTAI
TIRUNELVELI - 627 002   Duplicate

BOOKING CONFIRMATION

Associate Name: Janaki.p

PLOT DETAILS

PROJECT NAME : JASMINE CITY KOVILPATTY

Block Name : B BLOCK   Area in Square Feet: 1200

Plot No; :   Area (in Cents :

PRICE DETAILS

Plot Advance Amount : 5,00,000.00

Mode of Payment :

Customer Name : N.A   Customer ID : 7479790

Amount Received Rs. Rupees. Five Lakhs Only

Land Registration should be done anytime before 11.09.2022

29068/31178/1   GARLANDO PROPERTIES PRIVATE LIMITED
This Amount can be adjusted for any
future projects of the
Company like Jasmine City - TUTICORIN   S/g.XXXXX
Authorized Signatory

12. The prosecution has also collected the document showing the above said payment of money.

13.By pointing out this format, it has been submitted that it would not come under the definition clause of deposit. It must be construed either as investment in a company or an agreement of sale.

14.The question arises for consideration, is whether the respondent is competent to investigate the matter. When this argument was advanced by one of the counsels viz., Mr.Lajapathi Roy, it was objected by some of the victims and the learned Additional Public Prosecutor that it is not a case for quashment of FIR. The argument that has been advanced by Mr.Lajapathi Roy will not lie at this stage, since sufficient materials have been collected not only during the course of investigation, but also clear details are mentioned in the FIR itself. Only the deposits were received as advance from the public as advance; But they have introduced their own nomenclature or the document for their own benefit or to escape from the legal liability that too criminal liability. According to them, this is a premature stage to take up this plea. We can deal the objections that have been raised by the victims and the learned Additional Public Prosecutor in a later point of our discussion.

15.Now coming back to the argument of Mr.Lajapathi Roy, he would submit that the above said receipt of money by a limited company has to be dealt as per the provisions of the company law and if any deviation is made as per RBI provisions, if at all, only company law board can take action and not the Economic Offences Wing.

14.In the light of the above said argument, to understand the issue let us go to the Memorandum of articles of association of the companies. Articles have been produced in the type set of papers, which reads as follows.

> “I.The name of the company is NEOMAX PROPERTIES PRIVATE LIMITED.
>
> ...
>
> III.MAIN OBJECTS TO BE PURSUED BY THE COMPANY ON ITS INCORPORATION ARE:
>
> 1.To carry on the business of real estate and property developers.
>
> 2.To promote, establish, maintain, manage, run, design, develop, innovate , supervise, finance, aid, advise and collaborate with any person, company, association, undertaking or scheme for the purpose of the business of constructing, maintaining, improving, developing, working, controlling and managing any roads, offices, flats, blocks of flats or offices, residential houses, hotels, clubs, restaurants, factories, works, godown, place of amusement, stores,

shops, dairless, industries, building of any nature and other works and conveniences which the company may think directly or indirectly conducive to these objects ad to contribute or otherwise assist or take part in the construction, maintenance, development, working, control and management thereof, either individually or as joint venture with any other company/ firm/ individual/ consultant whether local or foreign.

3.To carry on all or any of the businesses usually carried on by land companies, land investment companies, land mortgage companies and building estate companies in all their several branches; and to acquire by purchase, lease, exchange or otherwise and sell land of any nature, buildings of any tenure or description and any estate or interest therein and any rights over or connected with land and to develop and to turn the same and / or any other property in which the company ma be interested."

16.When we read the Articles of association of other companies, are also on the similar lines. Reading the articles of association shows that the main object of the company is, carrying on the business of real estate, developing the properties and selling the same apart from Financing. More particularly, it has been specifically stated that they are also carrying on the business as the business usually carried on, by the other land companies, the land investment companies, etc,.

17.The articles of association also reads about the method of operating or raising money, etc. Class 23 reads under:

> "23.To borrow or raise money, fund and non-fund based facilities with or without security from any person, financial institutions, banks and others or to receive moneys or deposits at interest or otherwise, in such manner as the company may think fit and in particular by the issue of preference shares, debentures perpetual or otherwise, including convertible into shares of this or any other company and in security of such money so borrowed, raised or received, to mortgage, pledge or charge the whole or any part of the property, assets or revenue of the company, present or future pay off any such securities. The acceptance of deposits by the company shall be subject to the provisions of Section 58A of the Companies Act, 2013 and the Rules framed there under and the directions issued by the Reserve Bank of India as may be applicable."

18. The learned Senior Counsel, Mr.Lajapathi Roy is referring to Clause 23 of

Articles of Association for the purpose of argument that the acceptance of deposit by the company is subject to the provisions of Section 58A of the Companies Act, 2013 and Rules, framed thereunder and other directions issued by the RBI, from time to time. According to him, if deposit is made, automatically Section 58 A of the Companies Act, 2013, will come into play and only under Company law, the competent authority will take up the issue and not by the respondent. Clause 23 is more explicit in nature. Not only the deposit, but, also money has been permitted to receive by the company. The money or deposit may be received either for interest or otherwise. So, the question arises for consideration is whether the money received by the company is advance or investment. Whatever terminology that the company chose to adopt, for any purpose, it will be fit into the category of money received by the company. In this context, now, we can go to the objects of the company, as mentioned above. The object is to purchase and develop the land, and to sell the same to the public. Receiving the money in whatever form by the company either for interest or for selling the plot to the public after developing will straight away go under the category of the money received.

19. Next point is whether the money received by the company is with a promise to sell the property after developing the property will come under the category of deposit. Next point, which this Court bound to answer in the light of the argument

advanced by the counsel. As mentioned above in the complaint, it has been specifically stated that promise was made by the Directors and others namely the agents to return the money in double. But, the documents indicates, they promised to sell the property after payment of the installments. Not only that a clause is also mentioned in the receipt that the money may be appropriated for some other projects also. So this argument on the side of the petitioner that it must be simply construed as money received by the company for the purpose of sale cannot be accepted.

20. In some of the transaction, no doubt that sale deed has been executed in favour of the persons, who paid the money. Initially object of the company indicates that they are involved in purchase, development and to sell the plots. For that purpose they are receiving the money from the public; and they purchase the properties; develope it and sell the same. So, it will come under the category of deposit, well within the definition clause. This point is answered in the light of the business that has been undertaken by the petitioners. For more clarity we can also go into the judgment of this Court in a famous case viz., 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 in W.A.No.1227 of 2015

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 Act, 1997 and Section 420 of IPC.

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 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."

24.Reading of the above said two paragraphs will fix the issue. As stated above, whether the amount received by the company noting the above said scheme, can be termed as deposit amount, is a matter for investigation and trial. But, as stated in the FIR, promise was made to return the money in double. Even at the time of argument, it was submitted by Mr.Aswin Prasanna, learned counsel for one of the petitioners, so far as defacto complainant is concerned, the entire deposit has been returned to him. He has also produced the bank statement on this point. So, this also shows that the money was received as deposits.

25.We can take another angle also. If it is the case of the company that it is only an agreement of sale, then, after the amendment of Registration Act by the Tamil Nadu Act 29 of 2012, sale agreement in respect of the immovable property is compulsorily registrable one. But here, absolutely, no terms of sale were settled. The agreement was also not registered. In this context, we can also refer section 2(31) of companies Act, which has already extracted. And the definition of deposit as per rules of Companies Act,2013 is as follows:

> Further, Rule 2 (1)(c) of the Companies (Acceptance of Deposits) Rules, 2014, provides an inclusive definition of deposits. It clearly enlists the transaction that would not be considered as deposits."

26.so the definition given under the companies Act can also be made applicable to the present transaction. But, there is an exclusion, which is mentioned in XII (b)of the Rules.

> “XII (b) as advance, accounted for in any manner whatsoever, received in connection with consideration for an immovable property under an agreement of arrangement, provided that such advance is adjusted against such property in accordance with the terms of agreement or arrangement.”

27.So that is why, I have stated above that if it is an agreement of sale, simpliciter it ought to have complied, the statutory formalities of Registration Act as amended by the Tamil Nadu Act. That was not done. In some of the transactions, sale deeds have also been executed by the company and during the course of arguments totally five intervenors withdrew their objections, on the ground that sale deeds were executed by the company in their favour. Apart from this, the petitioner also produced the copy of the sale deeds executed by the company before and after the registration of the FIR. So the contention on the part of the petitioner that only the companies Act will come into operation, the contention that if at all only liquidation proceedings can be initiated and not the proceedings under Section 5 of the Act, 1997, is too a premature stage argument, which cannot be accepted at all.

28.So the preliminary argument advanced by Mr.Lajapathi Roy, learned Senior counsel, is rejected and I hold the registration of FIR is not per se illegal.

29.Now coming to the other argument of, Mr.Aswin Prasanna, was very much insisted upon the Court to not pass any adverse order as noted earlier. But, the issue involved and the magnitude, which covers the subject is very huge. According to the prosecution, several companies have been floated by the petitioners in various names in various Districts. Mr.Aswin Prasanna would submit that it may not be possible for a single authority to take up the entire issue. So that is why, according to him, he is opting for appointment of commission. Reading of the entire file also shows that several multi companies have been floated, several business transaction set up including running of colleges, schools, etc., So it is the contention on the part of the prosecution that several crores of rupees siphoned off to the said services. Not only that, they have also set up more than 105 shell companies. Thorough investigation is required as to whether money collected from the public been siphoned off. So far 91 accused have been arrayed and 25 companies implicated. Huge income tax arrear also liable to be paid. So according to the State more than 1000 crore is involved in this matter. So it will take a longer time to investigate each and every issue in a thorough manner. Some of the accused have been arrested and statement have also been recorded. But the main persons namely the Directors are still elusive. They are not co-operating for any investigation. Documents have to be collected by subjecting them to custodial interrogation. The facts which are exclusively with the knowledge of the accused must be brought on record.

30.In response to the above said argument learned Senior counsel Mr.Lajapathi Roy has submitted that they are ready to settle the entire issue, if 15 days interim protection is granted to the petitioners, they will sort out the issue. They are also ready to present their personal properties also, which normally Directors will not do, in such matters. They also ready to submit their passport, they will not flee away from the investigation, they will co-operate fully to the satisfaction of the Investigating Officer.

31.Similarly, Mr.Aswin Prasanna also submitted that no purpose is going to be served by subjecting these petitioners to judicial custody. They will come on statutory bail if the investigation could not be completed within the statutory period. The public will suffer and certainly not the company or the Directors. He would also draw the attention of this Court to the typed set of papers containing DTCP approval details. He has also produced the Table of salable lands available with the company. According to him, 1,95,19,480.21 sq. feet land were sold to the public and remaining 4,12,65,276.35 sq.feet salable land is available with the company. So they are ready to execute sale deeds to the public who are coming forward. But without giving opportunity to them to settle the issue even during the pendency of this petition, one of the petitioners namely Manivannan, who is the 10th accused was arrested by the respondent, and sent for judicial custody.

32.In response to the above said, the learned Additional Public Prosecutor would submit that even at the first instance it was brought to the notice of this Court that the petitioners are spreading messages to the public not to give any complaint against the company and if any compliant is given then there will be no possibility of settlement. So I directed the petitioners not to spread such messages. They are also directed not to prevent the public from giving the complaint. According to the learned Additional Public Prosecutor in spite of the above said specific direction Manivannan, and other persons conducted zoom meeting interacting with the public compelling them not to give any complaint or go to the police. This necessitated the respondent to make the arrest.

33.It is on record to show that such direction was given by this Court to the petitioners not to spread any messages in such manner. But it appears that they have violated. So the petition filed by the petitioner namely Manivannan has now become infructuous.

34.The next question is whether in the circumstances of the case, the petitioners are entitled for either interim protection or anticipatory bail. A detailed status report has been filed by the respondent. It has been stated in the status report that 17 companies have been opened in fake address. Totally 110 companies have been registered by the Neomax group. As per the confession statement of accused No.23, he collected deposits from 3000 depositors to the tune of Rs.90 crores. Similarly, accused No.29, has stated that he has collected Rs.30 crores from 1000 depositors. Now, the investigator is in the process of collecting documents. It is also stated that the deposit have been transferred and invested in hospitals, petrol bunks, schools, catering colleges, etc., Many of Bank accounts have been frozen. Out of the 110 companies floated by the accused and their associates, 50 companies are involved in real estate business. Various camps have been conducted by the respondent for collecting the complaints. In para No.38, they have also listed the details, which are required to be collected from the accused persons. According to the respondent, unless they are subjected to custodial interrogation, those relevant facts will not be brought on record. So according to them custodial interrogation is very much required.

35.In response to the status report and the argument advanced by the counsel for the petitioner a query was made by me. It was submitted that it was because of some panic reaction, one complaint was given, which is followed by some of the victims. So according to him, it is nothing but panic reaction. They suffered the financial constraints because of various reasons especially due to covid – 19, etc., So they are unable to satisfy the investors within the time agreed. So this caused the above said panic situation. At the time of starting the company and inviting the investment, absolutely there was no intention on the part of the petitioner to cheat. But as every business will have its own curse, the present situation occurred. But even now they are from genuine and bonafide in their submissions.

36.Another important fact that was brought to the notice of this Court by Mr.Ananda Murugan, Advocate appearing for the one of the intervenors that the petitioners for inviting the deposit, has not complied the Banning of Unregulated Deposit Schemes Act, 2019 (BUDS) Act. According to Mr.Ananda Murugan, as per the provisions of the above said Act money received by a company in any form in any manner as advance, as loan or any other form with a promise to return the same either in cash or in account or service, absolutely, permission ought to have been obtained. But, here, no such permission obtained before inviting the deposits. This matter can be considered by the Investigating Officer.

37.Prima facie, from the above said discussion and on perusal of the records, it is seen that huge public money is involved. Apart from various issues, thorough investigation is required as stated by the respondent in the status report. The matters which are exclusively within the personal knowledge of these petitioners must be collected. Custodial interrogation is very much required. Exactly on this point the earlier applications were dismissed by this Court. I find no reason to differ from the above said view, in spite of elaborate arguments advanced by the petitioners both factually, legally and their readiness to settle the issue.

38.Accordingly, all these criminal original petitions are dismissed. Crl.O.P.(MD).No.13071 of 2023 stands dismissed as infructuous in respect of the Accused No.10 viz., Manivannan.

sd/-
22/08/2023

/ TRUE COPY /

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

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TO

1THE SESSIONS JUDGE, SPECIAL COURT UNDER THE
TAMIL NADU PROTECTION OF INTEREST OF DEPOSITORS
(IN FINANCIAL ESTABLISHMENT), 1977, MADURAI.

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

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

+1 CC to M/s.S.RAMASAMY, Advocate (SR-12608[I] dated 22/08/2023)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-12672[I] dated 23/08/2023)

+1 CC to M/s.S.RAMSUNDARVIJAYRAJ, Advocate (SR-39744[F] dated 23/08/2023)

+1 CC to M/s.P.MANIANANDH, Advocate (SR-12648[I] dated 23/08/2023)

+1 CC to M/s.S.RAJASEKAR, Advocate (SR-12751[I] dated 24/08/2023)

ORDER IN
CRL OP(MD). Nos.13071, 13465 & 14119 of 2023
Date :22/08/2023

SA/SAR. /25.08.2023/34P/9C

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