Crl.O.P.Nos.1446 & 1475 of 2024
& Crl.O.P.No.25562 of 2023
and Crl.M.P.Nos.1948, 1950 of 2024
& Crl.M.P.No.1551 of 2023

C.V.KARTHIKEYAN,J.

The petitioner/A6 has filed Crl.O.P.No.1475 of 2024, the petitioner/A17 has filed Crl.O.P.No.1446 and the petitioner/A28 has filed Crl.O.P.No.25562 of 2023, all in Crime No.21 of 2022, registered for the offences under Sections 409, 420, 120(B), 109, 34 of IPC and Section 5 of Tamil Nadu Depositors (In Financial Establishments)(TNPID) Act, 1997 and Sections 21(3), 22, 23, 24 and 25 of Banning of Unregulated Deposit Schemes Act (BUDS) Act. A6 had been remanded to judicial custody on 15.06.2023, A17 had been remanded to judicial custody on the same day and A28 had remanded to judicial custody on 28.07.2023.

2.The learned counsel for the petitioners pointed out that the petitioners are innocent of the offences alleged and as a matter of fact, also claimed that they are the victims of the machinations and schemes of the Managing Director and Director of A1 and A2 Companies which could be shortly called as M/s. Hijau Associates Private Limited. It is also to be noted that two of the very crucial persons who are at the core of the entire fraud, one Alexander and his wife are still absconding and it is stated that steps have been taken by the respondent and by the Government to bring them to book and to make them face the judicial process in this country.

3.The gist of arguments of the learned counsels appeared for A6 and A17 is that both the accused/spouses had been categorized as Board of Members and the learned counsels wondered as to what the categorization that actually meant and stated that such categorization is not anywhere mentioned in the Companies Act, 2013. Such argument has to be rejected only because the said nomenclature itself has been given not to elevate these accused to that particular position or to categorize them as members of any Board but, to lure gullible investors with high sounding names and positions which do not exist. The very fact that those names have been given and that they have accepted to such a nomenclature shows that they had intention at the beginning itself to lure gullible investors and this is what exactly they did.

4.It is the very specific case of the respondent that A6, through her influence and other talents if it could be called a talent, had collected a sum of Rs.86/- crores from various depositors and A28 is said to have collected Rs.76/- crores. That amount is questioned and disputed by the learned counsel for A20 who also claims that he had also given a complainant much earlier to the first complaint given and that he had also deposited a sum of Rs.25,00,000/-. But he being a depositor does not put him any advantage because as the person who was responsible to inform the general public about the dangers of the schemes of the accused, he had also involved himself in ensuring that various persons, had put forth their hard earned money thinking that there would be good returns if the monies are invested in A1 and A2 Company. In this manner, it is informed that as on date totally 30292 complaints had been received and the total amount involved is more than Rs.2000/- crores.

5.It is however projected that the total number of depositors would be 89043 and the total amount involved would exceed Rs.4000/- crores. The *modus operandi* to put it in very brief words, was to lure general public that if they invest in A1 and A2 Company they would get substantial returns of atleast 15% of the amount deposited by them as interest right from the first month onwards. In turn, it had been stated that A1 and A2 Companies would deposit the amount so deposited in foreign oil Companies or oil Projects and thereby there was a guarantee that profit would be earned.

6.During the course of arguments it had also been informed that it was also held out that the amount would be invested in purchase of vegetables and other products and thereby luring farmers who put their sweat and toil to give food and nourishment to others, to also invest in this nefarious scheme. Right from the concept, they were incorporated both the Companies had only fraud as their only object. Since it had such object there cannot be any complaint about the nomenclature given and there cannot be any complaint about the conformity to the provision of Companies Act, 2013 as the object itself was unlawful and the Companies Act, 2013, would apply only to Companies whose objects are lawful and have been incorporated for lawful purposes and lawfully accepted purposes.

7.It is stated that there are totally 40 accused which included the two Companies and 38 individuals and of them, 18 accused had been arrested but 13 are still absconding. This would indicate that it would never be possible for the respondent to investigate completely. They were under a compulsion to file the final report and they did file the final report before the competent Court. Questioning that particular final report and complaining that it it was not complete final report, one of the accused had approached the Hon'ble Supreme Court through Special Leave Petition in Criminal Appeal No.11611 of 2023 and the Hon'ble Supreme Court, by an order dated 14.12.2023, had rejected those contentions and also rejected the entitlements for bail and claim for bail. It had also been observed that several accused are absconding.

8.My attention has also been brought by the learned Additional Public Prosecutor to the judgment of the Hon'ble Supreme Court reported in ***2013 7 SCC 439 (Y.S.Jagan Mohan Reddy Vs. Central Bureau of Investigation)*** and more specifically to paragraph No.34 which as follows:

> *"34.Economic offences constitute a class part and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious*

threat to the financial health of the country."

9.My attention is further drawn by the learned Additional Public Prosecutor to the judgment reported in ***1987 2 SCC 364 (State of Gujarat Vs. Mohanlal Jitamalji Porwal)*** and more importantly to paragraph No.5 of the said judgment is as follows:

> "*5.The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest."*

The concern of the Hon'ble Supreme Court in exercising discretion while granting bail in economic offences have been reflected both the above observations.

10.It had been observed that economic offences strike at the very heart of the criminal jurisprudence and leads a void in the financial capacity of everybody who had lost their money by investing in such fraudulent Companies like A1 and A2.

11.The arguments advanced by the petitioners are more out of desperation.

12.The learned counsel for the intervenor has also filed applications in all these petitions and very strong objections have also been placed by the intervenor which is actually an Association of all the depositors.

13.It is stated that during the course of investigation, about 70 properties have been identified but the value of the said properties are only about Rs.80/- crores whereas the total amount involved comes between Rs.2000/- to Rs.4000/- crores. It is further stated that gold, silver and vehicles have been seized but the total value is only about Rs.1.15/- crores.

14.It is thus seen that what has been seized, is extremely disproportionate to what the accused have collected from the gullible public. It is also seen that though charge sheet has been filed, further investigation will have to be done and the respondent have every right to file an additional charge sheet on further investigation done and that could be done only when all the absconding accused surrender themselves to the judicial process. So long as they are absconding, investigation can never be completed.

15.In view of all these reasons which I could only reduce to a minimum extent, considering the applicants filed before me are only seeking bail, I am not inclined to grant bail to the petitioners in all these Criminal Original Petitions. Accordingly, these Criminal Original Petitions are dismissed. Connected Criminal Miscellaneous Petitions are closed.

07.02.2024

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C.V.KARTHIKEYAN,J.

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Crl.O.P.No.25562 of 2023

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