Crl.O.P.No.1994 of 2024

C.V.KARTHIKEYAN,J.

The petitioner who was arrested and remanded to judicial custody on 25.05.2023 registered by the respondent police for the offences punishable under Sections 201, 204, 409, 120-B, 406, 420 & 109 r/w 34 of IPC and Sections 3, 5, 21(1), 21(2), 21(3), 23 & 25 of Banning of Unregulated Deposit Schemes Act, 2019, (BUDS Act, 2019) and Section 58(B)(1) of the Reserve Bank of India Act, 1934, and Section 5 of TNPID Act, in Crime No.7 of 2022, seeks bail.

2.The earlier application seeking bail filed by the petitioner was dismissed by this Court on 12.12.2023 in Crl.O.P.No.26283 of 2023. The entire facts had been examined in that particular order and it would only be appropriate that the order is extracted hereunder:

> *"4.It is stated that there are totally 40 accused. A1 is the Company involved in the entire scam, A7 to A9 are Board of Directors and A18 to A40 are the heads of the Branches of the said Company at various places. The petitioners herein come under that particular category as being those who are in charge of Branches of A1 Company.*
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> *5.It is also very specifically mentioned that A20 was in charge of the Branch at Aminjikarai at Chennai, A28 was in*

charge of the Branch at Coimbatore, A30 was in charge as the Branch Manager at Arni and A32 was in charge as Branch Manager at Chennai, and it is stated that his name has been also registered as one of the Directors of the Company.

6.The main crux of arguments advanced by the learned counsels for the petitioners are that the petitioners were only employees of the 1st accused Company and that they had no direct control over the activities of the 1st accused Company. It is probably imputed they are employees and were under compulsion to carryout orders of the Board of Directors. The main object of the 1st accused Company was to collect money from individuals across the State and everywhere wherever they had Branches, by promising higher returns. The actual task of spreading the network of that luring the innocent and gullible general public to part with their own hard earned money and lay with the present petitioners herein. They were the various arms of the 1st accused/Company.

7.It is however stated that their role was only to collect money from the general public and to remit it back to the 1st accused Company. It had also been stated by the learned counsels that the Board of Directors/A9 to A17 had been granted bail under Section 167(2) of Cr.P.C., consequent to investigation not being completed within the stipulated time as enunciated in the said provision from the dates of their remands. It is therefore, stated that since they had been *granted bail, the petitioners herein whose roles were only minimal as compared with the Board of Directors, and certainly did not enjoy the profits of the amounts collected by them must also be considered by this Court.*

8.It is also stated that one of the petitioners had joined just three days prior to the registration of FIR. It is also stated that with respect to A20, that she is afflicted with a serious disease and that she is a mother of three daughters and therefore, even if the Court were to examine the case against her on merits, it is still insisted that on medical ground she could be granted interim bail to facilitate her to get proper treatment for the afflictions which had struck her while she had been incarcerated in custody.

9.It is also contended by the learned counsels that as employees, they had also answered notices under Section 91 of Cr.P.C., issued by the respondent and they had been co-operating with the investigation process and only after a considerable period of time, had they been taken into custody. It had also been stated that there has been no recovery of cash or any other articles from these petitioners.

10.It had also been stated that investigation had been completed and final report had also been filed and the same had been taken cognizance as C.C.No.09 of 2023 by the Special Court of TNPID Act Cases, Chennai and that is a very specific circumstance which should be considered for grant of *bail to these petitioners herein. It had also been stated that trial would commence and they should also be given opportunities to defend themselves properly and give necessary instructions to their counsels during the process of trial. Raising these grounds and generally insisting on their innocence in the entire operations of the Company and their ignorance of the intentions of the Board of Directors to screen the money away from the depositors, bail is also sought.*

11.It is also stated that they were only pawns in the hands of the Board of Directors, and had discharged their duties as salaried employees and it is stated that there was no knowledge on their part when they received money from the depositors that the said monies would be held back by the Board of Directors and that the intention was only to receive and not to pay back the monies. It had therefore been insisted that taking into consideration the period of incarceration which had now crossed nearly more than 200 days, bail should be granted to the petitioners herein.

12.On behalf of the respondent, the learned Government Advocate (Crl. Side) very strongly disputed the contentions and objected for grant of any relief whatsoever. It is the contention of the learned Government Advocate (Crl. Side) for the respondent that nearly about Rs.2,438/- crores had been collected from the general public and it is pointed out that it would not be possible for the Company to collect such an *amount but for the efforts put in by these petitioners and such other accused who are in the field convincing the general public to invest their hard earned money in the Company.*

13.It is therefore stated that the role of these petitioners are very crucial not only in identifying the amounts which had been collected, but the individuals from whom they had been collected and to find out the genuinity of the claims of the depositors. It had also been contended by the learned Government Advocate (Crl. Side) for the respondent that these petitioners, have direct knowledge about the investors and therefore, are the only persons available to tamper the witnesses whenever their turn comes to depose evidence in the Court. It is also contended that bail had been granted to some of the accused only because the prosecution was not able to file their final report within the stipulated period of time. It is also stated a crucial accused had now been secured at Dubai and the Government is in the process of bringing them back to this country.

14.It is therefore contended that only when are they are brought back within the investigation fold, can further investigation to be done to reveal the actual modus operandi. It is stated that, in view of that particular fact, the claim for bail of these petitioners will have to be rejected by this Court.

15.It had been very specifically pointed out that so far as A20/the petitioner in Crl.O.P.No.26283 of 2023 is *concerned, where the main grievance of the learned counsel was regarding her medical conditions she had defaulted in repayment of deposit of Rs.8/- crores to 320 depositors collected through direct mode and through her agents. It is also stated that there was also one property which had been purchased, though the learned counsel stated that it is stands in the name of her husband, but still there is a property which had surfaced at Poonamallee in Thiruvallur District in Patta No.23 in S.No.666 being vacant land measuring about 4161.86 sq.ft. It is contended it had been purchased on 10.02.2023 after, the entire scam had come to light. It is therefore, implied that she possessed tainted cash to enable her to purchase that particular property even thought the guideline value of that property was at Rs.12,48,600/-.*

16.With respect to the statement made about her medical condition, the learned Government Advocate (Crl. Side) also forwarded a report from the Medical Officer from the Prison Hospital/Special Prison for Women, Chennai, wherein it had been stated that when she had been admitted on 26.05.2023 in jail, there were no complaints and no injuries. It had been stated that on 07.10.2023, she had complained of swelling for which she had been treated as an out patient in the out patient ward with Antibiotics and Analgesics. Thereafter, as the opinion of the Surgeon was obtained and it was diagonalized as Right Axillary Lipomatosis, fine needle *surgery was prepared for her but had stated that she was not willing for FNAC (L) Axilla at Stanley Medical College. The petitioner must realize that if she has a medical condition if there are Doctors available to treat her, there cannot be any doubt over the competency of the Doctors in Stanly Medical College. She must undertake such treatment and cannot take advantage of that particular medical condition and seek interim bail.*

17.It is a different matter if the treatment is not available at all and she had to be treated elsewhere but such treatment is available at Stanley Medical College and Hospital and no statement had been made across the part about the inefficiency of the Doctors at Stanley Medical College or apprehensions at their competency. Therefore, I would reject that ground on which bail is sought on medical grounds."

3.The learned Senior Counsel pointed out that the petitioner had been suffering incarceration for a considerable period of time and stated that the respondent has not given any probable reason as to why there should be continuation of custody.

4. It is stated that the respondent have not filed the final report when the other accused have been arrested which enabled the arrested accused to be released on bail under Section 167 (2) Cr.P.C. It is also contended that A9, the prime accused, had been secured at Dubai and it is stated that he had been leading a free life all these time.

5.However, the learned Government Advocate (crl.side) once again stated that there has been no change in circumstance from 12.12.2023 when the earlier application for bail was dismissed. It had also been stated that one of the depositors had also approached the Hon'ble Supreme Court seeking directions with respect to disburse of the amount and the manner in which it should be done.

6. Though the petitioner's plight will have to be considered, the Court will also have to consider the interest of the depositors. Since ordinary persons have lost substantial sums of money and more particularly, at the behest of this petitioner, 320 depositors have lost a sum of Rs.8/- crores, this would indicate that substantial amounts had been deposited by the members and they would have done so only after putting their own property to risk and also obtaining loans from various other places, under that belief that the returns from this company would cover the loss on mortgage or the interest

from borrowals. But unfortunately, they suffered. That factor will have to be kept in mind. Let the investigation proceed further. At this stage, I am not inclined to grant bail to the petitioner.

7. Hence, this Criminal Original Petition is dismissed.

14.02.2024

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C.V.KARTHIKEYAN,J.

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