IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.04.2024

Pronounced on :30.04.2024

CORAM

**THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN**

Crl.O.P.No.5110 of 2024
and
Crl.M.P.No.6693 of 2024

S. Arunachalam ... Petitioner/A3

Vs.

The State Rep. by
The Inspector of Police,
Economic Offence Wing,
Nammakkal,
Nammakkal District.
(Crime No.1 of 2023) ... Respondent/Complainant

**PRAYER:** Criminal Original Petition filed under Section 438 of Cr.P.C., prayed to enlarge the petitioner on anticipatory bail in Crime No.1 of 2023 pending investigation before the respondent police.

For Petitioner : Mr. Gopala Krishna Laxmana Raju
Senior Counsel

For Intervener : Mr.S. Makesh

For Respondent : Mr. V.J.Priyadarsana
Govt. Advocate (Crl. Side)

**ORDER**

The petitioner/A3 seeks anticipatory bail in Crime No.1 of 2023 registered by the respondent police for the offences under Sections 420 and 406 of IPC and Section 5 of TANPID Act.

2.This is the second anticipatory bail petition filed by the petitioner. The first anticipatory bail petition had been dismissed by an order dated 17.10.2023 in Crl.O.P.No.14359 of 2023.

3.Intervening petition has been filed and the intervenor has also raised objections for passing any order in favour of the petitioner.

4.On the side of the respondent counter affidavit had been filed.

5.This Court had considered the earlier anticipatory bail filed by this petitioner and also by A1, A2, A4 and A6. The anticipatory bail application of this petitioner and A1 were dismissed. The other accused A2, A4 and A6 were granted anticipatory bail with directions to deposit original title deeds of immovable properties worth about Rs.1/- crore standing either in their names or in the names of their relatives or friends to the credit of Crime No.1 of 2023 before the trial Court. Subsequently, A1 who is the father of this petitioner had been arrested and granted bail since the prosecution did not file final report within the stipulated time.

6.In the F.I.R in Crime No.1 of 2023 dated 27.05.2023, the complainant Durga Devi had alleged that she was introduced to all the accused who are members of one family and that she knew this family for about 5 decades. The nature of business of the accused was to collect monies from various individuals with promise to return it back with higher interest.

7. It is stated that the complainant had so invested a sum of Rs.50

lakhs, the amount which she had handed over to the first accused. She had similar business transactions for the past 10 years. A promissory note had been executed. Only interest was paid for the said sum. The principal amount was not returned. For the invested amount of Rs.50 lakhs, after deduction of tax and other aspects and including unpaid interest. She was entitled for return of a substantial amount. She stated that fresh promissory notes were executed, by taking back the old promissory notes. She had also made endorsements on the back side of the promissory notes for the past amounts received. However, when she asked for return of the principal amount, the accused did not return the same and on enquiry, she came to know that the accused had cheated several persons using the same modus operandi to a sum of Rs.100/- Crores. Hence she filed the complaint.

8.It is informed on behalf of the respondent/Investigating Agency that the first complaint was actually lodged on 23.02.2022. Thereafter various enquiries were made. The fact is that several complaints had been lodged against all these accused persons, particularly that they had given false promises that they would invest amounts in real estate business and return the amounts given with higher interest. During the course of investigation, it had come to light that the actual depositors are more than 400 and the total amount invested with the accused is approximately Rs.500 crores.

9.It is contended on behalf of the respondent that to their information they have received complaints stating that money has to be received from as many as 89 individuals and the total amount involved is about Rs.36,98,86,960/-. It is also stated that the actual number of depositors are more than 400.

10.It had been stated that the complaint by the de-facto complainant Durga Devi has been lodged only in March 2023. It was also stated that subsequent to enquiry conducted by the respondent, they have also frozen the bank accounts of the accused persons.

11.The learned Senior Counsel for the petitioner / son of the first accused stated that it is a fact that the petitioner had signed as witness in some of the promissory notes.

12.It is also seen that four properties were disposed of by the first accused and it is also seen that in all those four documents / sale deeds, this petitioner had signed as a witness.

13.A very strong representation is made on behalf of the intervenor before this Court that the sale deeds were malafide in nature and executed to screen away the amounts from being repaid. It is also stated that the sale consideration received had been parted to preferential creditors by the accused family and it is therefore complained that the accused persons have again joined together to deny the rightful depositors of their money. Since the petitioner who as a witness in the documents has direct knowledge, it is contended that he is directly involved in the business.

14.The learned Senior Counsel for the petitioner stated that the petitioner has no direct contact with the business of the first accused. The learned Senior Counsel for the petitioner stated that the petitioner had no direct knowledge of the sale deeds executed on 13.04.2023 by the first accused.

15.As stated the earlier application seeking anticipatory bail was dismissed on 17.10.2023.

16.In counter affidavit, it had been stated that a total sum of Rs.42,28,91,960/- is due from all the accused. The accused had given false promise inducing innocent people to deposit money and that the accused would pay attractive interest.

17.The learned Senior Counsel for the petitioner pointed out that in the counter affidavit it had been stated that the 1st accused had been arrested and remanded to custody and thereafter, had been taken into police custody and was also interrogated. It is therefore contended by the learned Senior Counsel that necessary information had been gathered by the respondent and further interrogation of this petitioner is not required since, the role of this petitioner was minimal. It is contended that he was not directly interested in the business of the 1st accused.

18.The written submissions had been filed and the learned Senior Counsel stated that the bank account had been frozen and that amounts are due from the debtors of A1. They deposited title documents which have been seized from A1 by the respondent. The market value of those properties would totally amount to Rs.40,73,80,831/-. It is therefore contended that those properties could be sold and the amount realized.

19.However, that may not be possible. Those title deeds had been given by the various individuals for amounts received by A1. If they pay back the amount then they are entitled for return of the title deeds. Those transactions are totally independent and are not related to the transactions alleged in the First Information Report. The title deeds would have been seized by the respondent, but if claims are made then the respondent will have to justify as to how they could retain title deeds of third parties for the amounts due and payable by the accused.

20.The declaration made about the seizure of title deeds of various third parties by the respondent would not come to the rescue of the petitioner / A3. The accused persons must come forward to return the amount which they are liable to pay to the complainants. They cannot fall back on the title deeds available with them, which had been given by various borrowers. Without they express consent of those borrowers, the properties can never and should never be sold. Even if the properties are sold, it is only the amount towards that borrowal which can be set off and the balance amount if any must be returned back to the said borrowers.

21.In view of the aforementioned reasons, I am not inclined to accept the contentions that merely because title deeds of properties in the names of various third party stranger had been seized by the respondent, the accused would stand absolved of their liability to return back the amounts which they received from the complainants.

22.Even though the earlier application seeking anticipatory bail had been dismissed on 17.10.2023, the respondent also have been extremely recalcitrant in taking the petitioner into custody. A direction is given that the respondent should act in upholding the expectation kept on them by the complainants.

23.Observing as above, this Criminal Original Petition stands dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

**30.04.2024**

smv
Index: Yes / No
Neutral Citation: Yes / No
Speaking order : Yes / No

To,

1. The Inspector of Police,
   Economic Offence Wing,
   Nammakkal,
   Nammakkal District.

2. The Public Prosecutor,
   High Court of Madras.

**C.V.KARTHIKEYAN, J.**

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Crl.O.P.No.5110 of 2024

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