



WEB COPY



Crl.M.P.No.4850 of 2024
in Crl.A.No.715 of 2021

THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.09.2024

DELIVERED ON : 19.09.2024

CORAM:

THE HON'BLE **MR.JUSTICE M. NIRMAL KUMAR**

Crl.M.P.No.4850 of 2024

in

Crl.A.No.715 of 2021

1.Suthi Emu Farms,
2.Suthi Emu Farms Private Limited,
3.Suthi Emu Farms & Hosieries,
Represented by A4
4.S.Tamizhnesan

... Petitioners/A1 to A4

Vs.

State by
The Deputy Superintendent of Police,
Economic Offences Wing-II Unit,
Erode, Tamilnadu.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) of Cr.P.C., to suspend the sentence and grant bail to the petitioner/appellant for the conviction and sentence imposed in C.C.No.21 of 2012 dated 05.08.2021 on the file of the Special Judge, Special Court under TNPID Act, Coimbatore and pending disposal of the above criminal appeal.



WEB COPY



Crl.M.P.No.4850 of 2024
in Crl.A.No.715 of 2021

For Petitioner : Mr.C.Iyyappa Raj

For Respondent : Mr.R.Vinothraja
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioners, seeking to suspend the sentence and grant bail to the petitioners/A1 to A4 for the conviction and sentence imposed in C.C.No.21 of 2012 dated 05.08.2021 on the file of the Special Judge, Special Court under TNPID Act, Coimbatore, pending disposal of the above criminal appeal.

2.The petitioners/A1 to A4 were convicted by the trial Court along with two others in C.C.No.21 of 2012 by judgment dated 05.08.2021 for the following offences:

(i) for offence under Section 420 I.P.C. and 5 of TNPID Act, A1 to

A3/Firm and Company ordered to pay fine of Rs.10,000/- for each



Crl.M.P.No.4850 of 2024
in Crl.A.No.715 of 2021

WEB COPY

offences and each counts (Rs.15,000/- x 110 counts x 3 company x 2

offences = Rs.99,00,000/-);

(ii)A4 and A6 shall pay the fine amount of Rs.66,00,000/- imposed on A1

and A2 Firm, i.e., each Rs.33,00,000/-, in default of payment of fine, to

undergo further period of one year simple imprisonment for each

offence;

(iii)A4, A5 and A6 each shall pay the fine amount of Rs.33,00,000/-

imposed on A3 Firm, i.e., each to pay Rs.11,00,000/- in default of

payment of fine by A4 to A6, they shall undergo further period of one

year simple imprisonment for each offence;

(iv)for offence under Section 120-B of I.P.C., A4 to A6 sentenced to

undergo two years simple imprisonment and to pay fine of Rs.15,000/-

for each count (Rs.15,000/- x 110 counts x 3 accused = Rs.49,50,000/-)

in default to undergo further one year simple imprisonment;



Crl.M.P.No.4850 of 2024
in Crl.A.No.715 of 2021

WEB COPY

(v)for offence under Section 420 of I.P.C., A4 to A6 sentenced to undergo three years simple imprisonment and to pay fine of Rs.15,000/- for each count (Rs.15,000/- x 110 count x 3 accused = Rs.49,50,000/-), in default to undergo further one year simple imprisonment.

(vi)for offence under Section 5 of TNPID Act, A4 to A6 sentenced to undergo ten years simple imprisonment and to pay fine of Rs.15,000/- (Rs.15,0000/- x 110 counts x 3 accused = Rs.49,50,000/-), in default to undergo further one year simple imprisonment. Total fine amount is Rs.2,47,50,000/-, in which, A4 and A6, each to pay Rs.93,50,000/- and A5 to pay Rs.60,50,000/-.

3.Aggrieved against the above conviction, the petitioners preferred an appeal in Crl.A.No.715 of 2021 before this Court along with suspension of sentence petition in Crl.M.P.No.14354 of 2021. This Court, by order dated 02.02.2022, granted bail to the petitioners on conditions that A4 to execute a bond for a sum of Rs.25,000/- with two sureties, each for a like sum to the



Crl.M.P.No.4850 of 2024
in Crl.A.No.715 of 2021

WEB COPY

satisfaction of the trial Court. Further directed the petitioner/A4 to deposit a sum of Rs.25,00,000/- to the credit of C.C.No.21 of 2012 on the file of Special Court under TNPID Act, Coimbatore at the time of furnishing sureties. Further directed the petitioner/A4 to deposit the balance fine amount of Rs.68,50,000/- to the credit of C.C.No.21 of 2012 within a period of eight weeks from the date of coming out on bail and if the amount is not so deposited, the trial Court to take steps to secure the petitioner/A4 and commit him to custody to undergo the remaining period of sentence. The petitioner thereafter filed a modification petition in Crl.M.P.No.6755 of 2022 and this Court, by order dated 25.07.2022, considering the difficulty expressed by the petitioner/A4 modified the condition imposed in paragraphs 7(ii) and 7(iii) of the order dated 02.02.2022 in Crl.M.P.No.14354 of 2021 to the extent that the petitioner to pay a sum of Rs.5,00,000/- upon which the petitioner shall be enlarged on bail. After the petitioner being enlarged on bail, within a stipulated period the petitioner to deposit another sum of Rs.10,00,000/- and



Crl.M.P.No.4850 of 2024
in Crl.A.No.715 of 2021

thereafter within a period of two months from the date of his release on bail to deposit further sum of Rs.10,00,000/- and all the amounts to be deposited to the credit of C.C.No.21 of 2012.

4. Thereafter the petitioner filed Crl.M.P.No.13514 of 2022 seeking modification of the order passed in Crl.M.P.No.6755 of 2022 dated 25.07.2022 stating that the petitioner has deposited a sum of Rs.5,00,000/- and he was enlarged on bail. Thereafter, to comply with the second condition of the order dated 25.07.2022, the petitioner approached his bank, namely, City Union Bank, Perunthurai branch to withdraw the amount of Rs.5,00,000/- which is lying in petitioner's Savings A/c No.241001001665573 and Current A/c. No.241007004263412, but he was not allowed to operate the same, since the appeal in C.A.No.715 of 2021 is pending in Crime No.17 of 2012. Hence, the petitioner is unable to comply with the conditions. Further he sought for a direction to include the amount lying in his Savings Bank Account as well as Current Account towards the



Crl.M.P.No.4850 of 2024
in Crl.A.No.715 of 2021

WEB COPY

amount of Rs.10,00,000/- to be deposited by the petitioner. This Court, finding that despite sufficient opportunity given to the petitioner to comply with the order of this Court, the petitioner not complied with the order, hence, dismissed the petition by order dated 12.09.2022 and consequently, cancelled the suspension of sentence granted to the petitioner in Crl.M.P.No.14354 of 2021 dated 02.02.2022. Further directed the respondent police to secure the petitioner to undergo remaining period of sentence. Thereafter the petitioner was secured on 27.01.2024 and now he is confined in Central Prison, Coimbatore. Hence, the present petition has been filed.

5.The contention of the learned counsel for petitioners is that the petitioners had been constantly paying to the depositors. They had no intention to cheat the depositors, which is seen from the evidence of prosecution witnesses. The petitioners' intention is only to pay back the depositors. In fact, the petitioner/A4 has been made as a scapegoat by A5, who is a powerful political personality, who lead the petitioner, A6 and other



Crl.M.P.No.4850 of 2024
in Crl.A.No.715 of 2021

WEB COPY

accused to trap but A5 was granted bail by this Court in Crl.M.P.No.13022 of 2022 in Crl.A.No.632 of 2022 by order dated 23.02.2022. Despite A5 was convicted both for jail and fine sentence similar to that of the petitioner/A4, this Court granted bail to A5, suspended the sentence without any condition of depositing any fine amount. But the petitioner/A4 has been targeted and imposed onerous condition. Hence, the petitioner is languishing in prison.

6.The learned counsel further submitted that the petitioner/A4 hail from Nagapattinam and at the instigation of A5, who is a General Secretary of Kongu Peravai and politician, he joined the business of A5 and he was only a name lender with regard to registered Firm-A1, registered company-A2 and unregistered Firm-A3 along with A6. It was A5, who was the backbone and the force in the entire scheme devised, in depositing for the Emu birds and Farm. The petitioner/A4 is similarly placed as of PW118 and PW119, the employees of the firm and company. The petitioner/A4 except lending his name, on the instructions of A5 and signed the documents,



Crl.M.P.No.4850 of 2024
in Crl.A.No.715 of 2021

cheques, voucher and receipt books, etc. without knowing the consequences and the real intention of A5 and now being targeted as though the petitioner/A4 is the main person. Further submitted that A5 executed an acknowledgement letter dated 24.06.2012 in the presence of PW114 that he received Rs.80,00,000/- from the company and as and when financial crisis occur to the company he would pay the said amount to the company. But A5 not complied with the undertaking given and taken a stand denying his signature, which would not absolve the liability of Rs.80,00,000/- received by A5.

7.He further submitted that the petitioner/A4 had given a calculation that out of Rs.2,57,09,300/- claimed by the prosecution, a sum of Rs.79,10,000/- was returned to the depositors and gold coins to the value of Rs.4,20,000/- given to the depositors and incurred an expenses towards the purchase of chicks to the tune of Rs.19,74,000/-, Rs.12,32,000/- for purchase of Emu birds, Rs.26,97,500/- towards feed for the Emu birds and



Crl.M.P.No.4850 of 2024
in Crl.A.No.715 of 2021

Rs.15,91,000/- towards construction of sheds, Rs.9,00,000/- towards purchase of furnitures, computer and accessories, Rs.12,00,000/- towards advertisement in news paper and television, Rs.80,00,000/- paid to A5 and Rs.11,00,000/- towards purchase of two cars, in total, Rs.2,70,24,500/-. This would clearly show that the petitioner was only an employee except for lending his name on the deception of A5. When A5 granted bail without any condition but the petitioner imposed with onerous condition is not proper. Hence, sought for suspension of sentence and bail.

8.The learned Government Advocate (Crl. Side) submitted that the petitioner/A4 was running the registered partnership firm company and unregistered firm along with A5 and A6. The petitioner actively participating in the day to day affairs of these establishments along with other accused A5 and A6. In this case, depositors cheated in the name of two schemes. By Scheme I, the petitioner received a deposit of Rs.1,50,000/- with a holding period of two years with an assurance that they will supply 6 emu birds, erect



Crl.M.P.No.4850 of 2024
in Crl.A.No.715 of 2021

WEB COPY

the sheds, provide feeds and free insurance and medical check ups and free medicines to the emu birds. Further, incentive and bonus would be paid. As per Scheme II, which is also similar to Scheme I, except the condition that emu birds would be maintained by the accused. In this case, 121 depositors cheated to the tune of Rs.2,69,80,550/-. He further submitted that 110 depositors examined in this case, who are PW1 to PW110. He further submitted that during trial PW1 to PW120 examined and Exs.P1 to P360 marked. Through PW116, Exs.P355 and P357/Letter and Register of Firms and certificate of registration of firm and company marked. PW113 – Owner of printing press produced Ex.P353/copy of notice, voucher and receipt book printed in the name of Suthi Emu Farm. The agreements, receipts and pamphlets issued by the accused to the depositors and complaints were marked as Exs.P1 to P351. PW111/VAO proved the seizure of incriminating documents, materials and objects. PW112 and PW115 are the landlords, who confirmed the accused running the business in their premises. PW118 and



Crl.M.P.No.4850 of 2024
in Crl.A.No.715 of 2021

WEB COPY

PW119 are the workers employed in the business establishment confirming that they were salaried persons and on the instructions of A4 to A6, they were working.

9.The petitioners gave false promises knowing well the promise can never be complied with. For Scheme I, the interest to be paid was 70% on the deposit and for Scheme II, it was 77%, which is unimaginable and no business can generate such income. Hence, right from the initial period, the intention of cheating is there. The trial Court on the evidence of the witnesses and materials produced had rightly convicted the petitioners and imposed the fine amount to be collected and paid as compensation to the innocent depositors, who are victims in this case.

10.He further submitted that the appellant/A5 filed a petition in Crl.M.P.No.13022 of 2021 in Crl.A.No.632 of 2021 for suspension of sentence imposed in C.C.No.21 of 2012 by order dated 05.08.2021 by the



Crl.M.P.No.4850 of 2024
in Crl.A.No.715 of 2021

WEB COPY

Special Court under TNPID Act, Coimbatore. This Court, on 23.02.2022, granted the reliefs of suspension of sentence and bail on condition that A5 to execute a bond for sum of Rs.10,000/- with two sureties and shall appear before the trial Court on the first working day of every English calendar month at 10.30 a.m., but A5 not complied the order and fine amount Rs.60,50,000/- also not paid and A5 was also convicted on 08.03.2022 in CBCID Crime No.02 of 2015 for offence under Sections 120(b), 364, 34 r/w 109 of I.P.C. 384, 465, 468, 471 r/w 468, 465 & 302, 201, 212, 216 of I.P.C. 3(2)(V) of SC/ST Act and undergoing life sentence till death in Jail, now, A5 is in Central prison, Coimbatore.

11.He further submitted that appellant/A6 filed a petition in Crl.M.P.No.2729 of 2023 in Crl.A.No.543 of 2021 for suspension of sentence imposed in C.C.No.21 of 2012 by order dated 05.08.2021 by the Special Court under TNPID Act, Coimbatore. This Court, granted bail for three months with condition to deposit Rs.25,000/- to the credit of C.C.No.21 of



Crl.M.P.No.4850 of 2024
in Crl.A.No.715 of 2021

2012 on the file of trial court at the time of furnishing of sureties. The Appellant/A6 paid 25,000/- and he was released on bail. Thereafter, the appellant/A6 filed a petition for extension of time in Crl.M.P.No.7367 of 2023 in Crl.A.No.543 of 2021 to comply with the conditions imposed by this Court by order dated 23.02.2023 in Crl.M.P.No.2729 of 2023. This Court extended the time for further period of three months with the conditions imposed by this Court by order dated 23.02.2023. Again A6 filed a petition for extension of time in Crl.M.P.No.14904 of 2023 in Crl.A.No.543 of 2021. Hence the Appellant/A6 not complied with the above said two orders of this Court and not paid fine amount of Rs.93,50,000/-. Subsequently, this Court on 26.09.2023, directed TNPID Court, Coimbatore to take action to issue a warrant and directed Deputy Superintendent of Police, EOW, to detain A6 to prison. As per the directions of this Court, NBW was issued by the TNPID Court, Coimbatore on 05.01.2024. The NBW was executed on 23.05.2024. The Appellant/A6 is in Coimbatore Central Prison still now.



Crl.M.P.No.4850 of 2024
in Crl.A.No.715 of 2021

WEB COPY

12.He further submitted that City Union Bank Savings Account No.241001001665573 an amount Rs.1,47,177/-, and Fixed Deposit Account No.241007004263412 an amount Rs.3,00,000/- in the name of A4/Tamizhnesan and in the Name of Suthi Emu Farms, Current Account No.241109000174774 an amount Rs.26,256/-, in total, Rs.4,73,434/- were identified and freezed. Those are Depositors money. Hence, above said three accounts were sent for proposal to Government in C.No.320/EOW/ERD/2023 dated 07.12.2023. The immovable property of A4/Tamizhnesan worth about Rs.2,25,000/- was also identified and sent for proposal to Government in C.No.320/EOW/ERD/2023 dated 07.12.2023 and also Rs.11,13,195/- is in DRO Account, Erode District. He further submitted that, A5/Yuvaraj's immovable property (2.5 Acre) was also identified and sent for proposal to Government in C.No.322/EOW/ERD/2023 dated 15.12.2023.



Crl.M.P.No.4850 of 2024
in Crl.A.No.715 of 2021

WEB COPY

condition was modified. After coming out on bail, this modified condition not complied and the petitioner absconded, later he was secured on 27.01.2024. It is also to be seen that the petitioner during trial absconded himself. The petitioner's contention that A5, who is similarly placed, was granted bail in Crl.M.P.No.13022 of 2021 dated 23.02.2022 does not automatically give a right for the petitioner/A4 to seek bail.

15.In view of the same, this Court is not inclined to entertain this petition and hence, the Criminal Miscellaneous Petition is dismissed.

19.09.2024

Index : Yes/No

Internet : Yes/No

Speaking order / Non-speaking order

Neutral citation : Yes/No

rsi



WEB COPY



Crl.M.P.No.4850 of 2024
in Crl.A.No.715 of 2021

M. NIRMAL KUMAR, J.

rsi

To

- 1.The Deputy Superintendent of Police,
Economic Offences Wing-II Unit,
Erode, Tamilnadu.
- 2.The Special Judge,
Special Court under TNPID Act,
Coimbatore.
- 3.The Superintendent of Prison,
Central Prison, Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.

**Pre-delivery order in
Crl.M.P.No.4850 of 2024
in Crl.A.No.715 of 2021**

19.09.2024