Crl.O.P.No. 20591 of 2024

T.V.THAMILSELVI, J.

The petitioner, who was arrested and remanded to judicial custody on 17.02.2023 for the alleged offence under Sections 34, 109, 120B, 409 and 420 of I.P.C. Sec.5 of Protection of Interest and Depositors Act and Secs.21(3), 22, 23, 24 and 25 of Banning of Unregulated Deposit Schemes Act, 2019, pending trial in C.C.No. 10 of 2023 on the file of Special Court for TNPID Act, Chennai in Crime No.21 of 2022, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the petitioner herein, in the capacity of Chairman of M/s. Hijau Associates Pvt. Ltd. has collected huge funds from the customers with a false promise of enormous and impractical returns leading to severe financial fraud and cheating. Furthermore, the petitioner's company also engaged several agents to collect deposits from the public and introduced incentive schemes and commissions to such agents. Thereafter, he has fraudulently diverted the deposits collected from the

public for his personal use and also diverted the same among other conspirators. Hence, the complaint was registered against the petitioner.

3. The learned senior counsel for the petitioner submitted that this is the third petition seeking for bail. He would submit that the petitioner had voluntarily surrendered before the Special Court for TNPID Act, Chennai on 17.02.2023 and he is in judicial custody for more than 1 year and 7 months. He would submit that custodial interrogation was also taken by the Investigating Agency for more than 7 days and to that effect, investigation is completed, but he is still in custody. He would submit that there is no specific overtact attributed against the petitioner and he has not at all committed any offence as alleged by the respondent police and he is no way connected with the occurrence. He would submit that no previous case pending against him and he was falsely implicated in this case. He would also submit that he is aged about 65 years old and he is suffering with several age-related health issues. He would submit that co-accused were released on bail and he has got himself associated with the said firm in the year 2019 and left his association with the said firm nearly two years back

in the year of 2022, so he is unaware of such unregulated deposits organised in the name of the said firm and he was not involved in collection of any deposits, but he was falsely implicated in this case. However, the prosecution filed a false charge sheet as if he has involved in collection of deposits from 89,043 depositors to the tune of Rs.4414,44,22,350/- and committed offence along with other accused. In support of his contentions, he relied the authority laid down in ***Crl.Appeal No. 1603 of 2019*** in the case of ***Shri P.Chidambaram vs. Central Bureau of Investigation,*** wherein the Apex Court held in para 16, 17, 21 as follows :-

> *"16. Refuting the said contentions, the learned Solicitor General submitted that though at the stage of grant or refusal to grant of bail, detailed examination of the merits of the matter is not required, but the court has to indicate reasons for prima facie concluding as to why bail was granted or refused. In support of his contention, the learned Solicitor General placed reliance upon* ***Kalyan Chandra Sarkar v. Rajesh Ranjan and another (2004) 7 SCC 528 and Puran v. Rambilas and another (2001) 6 SCC 338****. It was contended that the findings recorded by the learned Single Judge is only to record prima facie finding indicating as to why bail was not*

granted and the reasonings cannot be said to be touching upon the merits of the case.

18. In the present case, in the impugned judgment, paras (51) to (70) relate to the findings on the merits of the prosecution case. As discussed earlier, at the stage of considering the application for bail, detailed examination of the merits of the prosecution case and the merits or demerits of the materials relied upon by the prosecution, should be avoided. It is therefore, made clear that the findings of the High Court in paras (51) to (70) be construed as expression of opinion only for the purpose of refusal to grant bail and the same shall not in any way influence the trial or other proceedings.

21. In this appeal, we are only concerned with the question of grant of bail or otherwise to the appellant in the CBI case. We have referred to the submission of learned Senior counsel for the appellant and learned Solicitor General only for the sake of completion of the sequence of the contentions raised. Since the matter pertaining to Enforcement Directorate is pending before the concerned court, we are not expressing any opinion on the merits of the rival contention; lest it might prejudice the parties in the appropriate proceedings.

27. The learned Solicitor General submitted that when the accused is facing grave charges and when he entertains doubts of possibility of his being conviction, there is a "flight risk". It was submitted that the appellant has wherewithal to flee away from the country and prayed to refuse bail to the appellant on the ground of "flight risk" also. We find no merit in the submission that the appellant is a "flight risk" and there is possibility of his abscondence. In the FIR registered on 15.05.2017, the High Court has granted interim protection to the appellant on 31.05.2018 and the same was in force till 20.08.2019 – the date on which the High Court dismissed the appellant's petition for anticipatory bail. Between 31.05.2018 and 20.08.2019, when the appellant was having interim protection, the appellant did not file any application seeking permission to travel abroad nor prior to the same after registration of FIR any attempt is shown to have been made to flee. On behalf of the appellant, it is stated that the appellant being the Member of Parliament and a Senior Member of the Bar has strong roots in society and his passport having been surrendered and "look out notice" issued against him, there is *no likelihood of his fleeing away from the country or his abscondence from the trial. We find merit in the submission of the learned Senior counsel for the appellant that the appellant is not a "flight risk"; more so, when the appellant has surrendered his passport and when there is a "lookout notice" issued against the appellant.*

The learned senior counsel would also submit that on account of long period of incarceration running for around 1 year and 7 months, the petitioner is entitled for bail. For that he has also relied the authority laid down in ***Crl.Appeal No. ....of 2024 (arising out of SLP (Crl.) No.8781 of 2024)*** in the case of ***Manish Sisodia vs. Directorate of Enforcement,*** wherein the Apex Court held in para 49 as follows :-

"49. We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial."

He has also relied the authority laid down in ***Crl.Appeal No. 2787 of 2024*** in the case of ***Javed Gulam Nabi Shaikh vs. State of Maharashtra and***

another, wherein the Apex Court held in para 19 as follows :-

> *"19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime."*

On submission of aforesaid facts as well as by relying the aforesaid authority, he would submit that the petitioner is ready to abide any condition that may be imposed by this court and he would not abscond from the country and he is no way connected with the offence. Accordingly, learned senior counsel prayed to grant bail to the petitioner. Furthermore, he produced the medical records and on perusal of the same, it would reveals that the petitioner was admitted in hospital for mild chest pain during the period of custody.

4. The learned Addl. Public Prosecutor appearing for respondent

would submit that the petitioner was the Chairman and Director of A1 company and Partner in A2 company and committed a serious economic crime against the innocent and gullible public by collecting unregulated deposits in the garb of investing in offshore oil fields, later siphoned off with the proceeds of the crime and ultimately cheated them and there are tangible evidences collected that he had been involved in the collection of unregulated deposits from the gullible depositors through the above companies along with his son A3/Alexandar and other accused. He has also pointed out that he has surrendered before the respondent police voluntarily, but however, he has illegally entered into India through Nepal by manipulating travel documents and appeared before the respondent police. However, they are taking steps to secure his son, who is ranked as A3. A5 Mahalakshmi is his daughter-in-law and she was absconding and hiding herself in Dubai, U.A.E. To that effect, they are taking steps to arrest and extradite the prime accused. He would also submit that it is a case of economic offence of huge magnitude of around 1620 crore rupees and he has cheated the depositors and nearly about 260 bank accounts have been seized by respondent police and even the properties identified for attachment is not sufficient for his liability and they are not able to get the particulars of sisters concern. The petitioner is not cooperating to submit those particulars for further proceedings. He has also pointed out that he is in custody for more than 1 year 7 months and some of the accused were released on bail, against them, petition filed to cancel the bail and some of the accused still absconding. Furthermore, as on date, there is no recovery of amount and no property was attached. To support his contentions, he relied the following authorities :-

"(1) Reported in 1987 (02) SCC 364 in the case of ***State of Gujarat vs. Mohanlal Jitamalji Porwal and another,*** wherein the Apex Court held in para 5 as follows :-

> *"5.The next question which arises is as regards the request made by the learned Assistant Public Prosecutor for adducing additional evidence in order to prove letter Ex. 26 received from the Mint Master certifying that the article in question was made of gold of the purity of 99.60. The request was made in order to invoke the powers of the Court under Section 391 of the Code of Criminal Procedure, 1973, which inter alia provides that in dealing with any appeal under*

Chapter XXIX the appeal court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself or ask it to be taken by a Magistrate. The High Court rejected the prayer on the ground that it did not consider it "expedient in the interests of justice to open a new vista of evidence" in view of the fact that the offence had taken place six years back. The mere fact that six years had elapsed, for which time-lag the prosecution was in no way responsible, was no good ground for refusing to act in order to promote the interests of justice in an age when delays in the Court have become a part of life and the order of the day. Apart from the fact that the alleged lacuna was a technical lacuna in the sense that while the opinion of the Mint Master had admittedly been placed on record it had not been formally proved the report completely supported the case of the prosecution that the gold was of the specified purity. To deny the opportunity to remove the formal defect was to abort a case against an alleged economic offender. Ends of justice are not satisfied only when the accused in a criminal case is acquitted. The Community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the Community deserves equal treatment at the hands of the court in the discharge of its judicial functions. The Community or the State is not a person-

non-grata whose cause may be treated with disdain. The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. 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 with- out 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 High Court was therefore altogether unjustified in rejecting the application made by the learned Assistant Public Prosecutor invoking the powers of the Court under Section 391 of the Code of Criminal Procedure. We are of the opinion that the application should have been granted in the facts and circumstances of the case with the end in view to do full and true justice. The application made by the learned Assistant Public Prosecutor is therefore granted. The High Court will issue appropriate directions for the recording of the evidence to prove the report of the Mint Master under Section

391 Cr. P.C. when the matter goes back to High Court and is listed for directions. The appeal is therefore allowed. The order of acquittal is set aside. The matter is remitted to the High Court for proceeding further in accordance with law in the light of the abovesaid directions."

(2) Reported in 2013 (7) SCC 439 in the case of ***Y.S.Jagan Mohan Reddy vs. Central Bureau of Investigation,*** wherein the Apex Court held in paras 34 as follows :-

"*34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs 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."*

(3) Reported in 2013 (7) SCC 466 in the case of ***Jagan Nimmagadda Prasad vs. Central Bureau of Investigation,*** wherein the Apex Court held in paras 24 and 25 as follows :-

"24. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will

entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs 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."

(4) Reported in 2015 (11) SCC 502 in the case of ***Vinod Bhandari***

vs. State of Madhya Pradesh, wherein the Apex Court held in para 18 as follows :-

> "*18. It is certainly a matter of serious concern that the appellant has been in custody for about one year and there is no prospect of immediate trial. When a person is kept in custody to facilitate a fair trial and in the interest of the society, it is duty of the prosecution and the Court to take all possible steps to expedite the trial. Speedy trial is a right of the accused and is also in the interest of justice. We are thus, of the opinion that the prosecution and the trial Court must ensure speedy trial so that right of the accused is protected. This Court has already directed that the investigation be finally completed and final charge sheet filed on or before March 15, 2015. We have also been informed that a special prosecutor has been appointed and the matter is being tried before a Special Court. The High Court is monitoring the matter. We expect that in these circumstances, the trial will proceed day to day and its progress will be duly monitored. Material witnesses may be identified and examined at the earliest. Having regard to special features of this case, we request the High Court to take up the matter once in three months to take stock of the progress of trial and to issue such*

directions as may be necessary. We also direct that if the trial is not completed within one year from today for reasons not attributable to the appellant, the appellant will be entitled to apply for bail afresh to the High Court which may be considered in the light of the situation which may be then prevailing."

(5) Reported in 2019 (9) SCC 165 in the case of ***Serious Fraud Investigation Office vs. Nittin Johari and another,*** wherein the Apex Court held in para 25 as follows :-

"25. As already discussed supra, it is apparent that the Special Court, while considering the bail applications filed by Respondent No. 1 both prior and subsequent to the filing of the Investigation Report and complaint, has attempted to account not only for the conditions laid down in Section 212(6) of the Companies Act, but also of the general principles governing the grant of bail."

(6) Reported in 2022 SCC Online Raj 1464 103 GSTR 373 : (2022) 60 GSTL 424 : (2022) 5 WLC 422 in the case of ***Sohan Singh Rao vs. Union of India,*** wherein the High Court of Rajasthan held in para 8 as follows :-

"8. It is admitted position that the petitioner and

Vinaykant Ameta were Director in M/s Miraj Products Private Limited. As per the prosecution story, they had evaded tax of Rs. 869 Crores. GST department had seized one truck which was being unloaded at their premises. The Hon'ble Apex Court in various pronouncement held that the economic offender should not be dealt as general offender because economic offenders run parallel economy and they are serious threat to the national economy. Case of the petitioner is similar to the Vinaykant Ameta Vs. Union Of India and bail of the Vinaykant Ameta was dismissed by this Court and Hon'ble Apex Court had granted the bail of Vinaykant Ameta on depositing of Rs.200 Crores. So, after considering the submission put-forth by learned counsel for the parties and in the facts and circumstances of the present case and also looking to the seriousness of the offence(s) alleged against the petitioner without expressing any opinion on the merits of the case, I do not consider it a fit case to enlarge the petitioner on bail under Section 439 Cr.P.C."

By relying the aforesaid authorities, the learned Addl. Public Prosecutor raised strong objections to grant bail to the petitioner and prayed to dismiss this petition.

5. Considering both side submissions and on seeing the facts, it

reveals that F.I.R. was lodged in the year of 2022 in Crime No.21 of 2022 for the offence under Sections 34, 109, 120B, 409 and 420 of I.P.C. Sec.5 of Protection of Interest and Depositors Act and Secs.21(3), 22, 23, 24 and 25 of Banning of Unregulated Deposit Schemes Act, 2019 and on considering the fact that this is a case of financial fraud, cheating, criminal breach of trust, collection of unregulated deposits and criminal conspiracy committed by M/s.Hijau Associated Pvt. Ltd. and the fact that the petitioner is one of Director of the said Company and his son Alexandar is also a Director, but, he is hiding himself in U.A.E. and also the fact that though he is under custody of more than 1 year 7 months he was not cooperating for investigation, on considering the gravity offence, and the fact that so far, no property was attached and no amount was recovered and the fact that there is no change of circumstances and on seeing conduct of petitioner and also on considering the authorities relied on by both side counsels, this Court is not inclined to grant bail to the petitioner. Accordingly, this Criminal Original Petition is dismissed. However, on considering the fact that if he is suffering with age-related ailments, the jail authority is directed to give proper treatment to him as per manner known to law.

26.09.2024

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<u>T.V.THAMILSELVI, J</u>.

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