IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2024

CORAM

The Hon`ble Mr.Justice P.DHANABAL

CRL OP.No.22682 of 2024

Durairaj S/o. Kupendiran ... Petitioner /A28

Vs

State rep. by:-

The Deputy Superintendent of Police,
Economic Offences Wing,
Chennai. ... Respondent
[Cr. No.21/ 2022]

PRAYER: - The Criminal Original Petition is filed under Section 439 of Criminal Procedure Code, praying to grant bail to the petitioner / Accused 28 in Cr. No.21 of 2022 on the file of the respondent police.

For Petitioner : Mr. J. Asokan

For Respondent : Mr. R. Muniyapparaj,
Assistant Public Prosecutor
Assisted by Mr. M. Sylvester John

ORDER

The petitioner/Accused No.28, who arrested and remanded to judicial custody on 28.07.2023 for the offences punishable under Sections 120-B, 409, 420 r/w 109 and 34 of IPC and Section 5 of TNPID Act, 1997 and Sections 21(3), 22, 23, 24 & 25 of the Banning of Unregulated Deposits Schemes Act, 2019 in Cr. No.21 of 2022 on the file of the respondent police, Chennai seeks bail.

2. This is a case of financial fraud, cheating, criminal breach of trust, collection of unregulated deposits and criminal conspiracy committed M/s. Hijau Associates Private Limited / A1 and other accused, who are Chairman, Managing Director, Directors, Board of Members, Committee Members and Manager. The allegation against the company is that M/s. Hijau Associates Private Limited / A1 had been collecting deposit from the public with false and alluring promise of paying exorbitant interest at the rate of 15% per month. Hence one Nithya, who is a depositor in the A1 company has lodged complaint and based on the complaint, this case has been registered.

3. The learned counsel for the petitioner would contend that the respondent police have registered a false case against the petitioner and

others for the alleged offences under Sections 120-B, 409, 420 r/w 109 and 34 of IPC and Section 5 of TNPID Act, 1997 and Sections 21(3), 22, 23, 24 & 25 of the BUDS Act. This petitioner has been arrayed as A28 in the FIR and he was arrested and remanded to judicial custody on 28.07.2023. As per the prosecution, one Nithya has preferred a complaint stating that she and her family members were attracted by a deposit scheme of the company M/s. Hijau Associates Private Ltd., represented by its Director, Alexander and his father Soundaraja, in which they had promised to give interest of 15% for a period of 1 month and any amount can be further added and that would also be paid with 15% interest from the date of additional amount added as deposit. Believing their representation, she had invested a total amount of Rs.34 lakhs as 12 deposits and various dates from February 2021 to August 2022, but from the month of September 2022, the above company had stopped to pay interest. Therefore, the case has been registered. In fact, false case has been foisted against the petitioner and the petitioner is an innocent, that she has been falsely implicated in this case, that the main allegation against the petitioner is that he shown to be the close associate of A3 to A5 and he was made as a committee member in A1 company. In fact, this petitioner had also made deposits in the A1 company and he has also preferred complaint against the A1 company and he is one of the victims and that already investigation was completed and charge sheet was also filed and this petitioner is arrayed as A28 and he was arrested and remanded to judicial custody on 28.07.2023 and therefore, he prayed to grant bail to the petitioner.

4. The learned Assistant Public Prosecutor would submit that based on the complaint given by the defacto complainant, this case has been registered against the petitioner and others for the offences under Sections 120-B, 409, 420 r/w 109 and 34 of IPC and Section 5 of TNPID Act, 1997 and Sections 21(3), 22, 23, 24 & 25 of the BUDS Act. This is a case of financial fraud, cheating, criminal breach of trust, collection of unregulated deposits and criminal conspiracy committed M/s. Hijau Associates Private Limited / A1 and other accused, who are Chairman, Managing Director, Directors, Board of Members, Committee Members and Manager. The company was promoted by A3 and his wife A5 with a

share capital of Rs.1 lakh divided by 10,000 shares which they shared equally and the company has been assigned Company Identification number with 12 directors namely namely A3 to A14 along with their associate entities. The company is not issued with any non-banking finance company licensed by RBI to collect deposits from the public, not sanctioned with any Regulated Deposits Scheme by SEBI and not permitted to collect deposits under the provisions of Companies Act. So far, identified 89,043 depositors for an amount of Rs.4414,44,22,350/- and complaints were received from 30,292 depositors for a total deposited amount of Rs.2000 crores. As far as this petitioner is concerned, he had collected a sum of Rs.36,00,00,000/- from 766 depositors and was responsible for cheating them. This petitioner had also opened IDFC bank account and received the money from the gullible depositors in the above said account and cheated them. This petitioner is a Committee member of A1 company and he was responsible for collecting cash from the innocent depositors and earned huge amount of commission for his active role and this petitioner has been absconding for a long time and he was secured on 28.07.2023 and he was enquired under police custody from 01.08.2023 to 05.08.2023 and therefore, if he is released on bail, he might escape from the clutches of law. Hence, he strongly opposed to grant bail to the petitioner.

4.1. In support of his contention, the learned Assistant Public Prosecutor appearing for the State has relied upon the following judgments:

4.1.1. ***Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation reported in (2013) 7 Supreme Court Cases 439.***

4.1.2. Vinod Bhandari vs. State of Madhya Pradesh reported in (2015) 11 Supreme Court Cases 502.

4.1.3. State of Gujarat vs. Mohanlal Jitamalji Porwal and another reported in (1987) 2 Supreme Court Cases 364.

4.1.4. Sohan Singh Rao vs. Union of India reported in 2022 SCC Online Raj 1464.

4.1.5. Nimmagadda Prasad vs. Central Bureau of Investigation reported in (2013) 7 Supreme Court Cases 466.

4.1.6. Serious Fraud Investigation Office vs. Nittin Johari and

another reported in (2019) 9 Supreme Court Cases 165.

5. Heard both sides and perused the materials available on record.

6. Considering the rival submissions on either side, considering the gravity of offences, that huge money is involved in this case and so many persons have deposited their huge, hard earned money and already this Court dismissed the earlier bail application and there is no change of circumstances to consider the present bail application.

7. On perusal of the judgments relied on by the learned Assistant Public Prosecutor it is clear 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 and also, the Court has to keep 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 itself 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.

8. In the case on hand also, huge amount of public money involved in this case and offences are grave in nature. In view of the said reasons, this Court is declined to grant bail to the petitioner at this stage.

9. Accordingly, the Criminal Original Petition is dismissed.

04.10.2024

index: Yes/No
Internet: Yes/No
Speaking/Non Speaking order
mjs

To

1.The Special Judge, Special Court under the TNPID Act (Financial Establishment) Act, Chennai.
2.The Public Prosecutor, Madras High Court, Chennai.
3. The Deputy Superintendent of Police, Economic Offences Wing,

Chennai.
4. The Superintendent of Police, Central Prison, Puzhal, Chennai.

P.DHANABAL,J
mjs

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