



CRL OP(MD) No.20176 of 2022

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)**

Wednesday, the Twenty Seventh day of March Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice M.DHANDAPANI

CRL OP(MD) No.20176 of 2022

CrI OP(MD)No. 22587 of 2023

CRL OP(MD) Nos.192, 251, 2266, 3326, 3381 of 2024

AND

WP(MD) No.14035 of 2022,

CRL OP(MD).20176/2022 :

JALALUDEEN

... PETITIONER

Vs

**1 THE ADDITIONAL DIRECTOR GENERAL OF POLICE,
CBCID, SIDCO ELECTRONIC COMPLEX,
BLOCK NO.3, 1ST FLOOR GUINDY INDUSTRIAL ESTATE,
CHENNAI 32.**

**2 THE INSPECTOR OF POLICE
CBCID, TIRUCHIRAPPALLI.**

**3 THE DEPUTY SUPERINTENDENT OF POLICE,
ECONOMIC OFFENCES WING, UNIT II,
TIRUCHIRAPPALLI.
(CRIME NO.78 OF 2021)**

... RESPONDENTS/COMPLAINANT

**For Petitioner : MR.M.AJMAL KHAN, Senior Counsel
for M/S.AJMAL ASSOCIATES**

For Respondent : MR.B.NAMBISELVAN, Additional Public Prosecutor



CRL OP(MD) No.20176 of 2022

Prayer in CRL OP(MD). 20176/ 2022 :

To transfer the investigation in Crime No.78 of 2021 pending on the file of 3rd Respondent Police to the file of 2nd Respondent with a direction to investigate into the matter and file charge sheet in accordance with law.

CRL OP(MD)No. 22587 of 2023

G.Ravisankar

... Petitioner/Victim/ Investor

Vs

1 Kamalakannan

... Respondent No.1/ Accused No.6
in Crl.OP(MD)No.22587/ 2023

2 The Inspector of Police
EOW-II Police Station,
Madurai District.
Crime No.03 of 2023.

... 2nd Respondent/Respondent/Complainant

For Petitioners : Mr.S.M.ANANDHA MURUGAN, Advocate
for M/S.MATHURAM LAW ASSOCIATES

For Respondent 1 : Mr.AAYIRAM K.SELVAKUMAR, Advocate

For Respondent - 2: MR.B.NAMBISELVAN, Additional Public Prosecutor

Prayer in CRL OP(MD). 22587/ 2023 :

This Criminal Original Petition is filed under section 439(2) r/w 482 of Cr.P.C., to cancel the Bail granted to the accused No.6 in Crl.M.P.(MD).No.443 of 2023 on the file of the Learned Special Court under TNPID Act cases, Madurai dt.10.11.2023.

CRL.O.P.(MD)Nos.192 , 251, 2266, 3326 & 3381 of 2024,

Rajkumar

... Petitioner/Victim in CRL OP(MD)Nos.192 & 251 of 2024

Suresh

... Petitioner/Victim in CRL.OP(MD).2266/2024



CRL OP(MD) No.20176 of 2022

Sarathkumar

... Petitioner/Victim in CRL.OP(MD).3326/2024

Balakrishnan

... Petitioner/Victim in CRL.OP(MD).3381/2024

1 Kapil

... 1st Respondent/Petitioner No.2/ Accused No.29
in Crl.OP(MD)No.192/2024

1 Kamalakannan

... 1st Respondent/Petitioner/ Accused No.6
in Crl.OP(MD)No.251/2024

1 Simeon Raja

... 1st Respondent/Petitioner/ Accused 23
in Crl.OP(MD)No.2266/2024

1 Balasubramanian

... 1st Respondent/Petitioner/ Accused 7
in Crl.OP(MD)No.3326 & 3381/2024

2 The Inspector of Police
EOW-II Police Station,
Madurai District.
Crime No.03 of 2023.

... 2nd Respondent/Respondent/Complainant
in all petitions

For Petitioners : Mr.ANANDHA RAJAGOPAL, Advocate
in all petitions

For Respondent 1 : Mr.AAYIRAM K SELVAKUMAR, Advocate
in all petitions

For Respondent 2 : MR.B.NAMBISELVAN, Additional Public Prosecutor
in all petitions

For Intervenors : Mr.AJMALKHAN, Senior Counsel
for M/S. AJMAL ASSOCIATES, for Ramamoorthy

MR.K.PRABHA, Advocate for MURUGAN

MR.A.SINGARAVELU, Advocate for DEEPA

MR.R.KRISHNAN , Advocate for NASERIN BANU

MR.M.SARAVANAN, Advocate for SAKTHIVEL



CRL OP(MD) No.20176 of 2022

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Prayer in Crl.OP(MD) No.192 of 2024 :-

This Criminal Original Petition is filed under section 439(2) of Cr.P.C., to Cancel the bail granted to the 1st Respondent/ Accused No.29 in Cr.MP.No.338 of 2023 by its order dt.29.8.2023 on the file of Learned Special Court under the TamilNadu Protection of Interest of Depositors(In Financial Establishment)Act, Madurai.

Prayer in CRL OP(MD). 251/ 2024 :

This Criminal Original Petition is filed under section 439(2) of Cr.P.C.,to Cancel the Bail granted to the 1st Respondent/ Accused No.6 in Cr.MP.No.443 of 2023 by its order dt.10.11.2023 on the file of Learned Special Court Under the TamilNadu Protection of Interest of Depositors(In Financial Establishment)Act, Madurai.

Prayer in CRL OP(MD). 2266/ 2024 :

To cancel the bail granted to the 1st respondent / accused No.23 in Cr.M.P No. 338/2023 by its order dt. 29.08.2023 on the file of the learned Special Court under the Tamilnadu Protection of Interest of Depositors (In Financial Establishment) Act, Madurai.

Prayer in CRL OP(MD). 3326/ 2024 :

To cancel the bail granted to the 1st Respondent / accused No.7 in Crl MP No.504/2023 by its order dt.23.01.2024 on the file of learned Special Court under the TamilNadu Protection of Interest of Depositors (In Financial Establishment) Act, Madurai.

Prayer in CRL OP(MD). 3381/ 2024 :

To cancel the bail granted to the 1st Respondent / Accused No.7 in Cr MP No.504/2023 by its order dt.23.01.2024 on the file of Learned Special Court under the Tamilnadu Protection of Interest of Depositors (In Financial Establishment) Act, Madurai.

WP(MD).14035/2022 :

DHANEESH.S

... PETITIONER

Vs



CRL OP(MD) No.20176 of 2022

1 THE PRINCIPAL SECRETARY TO GOVERNMENT,
HOME DEPARTMENT, SECRETARIAT, CHENNAI - 600 009.

2 THE DISTRICT REVENUE OFFICER / COMPETENT AUTHORITY,,
KANYAKUMARI DISTRICT, NAGERCOIL.

3 THE SUPERINTENDENT OF POLICE,
ECONOMIC OFFENCE WING,
NO.2, NATESAN SALAI, PTC,ASHOK NAGAR,
CHENNAI - 600 083.

4 THE DEPUTY SUPERINTENDENT OF POLICE,
ECONOMIC OFFENCE WING - II,
KANYAKUMARI DISTRICT, NAGERCOIL.

5 THE INSPECTOR OF POLICE,
ECONOMIC OFFENCE WING - II,
KANYAKUMARI DISTRICT, NAGERCOIL.
(CRIME NO. 1/2017).

6 NIRMALAN

... RESPONDENTS

(*)7 THE HOME SECRETARY,
GOVERNMENT OF TAMIL NADU,
HOME DEPARTMENT, CHENNAI.

8 THE ADDITIONAL DIRECTOR GENERAL OF POLICE,
ECONOMIC OFFENCES WING,
CHENNAI 83.

... 7 TH & 8 TH RESPONDENTS

(*) R7 AND R8 ARE SUO MOTU IMPLEADED VIDE
COURT ORDER DATED.05.02.2024 IN WP(MD).
14035/2022

For Petitioner : MR.V.THIRUMAL, Advocate

For Respondent 1-5 : MR.B.NAMBISELVAN,
Additional Public Prosecutor

For Respondent 6 : MR.K.K.VIJAYAN, Advocate

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CRL OP(MD) No.20176 of 2022

Prayer in WP(MD).14035/2022 :

To issue a Writ of Mandamus directing the respondents No.1 to 5 to take appropriate legal steps to appoint the Honble Retired high Court Judge as a Committee Chairman to identify the property and bring the property to public auction sale and to disburse the money to the affected depositors in a speedy manner in connection with the property in Crime No. 1 of 2017 dated 15.09.2017 on the file of the 5th respondent and connected C.C.No. 6 of 2019 on the file of the Special Court under TNPID Act Cases 1997, Madurai.

COMMON ORDER

Two different types of petitions have been filed, which have sought the indulgence of this Court for invoking its power u/s 482 Cr.P.C. as also Article 226 of the Constitution, but the prayer in the said petitions are three-fold, viz.,

Batch of petitions in Crl. O.P. Nos. 192, 251, 2266, 3326, 3381 of 2024 and 22587 of 2023 have been filed to cancel the bail granted to the respective accused;

Crl. O.P. (MD) No.20176/2022 has been filed seeking transfer of investigation; and

W.P. (MD) No.14035/2022 has been filed for a mandamus for direction to appoint a Retd. High Court Judge for the purpose of expediting the process of realising and disbursing the amounts to the depositors.

2. Bail has been granted vide order dated 10.11.2023 to A-6, A-7, A-23 and A-29



CRL OP(MD) No.20176 of 2022

by the Special Judge, Special Court under the TNPID Act in Crime No.3/2023 considering the period of incarceration of the accused and also the duration of investigation. Alleging violation of the bail conditions and also tampering with the witnesses, petitions were filed seeking cancellation of bail granted to the abovesaid accused.

3. The case has been regularly coming up before the Court, wherein, reports are being filed with regard to the action taken to identify the properties and take steps with regard to protecting the interests of the depositors. Pursuant to the orders passed by this Court on 21.3.2024 report has been filed by the 8th respondent. However, finding that the report is not comprehensive enough as it did not provide the timelines within which constructive action would be taken up to realise the amounts and distribute the same to the depositors, this Court directed the 7th and 8th respondents, to file a report, providing the following details :-

“4. A perusal of the report shows that though the steps taken by the respondents have been listed out in the report, yet the report is bereft of the details as to the timelines within which various actions would be taken by the law enforcing agency. The report is bland without any time frame being submitted for completing the investigation and



CRL OP(MD) No.20176 of 2022

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taking necessary action so that the amounts deposited would be disbursed to the depositors. In the light of the aforesaid position, this Court would like to know the timelines within which the following below-mentioned tasks would be completed by the law enforcing agency :-

- i) The time within which the complaints/claims from the depositors would be invited;
- ii) The period within which the investigation would be completed, charge sheet filed;
- iii) The time within which the properties would be identified and steps taken to attach the said properties;
- iv) The time within which the necessary Government Order would be issued for attaching the properties so identified;
- iv) The time within which the Court would be moved and an order of interim attachment would be obtained from the Court with respect to the properties identified;
- v) The time within which steps would be taken to obtain permanent attachment of the properties from the Court;
- vi) The time within which the properties, which are attached, would



CRL OP(MD) No.20176 of 2022

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be brought for auction;

vii) The time within which the amount realised by way of auction would be disbursed to the depositors and the manner in which such disbursement would be made to the depositors.”

4. Pursuant to the aforesaid directions, a report dated 27.03.2024 was filed by the 8th respondent, wherein, the broad spectrum of the investigative process involved, the 8th respondent has spelt out the time required for receipt of complaints/claims from the depositors, filing of the charge sheet, identification of properties and taking of steps to attach the same, obtainment of Government Order for attaching the properties, obtainment of ad-interim attachment and permanent attachment from the competent Court, the properties to be brought for auction and disbursement of the amounts realised through the auction sale to the depositors. A tabulated statement has been given in the report with regard to the above, which is quoted hereunder for reference :-

S. No.	Name of the Task	Tentative Timeline
1	The time within which the complaints/claims from the depositors would be invited	6 Months

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CRL OP(MD) No.20176 of 2022

2	The period within which the investigation would be completed, charge sheet filed	12 to 15 Months
3	The time within which the properties would be identified and steps taken to attach the said properties	Minimum 6 Months or more
4	The time within which the necessary Government Order would be issued for attaching the properties so identified	4 to 6 Weeks
5	The time within which the Court would be moved and an order of interim attachment would be obtained from the Court with respect to the properties identified	Competent Authority Discretion
6	The time within which steps would be taken to obtain permanent attachment of the properties from the Court	Competent Authority Discretion
7	The time within which the properties which are attached would be brought for auction	Competent Authority Discretion
8	The time within which the amount realised by way of auction would be disbursed to the depositors and the manner in which such disbursement would be made to the depositors	Competent Authority Discretion

5. It is further evident from the report that timelines with regard to S. Nos.5 to 7 could not be spelt out presently due to the fact that Lok Sabha Elections, 2024 is scheduled to take place in which the Revenue Department personnel would be deployed and, therefore, the District Revenue Officer, who is the competent authority



CRL OP(MD) No.20176 of 2022

would be held up and, therefore, till the elections are over, no work can be undertaken with regard to S. Nos. 5 to 8.

6. It is to be pointed out that no person lives till eternity and every individual strives hard during his early days to gain monetary advantage, which he invests so that at a later point in life, it would come in aid in his old age. The monetary advantage, which is sought to be realised by means of deposits is being siphoned off by unscrupulous elements by floating such finance companies, which dangles lucrative and fanciful interest before the eyes of the general public, thereby, infecting their minds to invest with them, but seldom such companies repay the deposits to the common man, where the common man is made to run from pillar to post to retrieve his hard earned money.

7. Only in the aforesaid scenario, the Tamil Nadu Protection of Interest of Depositors Act (for short 'the Act') was enacted, which was aimed at protecting the interests of the depositors in financial establishments. The primary purpose of the Act is to safeguard the interests of the depositors, who invest their money in financial establishments, which do not come within the purview of the Regulatory Authorities like Reserve Bank of India. Only to secure the safety and interest of such depositors



CRL OP(MD) No.20176 of 2022

and to regulate and control the functioning of the financial establishments and to prevent fraudulent activities being perpetrated amongst the depositors, which would have a harmful and deleterious effect on the depositors' life, the Act was put in place.

8. From the above, it is evident that the Act serves as a crucial legal framework in promoting financial stability while at the same time protecting the interests of the depositors in the State by regulating the operations of financial establishment and preventing fraudulent practices by financial establishments.

9. Towards achieving the purpose of enactment of the Act, Special Courts have been established for expediting the adjudication of cases relating to fraudulent acts committed by financial establishments against the depositors. Section 3 of the Act enables the Government to attach properties of the companies, its directors, promoters, etc., which were purchased from out of the proceeds of the said collection.

10. By invoking the power available u/s 3 of the Act, the Government has issued G.O. (Ms) No.195, Home (Police-XIX) Dept., dated 8.3.2024, passing an ad-interim order attaching the immovable properties as specified in the schedule attached to the said Government Order, being the properties held in the name of the

<https://www.mhc.tn.gov.in/judis>



CRL OP(MD) No.20176 of 2022

defaulted firm. However, it is to be noted that in respect of the properties, which are held in the name of the accused involved in the aforesaid offence, no ad-interim order has been passed till date and according to the 8th respondent, investigation is still on in identification of the properties and steps would be taken to attach the properties, once they are fully identified.

11. While the aforesaid Government Order has been issued in respect of certain properties, which were identified, however, in pursuit of identification of other properties, towards which investigation is taking place, necessary Government Orders have to be issued upon such identification is made, whereinafter only the properties can be attached permanently and brought to auction.

12. In this backdrop, an analysis of the report submitted even as back as in the year 2022 reveals that the financial irregularities in the collection of deposits runs to about Rs.245 Crores till 12.03.2024, which is on the basis of about 1246 complaints received from the depositors, who have not been repaid with their deposits. It further transpires from the report that more than 110 companies have been floated of which 28 companies have been involved in real estate business and that there is change of Directors between the accused periodically. It further transpires from the



CRL OP(MD) No.20176 of 2022

report that properties worth about Rs.11.56 Crores have been identified for which G.O. Ms. No.195 dated 8.3.2024, which has been noted above, has been issued, ordering attachment of the said properties. In the aforesaid backdrop, since the financial fraud committed is of large scale proportion, by the report dated 27.3.2024, the period within which the various steps in the sequence of the Act would be undertaken has been spelt out. However, to certain pointed queries with regard to the timelines within which action would be taken, the respondents have taken umbrage under the General Elections, 2024 by submitting that the revenue machinery is involved in the election process and, therefore, the specific timelines could not be given at this point of time.

13. It is to be pointed out that the Act has been enacted to safeguard the interests of gullible depositors, who have been cheated at the hands of persons like the accused. However, under the shield of General Elections, the benefits, which flows from the Act cannot be curtailed so as to not reach the hands of the depositors on time, as otherwise the intent of the Act would stand frustrated. Therefore, all efforts ought to be taken to see that necessary steps are taken to complete the different tasks within a particular timeline, which alone would ensure that the depositors would stand to benefit.



CRL OP(MD) No.20176 of 2022

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14. Pausing here for a moment. Batch of about six petitions have been filed to cancel the bail granted to some of the accused by premising the case that the accused are trying to tamper with the witnesses and also put spokes in the investigative process.

15. In this regard, when this Court directed the learned counsel for the petitioners to address on the question of cancellation of bail, learned counsel appearing for the petitioners submitted though they had sought for cancellation of bail, however, their main aim it only to see that they get back their money, which they had deposited with the accused and in view of the fact that steps are being taken to attach the properties of the accused and the companies floated by the accused, this Court may issue necessary directions for attaching all the properties and sell the same in auction and disburse the amount to the depositors.

16. It is the further submission of the learned counsel for the petitioners that in the event of this Court deciding not to cancel the bail granted to the accused, this Court may direct the accused persons to appear before the law enforcing agency and disclose the details of all the properties and co-operate with the investigation so as to

<https://www.mhc.tn.gov.in/judis>



CRL OP(MD) No.20176 of 2022

enable the law enforcing agency to attach the property permanently and bring the properties for sale by public auction and disburse the amount to the depositors. It is further submitted that if the accused failed to cooperate with the investigation, direction may be issued to the investigating agency to take steps to have the bail cancelled.

17. Learned counsel appearing for the accused submits that nearly 798 complaints have been closed and the properties worth about Rs.400 Crores have been handed over to the respondent police. For handing over the rest of the properties, the accused had approached the respondent Police, however, they have reported that they will receive the properties as per the directions of the Court. It is the further submission of the learned counsel that some third parties are willing to purchase the properties and if the properties are sold, the amounts will be credited to the Government which could ensure in speedy disbursement of the amount to the depositors. It is further submitted that the details with regard to total number of depositors, address, approved and unapproved properties have already been given to the law enforcing agency.

18. It is further submitted by the learned counsel appearing for the accused that

<https://www.mhc.tn.gov.in/judis>



CRL OP(MD) No.20176 of 2022

the accused would cooperate fully with the investigating agency/the respondents herein in the identification of the properties and provide necessary assistance so that steps are taken by the investigating agency to secure the properties, attach the same, auction sale and disburse the amounts due to the depositors and in the event of the accused not cooperating with the investigation, the investigating agency may proceed in accordance with law.

19. This Court has carefully considered the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

20. Periodical reports have been filed by the investigating agency before this Court of which one such report dated 19.3.2024 reveals the lethargic and slow pace at which investigation is being carried on by the investigating agency. A perusal of the same reveals the following details :-

S. No.	Details	Amount (Rs.)
1	Number of pending investigation & further action	555



CRL OP(MD) No.20176 of 2022

2	Number of depositors involved	3,57,809
3	Number of GOs issued	286
4	Value of deposits involved	10,145,29,42,110/-
5	Worth of properties attached	851,99,94,694/-
6	Value of sale of properties	104,84,06,161/-
7	Total amount deposited in the DRO account under the TNPID Act (Auction proceeds & accused payments)	140,14,84,562/-
8	Amount settled through TNPID courts	50,58,41,874/-
9	No. Of depositors who received their deposits through court under the TNPID Act	5,022
10	Amount disbursed to the depositors through DROs under the TNPID Act	29,67,43,460/-
11	No. Of depositors who received their deposits through DRO under the TNPID Act	6,157
12	Total amount disbursed to the depositors under the TNPID Act	80,25,85,334/-
13	Total No. Of depositors who received their deposits under the TNPID Act	11,179



CRL OP(MD) No.20176 of 2022

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21. From the above, it is evident that though the total number of depositors involved is about 3.60 Lakhs, however, only 11,179 depositors alone have been settled. The amount involved is in excess of Rs.10,000 Crores of which only properties worth about Rs.851 Crores have been attached and an amount of only a paltry amount to the extent of about Rs.150 Crores alone have been disbursed to the depositors through the TNPID Court/DROs. Further the report reveals that more than 315 cases are pending in which action needs to be taken by the investigative agency. This shows the enormity of the financial transaction involved and the involvement of the various persons, who have perpetrated the fraud on the general public. The above clearly reveals that the investigative machinery is proceeding in a slow pace and it requires to be expedited if the depositors are to realise the fruits of their hard earned savings and the intent and purpose of the Act is fulfilled.

22. In the aforesaid backdrop, the various petitions filed by the petitioners, who are depositors in the different financial establishments requires to be considered, more particularly keeping in mind the interest of the depositors and enabling them to realise their hard earned money.

23. In the aforesaid scenario, though the petitions have been filed cancellation
<https://www.mhc.tn.gov.in/judis>



CRL OP(MD) No.20176 of 2022

of bail granted by the Court below and also for other reliefs, which have been detailed supra, however, it is to be pointed out that the interest of all the stakeholders, including this Court is only to ensure that the depositors get back their hard earned money. Even, the Act, u/s 5-A provides for compounding of the offence. Therefore, when the accused, on their own volition and seeking remorse are ready and willing to cooperate with the investigation in identifying the properties without putting any fetters in the investigation, this Court has to necessarily consider the said undertaking before passing any orders cancelling bail.

24. As aforesaid, the Act has been enacted only for the purpose of retrieving the money of the depositors, which had been clandestinely siphoned off by persons like the accused. When steps are taken by the investigating agency to retrieve the money and the Government, in the said drill, has also taken steps in issuing the necessary Government Orders, attaching the properties of the accused persons and the companies and further steps are to be taken towards permanent attachment of the properties, bringing the said properties to auction sale and disbursing the sale proceeds to the depositors alone should be borne in mind, more so, when the accused are ready to lend all their help in identifying the properties and selling the same for paying back the depositors.



CRL OP(MD) No.20176 of 2022

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25. In the aforesaid backdrop, this Court would venture to look into the power of the Special Court and the tasks that it could perform in the interests of the depositors.

26. Section 4 of the Act provides authority on the Government to appoint Competent Authority to exercise control over the properties attached by the Government u/s 3. Sub-section 3 to Section envisages the competent authority, so appointed to apply within thirty days to the Special Court constituted under the Act for making the ad interim order of attachment passed by the Government u/s 3 absolute and for a direction to sell the property so attached by public auction and realise the sale proceeds. The procedure for filing an application under sub-section (3) to Section 4 is provided for under sub-section (4).

27. Once the application is filed by the competent authority under sub-section (3) of Section (4), the procedure for making the attachment, sale, realisation and distribution is vested with the Special Court u/s 7 of the Act. Once the procedure contemplated u/s 7 is followed, the Special Court shall pass appropriate orders under the said provisions of Section 7 making the interim order of attachment passed



CRL OP(MD) No.20176 of 2022

by the Government u/s 3 absolute and, thereafter, proceed for sale, realisation and distribution of the sale proceeds in accordance with Section 7. Therefore, once the property is sought to be permanently attached, the scope of the Special Court is attracted and is limited to the extent of sale, realisation and distribution of the sale proceeds.

28. Keeping in mind the said facts as also the provisions of law, this Court is of the considered view that presently cancelling the bail granted to the accused would not be in any way beneficial in the interest of equity and justice, as the presence of the accused outside would be more helpful for the investigating agency to secure the properties. Further, considering the plea made by the accused and also taking into account the undertaking of the accused that they would not interfere with the investigation and render all assistance in identifying the properties, this Court is inclined to fix the timelines for completion of the various tasks, which would fall upon the investigating agency in calling for claims till the disbursal of the amounts to the depositors on auction selling the properties by also keeping in mind the General Elections, 2024, which cannot act as a detriment in proceeding further with the manner in which the complaint should be proceeded in accordance with the Act.



CRL OP(MD) No.20176 of 2022

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29. However, one thing which requires the consideration of this Court is the appointment of Advocate Commissioner made by the court below. The court below, invoking the powers under Order XXVI Rule 10-B of the Code of Civil Procedure has appointed the Advocate Commissioner in I.A. No.10/2024 at the instance of one of the accused, who had prayed that the petitioner therein is taking genuine steps and attempts to settle the issue in favour of the depositors for which purpose appointment of Advocate Commissioner is necessary.

30. A perusal of the order passed by the court below on the aforesaid interim application, the following finding has been rendered :-

“10. Even though the offence is compoundable before the Competent Authority being it is the Special Court, utmost care has to be taken to the materials brought before the Court and it should be organized and streamlined in a proper way to protect the interest of the depositors. The petitioner is making his genuine effort to compound the offence subject to the willingness of the depositors either by way of lands or by way of money. The petitioner had given the undertaking that they are having sufficient properties to compound entire depositors of their total financial establishments.”



CRL OP(MD) No.20176 of 2022

WEB COPY

31. Based on the aforesaid finding, the court below has proceeded to appoint the Advocate Commissioner.

32. Constitution of Special Court is provided for under Chapter IV of the Act. Section 6 thereof provides for the constitution of the Court and the powers of the Special Court with regarding to attachment, sale, realisation and distribution are provided for u/s 7. A careful perusal of Section 7 reveals that the main purpose of the constitution of the Special Court is for trying the case relating to financial establishments that tend to cheat the depositors and in this regard, the power of the court extends to issuance of notice on such persons interested in the properties, which are the subject matter of dispute, which is alleged to have been procured through the proceeds of the crime and to pass orders with regard to attachment of the property or any portion thereof.

33. Sub-section (5) of Section 7 of the Act provides that where objection is made, the Special Court shall proceed to investigate the same and in the course of such investigation the Special Court shall, subject to the provisions of the Act follow the procedure and exercise all the powers of a Court in hearing a suit under the Code of

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CRL OP(MD) No.20176 of 2022

Civil Procedure, 1908, and any person making an objection shall be required to adduce evidence to show that at the date of attachment he had some interest in the property attached.

34. In this regard, a perusal of Order XXVI Rule 10-B of the Code of Civil Procedure reveals that Order XXVI pertains to the cases in which court may issue commission to examine witness. Rule 10-B thereof pertains to performance of a ministerial act, which in the opinion of the Court, cannot be conveniently performed before the Court, the Court may, for reasons to be recorded, issue a commission to such person, as it thinks fit, directing him to perform that ministerial act and file a report.

35. There could be no quarrel with the power to issue commission, but could the Special Court under the Act is vested with such power to appoint such a commission is the question, which requires determination.

36. The Special Court, as is evidenced from Section 6 and 7 of the Act is engrafted with the requisite powers for trying the cases with regard to attachment, sale, realisation and distribution of the properties of a financial establishment to its



CRL OP(MD) No.20176 of 2022

depositors. The Special Court is not a Civil Court for that matter trying a suit. In fact, Section 5-A provides for compounding of offence, which could be compounded by the Competent Authority appointed by the Government u/s 4 of the Act. The Court has no power to compound the offence. The power of the Special Court extends only to the extent of attachment, sale, realisation and distribution of the properties of a financial establishment.

37. At best, the Special Court could invoke the provisions of the Code of Civil Procedure and follow the procedure and exercise all powers of a Court in hearing a suit, so long as the same is not inconsistent with the provisions of the Act and where the objection is made with regard to a property by any person claiming interest over the said property. Barring the above, where an objection is raised, the Special Court cannot exercise the powers of the Civil Court by exercising the powers and follow the provisions of the Code of Civil Procedure.

38. In the case on hand, the finding of the Special Court with regard to appointment of Advocate Commissioner, as evidenced in the order, is as under :-

“11. On considering the aforesaid facts and circumstances of this case, it is necessary to give an opportunity to the petitioner at a 1st phase, by the way



CRL OP(MD) No.20176 of 2022

of compounding the claims of the 1004 depositors as on date, who had given the complaints on the file of the 1st respondent. So to arrive the stage to compound the offence, certain initial work has to be completed regarding the verification of the claims of the depositors, their willingness regarding to the aspect of compound the offence either by way of lands or for property, etc., and all relevant things to be ascertained, which are ministerial work in nature. In that circumstances, to carry out ministerial acts towards the aspect of compounding the offence, it is necessary to appoint a Commissioner, which in the opinion of the Court be conveniently performed before the Court as well as before the Competent Authority.”

39. Section 5-A of the Act, which pertains to compounding of offence, provides that it may be compounded by the competent authority before the institution of the prosecution, or after the institution of prosecution, by the competent authority, with the permission of the Special Court, on payment of the entire amount due to the depositors with or without interest.

40. In the present case, if the accused, who had filed the interim application

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CRL OP(MD) No.20176 of 2022

seeking appointment of Advocate Commissioner, if really intends to compound the offence, ought to have moved the competent authority u/s 5-A of the Act and if prosecution had already been instituted, then the competent authority, appointed u/s 4 of the Act, could move the Special Court seeking permission to compound the offence on payment of the entire amount due to the depositors with or without interest.

41. Section 5-A clearly stipulates that the power of the Special Court is only to the extent of granting permission to the competent authority, if an application for compounding the offence is made by the accused to the competent authority and not otherwise. In the case on hand, the application had been moved by the accused before the Special Court for appointment of an Advocate Commissioner by submitting that the accused intends to pay out all the depositors as it is financially stable and has the means through the various properties to pay out the claims.

42. If really the accused intends to pay the depositors in full, the proper course for the accused is to pursue compounding of the offence before the competent authority by taking recourse to Section 5-A and upon such application, permission could be sought for from the Special Court by the competent authority. Without



CRL OP(MD) No.20176 of 2022

following the said procedure, going before the Special Court by moving an application for appointment of Advocate Commissioner is grossly erroneous and the Special Court cannot invoke the provisions of the Civil Procedure Code, more particularly Order XXVI Rule 10-B, when such provision is inconsistent with the Act, as no such power is ordained on the Special Court to deal with such a relief.

43. Further, when I.A. No.9/2024 has been filed by accused to to raise the order of attachment, the prayer of the very same accused in I.A. No.10/2024 seeking appointment of Advocate Commissioner, for alleged smooth settlement of the claims of the various depositors is directly contrary to the prayer in I.A. No.9/2024. The prayer in I.A. No.9/2024 and I.A. No.10/2024 are nothing but veiled attempts to scuttle the investigation being carried on to identify the properties and to bring the same for attachment and realise the proceeds and pay the amounts due to the depositors. Further, when there is no allegation against the prosecution/investigating agency and that the investigation is being carried on properly and properties are being identified for attachment, there arises no occasion for the Special Court to appoint Advocate Commissioners on the mere asking of the accused. In fact, the respondent/prosecuting agency has taken a stand that the accused are trying to scuttle the investigation through the said applications and had objected to the same.

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CRL OP(MD) No.20176 of 2022

However, without properly appreciating the calculated attempts of the accused, the Special Court had passed the orders in favour of the accused/petitioner therein, which cannot be allowed to subsist.

44. The Special Court, without properly appreciating its powers and the extent to which it can exercise its powers, inspite of the fact that an objection had been taken by the prosecuting agency with regard to appointment of Advocate Commissioner as also the opening of lock and seal of the premises of the accused, had ordered the said applications in favour of the accused by appointing an Advocate Commissioner and also directing the respondents to open the lock and seal of the petitioner mentioned office for a limited purpose, which is beyond the powers of the Special Court as it directly affects the interests of the depositors. When the prosecution had taken an objection, in the interests of the depositors, the Special Court ought to have travelled with the prosecution and should not have passed orders in the affirmative in the interim applications, which is beyond the power of the Special Court. The interpretation placed by the Special Court for appointing the said Advocate Commissioner is not only beyond its powers, but it is usurping the powers of the Competent Authority, which is grossly illegal and perverse and, therefore, the order in I.A. No.10/2024 appointing Advocate Commissioner deserves to be set aside

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CRL OP(MD) No.20176 of 2022

and, accordingly, the appointment of Advocate Commissioner vide order dated 19.02.2024 in I.A. No.10/2024 is set aside.

45. Insofar as the petition filed for appointment of a retired High Court Judge for the purpose of expediting the process of auction selling the properties and disbursing the sale proceeds to the depositors, investigation is still being carried on and not all the properties have been identified and attached and, therefore, at the present juncture, it would not be in the interest of either party to accede to the prayer made in the writ petition and, therefore, the said writ petition is closed reserving liberty to the petitioner to seek the said relief at a later point of time, if situation warrants.

46. Insofar as the petition filed seeking transfer of investigation, it is to be pointed out that the materials available on record reveal that the investigation is proceeding in a proper manner but for some hiccups, due to administrative delays and the likes, which cannot be the basis to transfer the investigation to some other agency. So long as the investigation is proceeding in a proper manner and there is no bias in the conduct of the investigation, of which there is no allegation, transfer of investigation sought for cannot be acceded to. Further, in the absence of any material, transfer of investigation to some other agency is not only erroneous, but it would only frustrate the whole process, thereby resulting in further delay in the



CRL OP(MD) No.20176 of 2022

depositors realising their amounts. Further, the allegations levelled in the petition are bald allegations and there is no pointed allegation and the mere apprehension of the petitioner cannot be the basis for this Court to transfer the investigation. Therefore, the said petition seeking transfer of investigation deserves to be rejected.

47. In fine, with the below-mentioned directions, while Crl. O.P. (MD) Nos. 192, 251, 2266, 3326, 3381 of 2024 and 22587 of 2023 seeking cancellation of bail are dismissed, Crl. O.P. (MD) No.20176/2022 filed seeking transfer of investigation is dismissed and W.P. (MD) No.14035/2022 filed for appointment of a Retd. High Court Judge for the purpose of expediting the process of realising and disbursing the amounts to the depositors is also dismissed as premature :-

The respondents/accused are directed to co-operate with the investigation by disclosing the properties belonging to them and the amount deposited by the victims along with the details of the all the depositors.

The respondents/accused shall not alienate any of the properties which are the subject matter of TNPID cases pending before Special Court.

If any one of the conditions aforesaid is violated, bail granted by the Special Court to the accused shall stand automatically cancelled and the respondent shall take steps to take the accused into custody.

The following timelines are fixed for the completion of the various tasks,



CRL OP(MD) No.20176 of 2022

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which have been detailed by this Court in its order dated 21.03.2024 :-

The respondents shall make the requisite paper publication giving wider coverage inviting claims from the depositors against defaulted Financial Establishment within a period of 2 weeks from the date of receipt of a copy of this order by clearly mentioning that the depositors who have deposited amounts in the various financial establishments run by the accused shall file the necessary claim within a period of eight weeks from the date of the said paper publication and claims so filed shall be received by the investigating agency/competent authority during the aforesaid period.

The investigating agency is directed to complete the investigation and file the charge sheet within a period of 15 months from the date of receipt of a copy of this order.

The investigating agency shall identify the properties and as and when such identification is made, within a period of two weeks, the investigating agency shall take the necessary steps seeking ad interim attachment of the said properties. Further, all the properties, which are connected with the financial establishments under the scanner of the investigating agency shall be identified and an order of ad interim attachment u/s 3 of the Act shall

be obtained from the Government within a maximum period of six weeks



CRL OP(MD) No.20176 of 2022

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from the date of a receipt of a copy of this order.

Requisite Government Order shall be issued for attachment of the properties u/s 3 of the Act within a period of six weeks from the date of such request as and the investigating agency identifies the properties and submits the request for ad interim attachment.

As per Section 4(3) of the Act, the District Revenue Officer, who is the designated Competent Authority, shall make an application for making the interim attachment of the properties within a period of 30 days from the date of receipt of the Government Order as provided for under the Act before the Special Court.

The Special Court shall pass necessary orders making the interim attachment absolute in respect of the properties for which permanent attachment is sought for by the competent authority within a period of six months from the date of such application/permission.

Upon an order of permanent attachment being passed by the Special Court u/s 7 of the Act, order shall be passed by the Special Court to the Competent Authority under sub-section (6) of Section 7 to auction sell the properties so attached and realize the sale proceeds within a period of three

months from the date of such order being passed.



CRL OP(MD) No.20176 of 2022

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Upon the properties auction sold and the proceeds realized, the Competent Authority shall file necessary application for disbursement of the amount to the depositors within a period of one month from the date of said sale and realization of the proceeds and on such application being filed, the Special Court shall pass orders with regard to disbursement of the amount to the depositors under sub-section (8) to Section 7 within a period of two months from the date of such application.

Upon such order being passed by the Special Court under sub-section (8) to Section 7 of the Act, the Competent Authority shall disburse the amounts to the depositors under due acknowledgement in accordance with law within a period of three months from the date of the said order passed by the Special Court.

sd/-
27/03/2024

/ TRUE COPY /

15 /04/2024
Sub-Assistant Registrar
(C.S.I /II /III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

GLN



CRL OP(MD) No.20176 of 2022

TO
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1 THE ADDITIONAL DIRECTOR GENERAL OF POLICE,
CBCID, SIDCO ELECTRONIC COMPLEX,
BLOCK NO.3, 1ST FLOOR GUINDY INDUSTRIAL ESTATE,
CHENNAI 32.

2 THE INSPECTOR OF POLICE
CBCID, TIRUCHIRAPPALLI.

3 THE DEPUTY SUPERINTENDENT OF POLICE,
ECONOMIC OFFENCES WING, UNIT II,
TIRUCHIRAPPALLI.

4 THE PRINCIPAL SECRETARY TO GOVERNMENT,
HOME DEPARTMENT, SECRETARIAT, CHENNAI - 600 009.

5 THE DISTRICT REVENUE OFFICER / COMPETENT AUTHORITY,,
KANYAKUMARI DISTRICT, NAGERCOIL.

6 THE SUPERINTENDENT OF POLICE,
ECONOMIC OFFENCE WING,
NO.2, NATESAN SALAI, PTC,ASHOK NAGAR,
CHENNAI - 600 083.

7 THE DEPUTY SUPERINTENDENT OF POLICE,
ECONOMIC OFFENCE WING - II,
KANYAKUMARI DISTRICT, NAGERCOIL.

8 THE INSPECTOR OF POLICE,
ECONOMIC OFFENCE WING - II,
KANYAKUMARI DISTRICT, NAGERCOIL.

9 THE HOME SECRETARY,
GOVERNMENT OF TAMIL NADU,
HOME DEPARTMENT, CHENNAI.

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CRL OP(MD) No.20176 of 2022

10 THE ADDITIONAL DIRECTOR GENERAL OF POLICE,
ECONOMIC OFFENCES WING,
CHENNAI- 83.

11 THE SPECIAL JUDGE UNDER THE TAMIL NADU
PROTECTION OF INTEREST OF DEPOSITORS
(IN FINANCIAL ESTABLISHMENTS) ACT,
MADURAI.

12 THE INSPECTOR OF POLICE
EOW-II POLICE STATION,
MADURAI DISTRICT.

13 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

- +1. CC to M/S. AJMAL ASSOCIATES Advocate SR.No.17090(F)dt: 28/03/2024
- +1. CC to M/S. S.BASKAR MADHURAM Advocate SR.No.3850(I)dt: 28/03/2024
- +1. CC to M/S. K.PRABHU Advocate SR.No.3919(I)dt: 28/03/2024
- +1. CC to M/S. V.THIRUMAL Advocate SR.No.16742(F)dt: 28/03/2024
- +1. CC to M/S. T.ANTONY ARULRAJ Advocate SR.No.16353(F)dt: 27/03/2024

ORDER
IN

CRL OP(MD) No.20176 of 2022,
Crl OP(MD)No. 22587 of 2023,
CRL OP(MD) Nos.192, 251, 2266, 3326, 3381 of 2024
AND

WP(MD) No.14035 of 2022,
Date :27/03/2024

PKP/15.04.2024/ 37P/19C

Madurai Bench of Madras High Court is issuing certified
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