IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.12.2024

PRONOUNCED ON: 09.01.2025

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.Nos.15086 & 15907 of 2024

in

Crl.A.Nos.1415 & 1451 of 2023

Crl.M.P.No.15086 of 2024

R.Rajender Kumar ... Petitioner/Accused No.34

Vs.

1. State Represented by
Deputy Superintendent of Police,
Economic Offences Wing – II,
Guindy, Chennai – 32.

2. R.Suryanarayanan ... Respondent/Complainant

Crl.M.P.No.15907 of 2024

K.Balasubramanian ... Petitioner/Accused No.8

Vs.

State Represented by
Deputy Superintendent of Police,
Economic Offences Wing – II,
Guindy,

Chennai – 32. ... Respondent/Complainant

COMMON PRAYER: Criminal Miscellaneous Petitions filed under Section 430 (1) of the BNSS, praying to suspend the sentence imposed on the petitioners/A34 &A8 herein by the learned Special Judge for TNPID Act, Chennai, vide the order and judgment dated 20.11.2023 in CC No.6 of 2020 and enlarge the petitioners on bail pending disposal of the above criminal appeals

For Petitioner
in Crl.MP.15086/24 : Mr.S.Sivaraman
in Crl.MP.15907/24 : Mr.B.Kumar, Sr. Counsel
for Ms.M.K.Kanimozhi

For Respondent/State : Mr.E.Raj Thilak,
in both cases Additional Public Prosecutor

COMMON ORDER

These Criminal Miscellaneous Petition have been filed seeking to suspend the sentence imposed on the petitioners/A34&A8 vide judgement and order dated 20.11.2023 passed in C.C.No.6 of 2020 on the file of the learned Special Judge, Special Court under TNPID Act, Chennai, and to enlarge the petitioners/A34 & A8 on bail pending disposal of the appeal.

2. The petitioners, were arrayed as A34 and A8 respectively before

the trial Court and convicted for the offences under Sections 5 of the TNPID Act, 120(b) r/w 420 and 406 of the IPC and sentenced as follows:

Accused No.	Offence under Section	Sentence imposed
A34	5 TNPID Act (446 counts)	To undergo rigorous imprisonment for ten years for each count 3 times and to pay a fine of Rs.50,000/- each counts 3 times (446 x 50,000 x 3 times) = Rs.6,69,00,000/-,
	120(b) r/w 420 IPC	To undergo rigorous imprisonment for four years three times and to pay a fine of Rs.10,000/-
	420 IPC	To undergo rigorous imprisonment for four years three times and to pay a fine of Rs.10,000/-
	406 IPC	To undergo rigorous imprisonment for two years three times and to pay a fine of Rs.10,000/-
A8	5 TNPID Act (446 counts)	To undergo rigorous imprisonment for ten years for each count and to pay a fine of Rs.50,000/- each counts (446 x 50,000/-) = Rs.2,23,00,000/-,
	120(b) r/w 420 IPC	To undergo rigorous imprisonment for four years and to pay a fine of Rs.10,000/-
	420 IPC	To undergo rigorous imprisonment for four years and to pay a fine of Rs.10,000/-
	406 IPC	To undergo rigorous imprisonment for two years and to pay a fine of Rs.10,000/-
In default of fine, they are sentenced to undergo simple imprisonment for six months and the sentences were directed to run concurrently.		

3. Challenging the above conviction and sentence, the petitioners have filed the above Criminal Appeal and they seek suspension of sentence and bail in the present petitions.

4. Heard Mr.S.Sivaraman, learned counsel for the petitioner/A34

and Mr.B.Kumar, learned senior counsel appearing for the petitioner/A8 and Mr.E.Raj Thilak,the learned Additional Public Prosecutor appearing for the respondent/State.

5. It is the case of the prosecution that the petitioners along with the prime accused-A4 in this case had floated 17 companies; that A4 raised deposits under various deposits schemes; that the petitioners had conspired with A4 and other accused and in pursuance to the conspiracy, collected money from the depositors by promising high rate of interest; that thereafter the petitioners and other accused defaulted in payment of the deposits.

6. Mr.B.Kumar, learned senior counsel for petitioner/A8 would submit that conspiracy period by the prosecution is between November 2009 and October 2013; that the petitioner, is one of the Directors of A3 company, which had not collected deposits; that the petitioner, who is a practicing Chartered Accountant and who had deep roots in the Society was not a Director since 2008 in any of the companies floated by A4; that the sentence imposed on the co-accused was suspended by this Court vide order dated 19.07.2024 in Crl.M.P.No.18650 of 2023 etc. batch in Crl.A.Nos.1365 of 2023 etc. batch and hence prayed for suspension of

sentence for this petitioner also.

7. Mr.S.Sivaraman, the learned counsel for the petitioner/A34 would submit that the petitioner joined the company even according to the prosecution only after the alleged offences were committed; that therefore, is not involved in the alleged offences and is sought to be prosecuted only because, he joined as a Director subsequently.

8. Mr.E.Raj Thilak, the learned Additional Public Prosecutor, *per contra*, submitted that the trial Court had considered the role played by A8 and had held that most of the witnesses have deposed that they knew the petitioner/A8 and had seen A8 at the office of A1; that he is one of the "Payment Services-Fund Management Account" holders; that though he had stated that he joined the company in the year 2008, he played a vital role in canvasing and collecting deposits from innocent depositors; that the trial Court had imposed a fine of Rs.2,23,30,000/- besides the sentence of imprisonment as stated above.

9. As regards the petitioner/A34, the learned Additional Public Prosecutor submitted that though, A34 had joined the company later, he

had joined the company with the knowledge about the alleged acts of cheating by A4 and the companies floated by him and he had not resigned from the company so far and therefore since the offences are continuous, the petitioner is also liable; and that the trial Court has imposed the fine of Rs.6,69,90,000/- besides the sentence of imprisonment as stated above. Hence, he prayed for the dismissal of these petitions for suspension of sentence.

10. The learned counsel for the Depositors Association would submit that this Court had earlier suspended the sentence only because the accused had agreed to make deposits and that the association is only interested in realising their money and not in detaining the accused in custody and hence submitted that even if this Court is inclined to suspend the sentence, the same may be on condition to deposit a substantial sum.

11. Considered the rival submissions and perused the records.

12. This Court in a batch of Criminal Miscellaneous Petitions, stated earlier had suspended the sentence by directing the petitioners

therein to make substantial deposits, which is as follows:

Name of the Appellant/ Accused No.	Amt. Of fine ordered by the trial court	Amount to be deposited by the accused/appellant herein
R.Subramanian (A-4)	Rs.8,92,60,000/-	Rs.3,00,00,000/- (Rupees Three Crores only)
A.Srimathi (A-9)	Rs.6,69,90,000/-	Rs.20,00,000/- (Rupees Twenty Lakhs only)
P.Ram Mohan (A-13)	Rs.15,63,10,000/-	Rs.3,00,00,000/- (Rupees Three Crores only)
R.Ganesh (A-14)	Rs.8,93,20,000/-	Rs.2,00,00,000/- (Rupees Two Crores only)
S.Srividhya (A-15)	Rs.2,23,30,000/-	Rs.75,00,000/- (Rupees Seventy Five Lakhs Only)
P.Sadanand (A-32)	Rs.8,93,20,000/-	Rs.2,00,00,000/- (Rupees Two Crores only)

13. It is reported by the learned Additional Public Prosecutor that some of the accused, who were unable to comply with the said direction, are still in custody.

14. Be that as it may. The depositors association had challenged the order granting suspension of sentence before the Hon'ble Supreme Court in SLP (Crl.) Diary No.51667 of 2024 and the Hon'ble Supreme Court had held as follows:

> "We are not inclined to interfere with the impugned judgment/order granting suspension of sentence, which is essentially

discretionary in nature and also directs to deposit of a certain amount.

However, we request the High Court to take up the appeal(s) for hearing expeditiously as payment to the depositors are dependent upon the decision in the appeal(s). It will be open to the petitioner, Viswapriya Investors Welfare Association, to file an application for release of the deposits made by the respondents.

Recording the aforesaid, the present special leave petitions are dismissed."

15. Therefore, in the light of the above, this Court is of the view that since the petitioners are in custody from 20.11.2023 and the sentence of imprisonment is for a fixed period, pending appeal, they cannot be detained for an indefinite period. In the order of suspension of sentence earlier granted by this Court for the co-accused, this Court had recorded the submissions made by the petitioners with regard to the merits of the case. However, without going into the merits of the case, considering the fact that the order passed by this Court granting suspension of sentence was confirmed by the Hon'ble Supreme Court and also considering the period of incarceration, this Court is of the view that the petitioners herein would be entitled to the relief of suspension of sentence.

16. The learned senior counsel for A8 would submit that the competent authority under the TNPID Act has attached properties worth Rs.46 Crores, which would take care of the interest of the depositors. He would also submit that there is nothing on record to suggest that the petitioners had illegally gained from the deposits and that they were only name lenders and even as per the prosecution, they had only canvassed for the deposits on behalf of the companies floated by A4.

17. When specifically asked as to what would be the reasonable amount of deposit that can be directed to be made, the learned Additional Public Prosecutor and the learned counsel for the depositors association submitted that this Court may direct such deposit as this Court deems fit. This Court had earlier directed the main accused to deposit Rs.3 Crores and his wife to deposit Rs.20 Lakhs, which appears to have been deposited.

18. The role played by A8 as could be seen from the impugned judgment is that A8 played a vital role in canvassing and collecting of deposits from the depositors for A1-company, though he was not its Director and had resigned from other companies.

19. The role played by A34, as revealed from the impugned judgment is that A34 had given consent to be appointed as a Director knowing fully well about the collection of the deposit amounts and the commission of the offence of cheating by the company and the other offenders; and that since the offence is a continuing one, he is also liable.

20. Therefore, in view of the role played by the accused above named and the period of incarceration and the fact that some of the Directors, for whom sentence was suspended were unable to comply with the conditions, this Court is of the view that it would sub serve the interest of justice, if A8 is directed to deposit Rs.30 Lakhs and A34 is directed to deposit Rs.5 Lakhs.

21. Accordingly, the sentence imposed on the petitioners/A8 & A34, is suspended on the following conditions.

(i) The petitioner/A8 shall deposit a sum of Rs.30,00,000/- [Rupees Thirty Lakhs only] and the petitioner/A34 shall deposit a sum of Rs.5,00,000/-[Rupees Five Lakhs only], to the credit of C.C.No.6 of 2020 on the file of the learned Special Judge, Special Court under the

TNPID Act, Chennai, and acknowledgment of such deposits shall be produced before the Special Judge, at the time of release on bail;

(ii) On such deposit being made, the petitioners/A8 & A34 and production of deposit receipts acknowledging the deposit of the said amounts, the petitioners/A8 & A34 are directed to be released on bail on condition that each of the petitioners herein execute a bond for a sum of Rs.2,00,000/- with two sureties, each for a like sum, to the satisfaction of the learned Sessions Judge, Special Court under TNPID Act, Chennai, within a period of four weeks from the date of receipt of a copy of this order;

(iii) The petitioners and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity;

(iv) The petitioners herein shall appear before the learned Special Judge, Special Court under the TNPID Act, once in a week, i.e., on the first working day of every week at 10.30 a.m. until further orders and if they are not able to appear before the trial Court on any day, they shall make arrangements to file an application under Section 317

Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of their absence, as directed by the trial Court;

(v) The learned Special Judge may transfer the amount to the competent authority who shall use the aforesaid amounts for distribution to the depositors after verification of deposit receipts and under acknowledgment; and

(vi) The criminal miscellaneous petitions are ordered in the aforesaid terms. List the criminal appeals in the usual course.

09.01.2025

Index: Yes/No
Speaking/Non-speaking order
Neutral citation: Yes/No.
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Issue order copy today
To

1. The Special Judge,
Special Court under TNPID Act, Chennai.

2. The Deputy Superintendent of Police,
Economic Offences Wing – II,
Guindy, Chennai – 32.

3. The Public Prosecutor,
High Court, Madras.

SUNDER MOHAN, J.

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Pre-delivery common order in
Crl.M.P.Nos.15086 & 15907 of 2024

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