Mohanraj and Others Vs. State Rep by Additional Superintendent of Police, Cbi, Eow, Chennai

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Court : Chennai

Decided On : Oct-05-2012

Judge : G.M. Akbar Ali

Appeal No. : Crl. O.P. No.1897, 1898 and 1899 of 2012 & M.P.Nos.1 of 2012(3 nos.), 2 of 2012 (3 nos.), 3 of 2012 (3 nos.) & 4 of 2012 (2 nos.)

Appellant : Mohanraj and Others

Respondent : State Rep by Additional Superintendent of Police, Cbi, Eow, Chennai

Advocate for Pet/Ap. : For the Petitioners: V. Gopinath, Senior Counsel for L. Mahendran, Advocate. For the intervenors: Ms. B. Maheswari, S. Senthilkumar, P. Ramesh, Advocates, For the Respondent: N. Chandrasekaran, Spl. Public Prosecutor for CBI cases

Judgement :

1. The petitioners, who are alleged to have committed offences under Sections 4 of Prize Chits and Money Circulation Scheme (Banning) Act 1978, under Sec.420 IPC and under Sec.5 of TNPID Act 1997, were arrested on 11.8.2011 with reference to Cr.No.R.C.No.12(E) of 2011 on the file of the respondent police, seek bail.

2. The case of the prosecution is that during 2008-2009 at Tiruppur, A.1 to A.3 entered into a criminal conspiracy to collect deposits from the general public without specific approval from Reserve Bank of India on a false promise of Forex Trading but to indulge in circulation of money. In pursuance of the criminal conspiracy, on 2.7.2008 A.1 to A.3 floated a company by name M/s Paazee Forex Trading India Pvt Ltd with A.1, as Managing Director and A.2 and A.3, as the Directors of the Company. They also floated two partnership firms by name M/s Paazee Trading Inc (A5) and M/s Paazee Marketing Company (A6), both partnership represented and managed by its partners, A.1 to A.3.

3. A.1 to A.3 fraudulently mobilized investments and deposits from the public and also promised that huge dividend/interest will be paid in very short duration on the deposits so collected. They also issued cheques of various banks in that regard. Thereby the accused dishonestly made 52,893 persons to believe that the company/firms are engaged in Forex trading activities and thereby collected to the tune of Rs.496,27,63,760/- from the depositors during the year of 2009 under the schemes viz., promotional, scheme II, anniversary, Adi Damaka and festival offer and promised to repay Rs.1210,26,05,501, but repaid only 340,15,19,623/- knowing fully well that they were not doing any business to generate such huge returns and thus created loss to the depositors to the tune of Rs.870,10,85,878/-.

4. Initially a case was registered by the Central Crime Branch, Tirupur in cr.No.26 of 2009 under the Prize Chits and Money Circulation Scheme Banning Act 1978 and also under Sec.420 IPC. Subsequently, the case was transferred to Economic Offences Wing, Chennai. By an order passed in Crl. OP No. 2691 and 5356 of 2011 dated 19.4.2011 the case was transferred to the respondent CBI.

5. On completion of investigation, the respondent filed final report on 7.10.2011 before the learned Special Judge for TANPID Cases, Coimbatore which has been taken on file in CC No.9 of 2011.

6. The accused moved anticipatory bail before this court and they were granted pre-arrest bail.

7. The depositors filed petition for cancellation of bail. The accused undertook to deposit a sum of Rs.1.50 crores. But they have not complied with the condition. Therefore, the bail was cancelled. The accused preferred S.L.P., but the same was dismissed.

8. Subsequent anticipatory bail application was also dismissed and the petitioners were arrested on 11.8.2011 and were remanded to judicial custody and they have moved the present applications seeking bail on various grounds.

9. Opposing the bail applications, some of the depositors have filed MPs to intervene and also to assist the prosecution.

10. On notice, the respondent filed a detailed counter stating that the investigation has established that the accused have to pay a sum of Rs.870,10,85,878/- to the depositors and the accused have siphoned off and misappropriated the money and are personally benefited. The investigation reveals that more than Rs.90 crores was deposited in the Bank at Singapore and the respondent is taking steps to repatriate the amount.

11. Mr.V. Gopinath, learned Senior Counsel who appeared for Mr.L. Mahendran, learned counsel for all the petitioners, submitted that the accused are in custody from 11.8.2011 and even according to the prosecution, the accused have returned substantial portion of the principal amount, though the amount promised as returns, have not been refunded.

12. The learned Senior counsel pointed out that the prosecution has taken steps to repatriate Rs.90 crores lying in the accounts at HSBC Bank, Singapore and the accused have given no objection for the amount to be transferred to District Revenue officer, Coimbatore who is the competent authority under TANPID Act to return the money to the depositors.

13. The learned Senior counsel pointed out that even according to the prosecution, they have collected Rs.493 crores out of which Rs.339 crores have been returned to the depositors and the principal amount due is Rs. 154 crores.

14. The learned Senior counsel also pointed out that charge sheet has already been filed and there are 1432 persons have been cited as witnesses and 2234 documents have been referred.

15. He also submitted that A.3 is a woman having two children. A.2 is a senior citizen aged about 64 years and both of them were Directors in the Company and they were not actively involved in the offence and therefore, bail has to be considered at this stage.

16. The learned senior counsel relied on a decision reported in 2012 1 SCC 40.(Sanjay Chandra vs Central Bureau of Investigation)

17. On the contrary, Mrs.B. Maheswari, the learned counsel who appeared for some of the intervenors, submits that there are thousands of depositors who have been cheated by the accused. All of them have lost their savings and many of them have sold their property to invest and some of them have committed suicide as they lost their money.

18. The learned counsel pointed out that the depositors have not received any amount either from the competent authority or from the accused and the accused are not coming with true accounts and they are not disclosing the assets they have with them.

19. The learned counsel pointed out that even according to the prosecution the disclosed assets of the accused have not been attached for sale and the amount deposited in the bank at Singapore has not been repatriated so far and therefore, if the accused are granted bail, they will definitely tamper with the witness and flee from justice.

20. Heard Mr.S. Senthil Kumar and Mr.P. Ramesh, learned counsel for intervenors submits that the offence is very grave.

21. Mr.N. Chandrasekaran, the learned Spl.Public Prosecutor for CBI Cases submitted that the investigation has revealed that the accused have to repay more than 870 crores and they have not disclosed any of their assets except the bank account at Singapore and if they are granted bail, they will flee from justice. He

also pointed out that the trial has already started and some of the witnesses were also examined.

22. The learned senior counsel for the petitioners submits that there are more than 1000 witnesses to be examined and documents have to be marked and the trial will not be over within a short span of time and pre-trial incarceration is against the fundamental rights.

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

24. The case involves a biggest fraud played by the accused on the general public taking advantage of their greed to earn more money. It is submitted that the accused have promised triple the amount of what was invested within three months of such deposit. How that could be possible was neither of concern to the accused nor verified by the depositors. The gullible depositors were drawn like moths to the light and thus put to this state of affairs. However, now the investigation is over and charge sheet has been filed and trial has also started.

25. Whether the prosecution is going to establish the charges against the accused and whether they are going to be suitably punished for their offences depends on the outcome of the trial.

26. But this court is more concerned about the depositors. Whenever the applications for bail is heard, this court has witnessed the anguished faces of innocent depositors who came to the Court with the fond hope that they will get back their smallest savings at the intervention of this court.

27. The court could see the anxiety in their faces with hope and despair. Their only hope is that the competent authority viz., the District Revenue Office, Coimbatore under the TANPID Act, with the active assistance of the respondent, will be able to collect the assets of the accused and distribute the wealth illegally amassed, to the poor depositors.

28. The court is equally anxious to see that the depositors get their money back for which the accused have to voluntarily disclose their assets and the respondent has to obtain necessary orders from the Government for attachment and sale of

property and also repatriate the amounts from foreign countries to enable the competent authority to distribute the money due to the depositors.

29. In any event, in the present applications, this court is to see whether the petitioners can be enlarged on bail pending a long drawn trial.

30. The learned counsel relied on a decision reported in 2012 (1) SCC 40 (Sanjay Chandra vs Central Bureau of Investigation) (2G Spectrum Scam case) wherein the Apex court has held that gravity alone cannot be a decisive ground to deny bail. The Apex Court held thus:

"In the present case, the pointing finger of accusation against the appellants is the seriousness of the charge. The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, it has been contended by the prosecution that there is a possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. Seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor; the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, the Court would not be balancing the constitutional rights but rather recalibrating the scales of justice".

31. To address the grievances of the intervener this court directed the prosecution to file a report regarding the properties possessed by the accused. The interveners have given the list of properties and the respondent received the same on 4.8.2012 and they are enquiring into the money with which the properties were acquired by the owners as the properties are not standing either in the name of the company or in the name of the accused.

32. It is also submitted that the documents have also been received from the Insurance Companies and the respondent have also given details about seven properties which are as follows:

Details of immovable property held in the name of Financial Institution and the accused in connection with R.C.12/E/2011/CBE/EOW/Chennai

S.No	Particulars of Property	Extent of Property Survey No. Doc No.
1	House Site No.282 J.J.Nagar, Sivanmalai Village, Kangeyam Taluk, 354 Pappa Nagar, 2nd Street Cotton Mill Road, Tiruppur	2400 sq.ft in SF Nos.825 Doc No.6800/08 of Kangeyam SRO
2	Agricultural Land	1200 sqfts Vacant site in SF Nos.12 of Thottipalayam village Doc No.883/1986 Constructed House worth Rs.6 lakh
3	Veeranampalayam village KangeyamTaluk	Half Share of the Ancestral property 2,760 Hectare S.F.No.1011/5 of Veeranampalayam village
4	House Site in D.No.14/13 3rd Street, Babuji Nagar, Kumaranandhapuram	2739 sq.ft in S.F.No.74 of Kumaranandhapuram Thottipalayam Village Tirupur
5	Agricultural land Veeranampalayam village Kangeyam Taluk	4 Acres Agriland in S.F.No.782/2 registered as Doc.No.6031/2009 in Kangeyam SRO
6	Site 53.54 with Godown in Malli Nagar, Thottipalayam Village, Tiruppur	Doc.No.1417/99 2550 Sq.ft in S.F.No.12 of Thottipalayam village
7	House site in Villankuruchi village, Coimbatore	Saleagreement signed by Mohanraj with N. Saraswathi for purchase of 4352 Sqft House site in S.F.No.488/5A2C.

33. Apart from this, Rupees Nighty crores have been deposited in a Singapore Bank for which repatriation proceedings have been initiated. According to the intervenors expeditious steps have not been taken by the respondent to identify

and collect the movable and immovable properties and liquidate them to enable the competent authority to disburse the same to the depositors.

34. However, while understanding the anxiety of the intervenors this court is also aware of the fact that the respondent has to be given sufficient time to take appropriate steps for the same.

35. In any event, considering the gravity of the offence and the involvement of the accused, I am not inclined to set the accused at liberty who are solely responsible for this fraud, except A.3, who is a woman.

36. Since A.3 is only a Director and mother of two female children and she is in custody for more than a year, her bail plea is considered on humanitarian ground.

37. Accordingly, A.3 who is the petitioner, in Crl.O.P.No.1899 of 2012 is ordered to be released on bail on the following conditions:

i) the petitioner shall execute a bond for a sum of Rs.1,00,000/-(Rupees one lakh only) with two sureties each for the like sum to the satisfaction of the learned Special Judge for TNPID Cases, Coimbatore;

ii) the petitioner shall surrender her passport before the learned Magistrate and shall not leave the country without the permission of the Court;

iii) the petitioner shall appear before the respondent police as and when required;

iv) The petitioner is also directed to disclose all the information which she possess regarding the assets purchased from the money deposited by the public and co-operate with the respondent;

v) She is further directed to appear before the trial court on all the dates of hearing till the completion of trial.

38. Before parting with the petition the following directions are issued to the respondent police:

1) the respondent police is directed to take immediate steps to verify the list of assets given by the intervenors and if it is found that those assets have also been purchased from the money deposited by public, in whom soever's name the property is purchased, to bring the property within the ambit of TANPID ACT.

2) to take immediate steps to obtain an order of attachment from the Government and also take steps for sale of properties mentioned in the list above to enable the competent authority to disburse the money proportionately.

3) to take steps to repatriate the sum of Rs.90 crores which is said to be deposited with the Bank at Singapore and place the same before the competent authority. Viz., District Revenue Office, Coimbatore under the TANPID Act,.

39. In addition to the above, the trial court is directed to expedite the trial and also to supervise and implement the above directions issued to the respondents.

40. As far as the other two petitions viz., Crl.O.P Nos.1897 and 1898 of 2012, are concerned they are dismissed for the reasons stated above. Consequently, connected Mps are closed.