

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

TUESDAY, THE 13TH DAY OF JUNE 2023 / 23RD JYAISHTA, 1945

CRL.MC NO. 1759 OF 2023

**AGAINST THE ORDER DATED 15.02.2023 IN CRMP 391/2023 OF
ADDITIONAL SESSIONS COURT(ADHOC) III, THRISSUR IN CRIME
NO.42/2023**

PETITIONER:

SALEEL KUMAR V.S.,
AGED 28 YEARS,
VELLARIKKATTU HOUSE, PALAYOOR,
CHAVAKKAD, THRISSUR., PIN - 680506

BY ADVS.
BONNY BENNY
BEJOY JOSEPH P.J.
VISHNU NARAYANAN
BALU TOM
GOVIND G. NAIR
SABU THOMAS

RESPONDENT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

BY ADV PUBLIC PROSECUTOR
SRI.SANGEETHARAJ, PP

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
13.06.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

CR

K.BABU, J.

Crl.M.C.No. 1759 of 2023

Dated this the 13th day of June, 2023

ORDER

The challenge in this Crl.M.C. is to the order dated 15.02.2023 in Crl.M.P. No.391/2023 in crime No.42/2023 of Thrissur East Police Station passed by the Designated Court (Additional Sessions Court-III, Thrissur) constituted under Section 8 of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as 'BUDS Act').

2. The petitioner is accused No.2 in the above crime. The offences alleged against the petitioner and other accused are punishable under Sections 406 and 420 of IPC, Section 3 r/w Section 21, and Section 5 r/w Section 23 of the BUDS Act.

3. The prosecution allegations are as follows:

3.1. The accused were Directors of Safe and Strong Business Consultant Pvt. Ltd. Thrissur. The petitioner and the other accused, being deposit takers of the firm, issued an advertisement soliciting deposits in pursuance of an Unregulated Deposit Scheme. They intentionally made promises to induce depositors to invest in the firm.

4. The Thrissur East Police registered the above crime based on the complaint of one of the depositors. The Police are proceeding with the investigation. The Investigating Officer seized the vehicle bearing registration No.KL-07-CD-9369 from the possession of the petitioner and produced before the Designated Court.

5. The petitioner filed an application seeking interim custody of the vehicle under Section 451 Cr. P. C.. The Court below rejected the application. The operative portion of the order reads thus:-

“5. The above case has been registered alleging commission of offences punishable u/ss. 406 and 420 of IPC and Section 3 r/w 21, 5 r/w 23 of BUDS Act. The learned public prosecutor submitted that the investigation in this case is only in the preliminary stage. As per the provisions in the BUDS Act if it is found that the vehicle was purchased by using the unregulated funds, it has to be confiscated. So, the custody of the vehicle may not be given to the petitioner at this stage. On the other hand the learned counsel for the petitioner argued that neither the petitioner nor her vehicle has any connection with the alleged crime and since the vehicle is not involved in the commission of the crime, the same may be released to the petitioner.

6. On a consideration of the nature of the allegations and the offence alleged against the accused and the fact that the investigation is only in the preliminary state, I am not inclined to release the vehicle at this stage.”

6. Heard the learned counsel appearing for the petitioner and the learned Public Prosecutor.

7. The learned counsel for the petitioner submitted that the investigating agency was not competent to seize the vehicle as there were no allegations to attract the offences under the BUDS Act

against the petitioner. It is contended that the seizure of the vehicle is illegal.

8. *Per contra*, the learned Public Prosecutor contended that the ingredients to attract offences under Section 3 r/w Section 21 and Section 5 r/w Section 23 of the BUDS Act are there in the prosecution allegations, and therefore, the Investigating Officer is competent to seize the vehicle by invoking Sub-section (1)(c) of Section 31 of the BUDS Act.

9. The learned Public Prosecutor further contended that the course open to the petitioner is to approach the Designated Court by invoking Section 17 of the BUDS Act.

10. It is useful to extract Sections 3 and 5 of the BUDS Act.

11. Section 3 reads thus:-

“3. Banning of Unregulated Deposit Schemes

On and from the date of commencement of this Act,---

(a) the Unregulated Deposit Schemes shall be banned; and

(b) no deposit taker shall, directly or indirectly, promote, operate, issue any advertisement soliciting participation or enrolment in or accept deposits in pursuance of an Unregulated Deposit Scheme.”

12. Section 5 reads thus:-

“5. Wrongful inducement in relation to Unregulated Deposit Schemes.

No person by whatever name called shall knowingly make any statement, promise or forecast which is false, deceptive or misleading in material facts or deliberately conceal any material facts, to induce another person to invest in, or become a member or participant of any Unregulated Deposit Scheme.”

13. I have gone through the allegations in the FIR registered against the petitioner and the other accused. It is alleged that the petitioner and the other accused enticed individuals to become franchisees in Safe and Strong Business Consultants Pvt. Ltd., Thrissur, Adam Bazar, by offering a monthly franchisee income of Rupees Two Thousand if they invested Rupees One Lakh. They were promised a return of their investment after five years or the option to invest Rupees One Lakh to receive a total of Rs. 2.50 Lakhs in franchisee income. The defacto complainant was deceived into believing that she would receive higher returns and was asked to transfer money to the accused through their account maintained with the Federal Bank Ltd. Thrissur East Fort Branch. The accused failed to provide the promised franchisee stipend and did not refund the purchase money.

14. There are ingredients of the offences punishable under Section 3 r/w Section 21 and Section 5 r/w Section 23 of the BUDS Act in the prosecution allegations. The prosecution also seeks the aid of Section 34 of IPC to implicate the petitioner as accused No.2.

15. The learned counsel for the petitioner challenged the power of the Investigating Officer to seize the vehicle.

16. The learned Public Prosecutor contended that as the investigating agency has reason to believe that the vehicle seized was used in connection with the commission of the offences, the

same was seized, invoking Sub-section (1)(c) of Section 31 of the BUDS Act.

17. Section 31 reads thus:-

“31. Power to enter, search and seize without warrant

(1) Whenever any police officer, not below the rank of an officer in-charge of a police station, has reason to believe that anything necessary for the purpose of an investigation into any offence under this Act may be found in any place within the limits of the police station of which he is in-charge, or to which he is attached, such officer may, with the written authorisation of an officer not below the rank of Superintendent of Police, and after recording in writing so far as possible, the thing for which the search is to be made and subject to the rules made in this behalf, authorise any officer subordinate to him,--

(a) to enter and search any building, conveyance or place, between sunrise and sunset, which he has reason to suspect is being used for purposes connected with the promotion or conduct of any deposit taking scheme or arrangement in contravention of the provisions of this Act;

(b) in case of resistance, to break open any door and remove any obstacle to such entry, if necessary by force, with such assistance as he considers necessary, for exercising the powers conferred by clause (a);

(c) to seize any record or property found as a result of the search in the said building, conveyance or place, which are intended to be used, or reasonably suspected to have been used, in connection with any such deposit taking scheme or arrangement in contravention of the provisions of this Act; and

(d) to detain and search, and if he thinks proper, take into custody and produce before any Designated Court any such person whom he has reason to believe to have committed any offence punishable under this Act.

18. As per Sub-section (1)(c) of Section 31, the police officer concerned is empowered to seize any record or property found as a

result of the search as provided in Sub-section (1)(a), which is intended to be used or reasonably suspected to have been used, in connection with any such deposit taking scheme or in contravention of the provisions of the BUDS Act.

19. The prosecution alleges that the seized vehicle was used for the commission of the alleged offences. The learned Public Prosecutor has taken me to Section 17 of the BUDS Act and submitted that the option available to the petitioner is to approach the Designated Court for the release of the vehicle by depositing the fair value. Section 17 of the BUDS Act reads thus:-

“17 . Payment in lieu of attachment

(1) Any deposit taker or a person referred to in sub-section (1) of section 15, or transferee referred to in section 16 whose property is about to be attached or has been provisionally attached under this Act, may, at any time before the confirmation of attachment, apply to the Designated Court for permission to deposit the fair value of the property in lieu of attachment.

(2) While allowing the deposit taker or person or transferee referred to in sub-section (1) to make the deposit under sub-section (1), the Designated Court may order such deposit taker or person or transferee to pay any sum towards costs as may be applicable.”

20. The learned counsel for the petitioner contended that the vehicle has so far not been attached, and therefore, he is entitled to get interim custody of the same under Section 451 of Cr. P. C..

21. The learned Public Prosecutor submitted that even in respect of a vehicle about to be attached, Section 17 would come into play. The learned Public Prosecutor further submitted that it is the definite case of the prosecution that the vehicle seized was used

in connection with the alleged deposit-taking scheme. It is further submitted that the investigating agency has already moved before the Competent Authority appointed under Section 7 of the BUDS Act, and an order of provisional attachment of the vehicle was passed.

22. The Court below has recorded the finding that the vehicle is liable to be proceeded under the BUDS Act and the Rules made thereunder, and therefore, the petitioner is not entitled to the interim custody of the same.

23. The BUDS Act is a self-contained Code. The intention of the Act is to provide for a comprehensive mechanism to ban the unregulated deposit schemes and to protect the interest of depositors. Chapter V of the Act, which deals with 'Restitution to Depositors', narrates the various provisions explaining the procedures to be followed in the case of attachment and sale of the seized properties.

24. Taking into consideration the object of the BUDS Act, I am of the considered view that when a vehicle or any other property is seized on the allegation that the property is intended to be used or reasonably suspected to have been used, in connection with any Unregulated Deposit-taking Scheme and hence liable to be proceeded against, invoking the provisions of Chapter V of the BUDS Act, the same shall not normally be returned, otherwise than under

the provisions of the Act, till the culmination of the proceedings in respect of such offence, including attachment and sale.

25. As the vehicle involved in this case is liable to be proceeded under the provisions of the BUDS Act and the Rules made thereunder, the order impugned requires no interference. However, the petitioner is at liberty to apply to the Designated Court for permission to deposit the fair value of the property in lieu of attachment before the confirmation of the provisional attachment.

26. It is made clear that the observations made in this order are not to be construed as final conclusions on the factual aspects. The Trial Court shall consider the request of the petitioner under Section 17 of the BUDS Act untrammelled by any of the observations made herein.

27. The learned counsel for the petitioner prayed for an expeditious disposal of the matter by the Designated Court. If the petitioner files an application under Section 17 of the BUDS Act, the Court below shall dispose of the same within a period of 30 days from the date of filing.

The Criminal M.C. is disposed of as above.

**Sd/ -
K. BABU
JUDGE**

APPENDIX OF CRL.MC 1759/2023

PETITIONER ANNEXURES

Annexure A1	THE PHOTOSTAT COPY OF THE FIR NO.42/2023 OF THRISSUR EAST POLICE STATION DATED 04.01.2023
Annexure A2	THE PHOTOSTAT COPY OF THE EMAIL INTIMATION DATED 1.10.2021
Annexure A3	THE PHOTOSTAT COPY OF THE FIR NO.1029/2022 OF KUNNAMKULAM POLICE STATION DATED 22.08.2022
Annexure A4	THE SUMMONS NO.3341 DATED 29.01.2022 ISSUED TO THE PETITIONER U/S 61 OF CR.P.C ISSUED BY JUNIOR SUPERINTEND, COURT OF JUDICIAL MAGISTRATE FIRST CLASS, KUNNAMKULAM
Annexure A5	THE CERTIFIED COPY OF THE ORDER IN CRL.M.P NO.391/2023 BEFORE THE COURT OF III ADDITIONAL SESSIONS JUDGE, THRISSUR DATED 15.02.2023
Annexure A6	THE PHOTOSTAT COPY OF THE POLICY SCHEDULE CUM CERTIFICATE OF INSURANCE, UIN NO.IRDAN190RP0001V01200203 DATED 25.01.2023
Annexure A7	THE PHOTOSTAT COPY OF THE STATEMENT ISSUED TO THE PETITIONER BY THE HDFC BANK DATED 22.02.2023