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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 22/06/2023

PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN

CRL OP(MD). No.10348 of 2023

Shri Villayutham

... Petitioner/Accused No.1

Vs

The State through,
Represented by,
The Directorate of Enforcement,
Madurai Sub Zonal Office,
No.1A, P & T Nagar,
Madurai.
(ECIR MDSZO/13/2021).

... Respondent/Complainant

For Petitioner :Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

For Respondent :Mr.K.R.Laxman
Central Government Senior Panel Counsel

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :-

For Bail in ECIR MDSZO/13/2021 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner/Accused No.1, who was arrested and remanded to judicial custody on 13.03.2023 for the offences under Section 3 of the Prevention of Money Laundering Act, 2002, punishable under Section 4 of the said Act in ECIR MDSZO/13/2021 on the file of the respondent police, seeks bail.



2. The case of the prosecution is that on the [redacted] of the case registered in Crime No.95 of 2021 on the file of the Jetty Police Station, Rameshwaram, Ramanathapuram District for the offences under Sections 9, 39 and 51 of Wild Protection Act, 1972, which are covered under paragraph No.6 of Part A of the Schedule to the Prevention of Money Laundering Act, 2002 (hereinafter referred to as "the PML Act, 2002") under Section 2(1)(x) and (y) of the PML Act, 2002, the petitioner appeared to have committed an offence of money laundering under Section 3 of the PML Act, 2002, which is punishable under Section 4 of the PML Act, 2002. On the basis of the same, a case has been registered by the respondent in ECIR MDSZO/13/2021, dated 24.05.2021 as against the petitioner and others. The case of the prosecution in Crime No.95 of 2021 on the file of the Jetty Police Station, Rameshwaram, Ramanathapuram District is that the petitioner is said to have processed and smuggled 2800 kgs of lifeless processed and unprocessed sea cucumbers worth about Rs.2 crores.

3. The learned Senior Counsel appearing for the petitioner would submit that the petitioner is arraigned as Accused No.1 out of four accused persons. He is a fisherman and he had started some business in his locality. While being so, the Inspector of Police, Jetty Police Station, Rameshwaram, Ramanathapuram District registered the case in Crime No.95 of 2021 alleging that the petitioner was found in possession of 2800 kgs of lifeless processed and unprocessed sea cucumbers worth about Rs.2 crores. He was arrested and remanded to judicial custody. However, the Inspector of Police, Jetty Police Station, Rameshwaram, Ramanathapuram District failed to file a final report and as such, the petitioner was granted default bail under Section 167(2) of Cr.P.C., after 60 days he was released on bail. Thereafter, the respondent registered the case in ECIR MDSZ/13/2021, dated 24.05.2021 under Section 3 of the PML Act, 2002 which is punishable under Section 4 of the PML Act, 2002 and the petitioner was arrested and remanded to judicial custody on 13.03.2023. Now, the respondent completed the investigation and also filed a final report. Therefore, the custodial interrogation of the petitioner does not require hereafter and no possibility of hampering or tampering the witnesses and material evidence. He further submitted that though various cases were registered against the petitioner, most of the cases were not charge-sheeted so far and therefore, he prayed for bail to the petitioner.

4. The respondent filed a counter affidavit.

5. The learned Central Government Senior Panel Counsel appearing for the respondent would submit that the Inspector of Police, Jetty Police Station, Rameshwaram had registered the F.I.R in Crime No.95 of 2021 on 11.04.2021 as against the petitioner and others for the offences under Sections 9, 39(1), 50 and 51(1) of the Wild Life (Protection) Act, 1972, on the allegation that they were

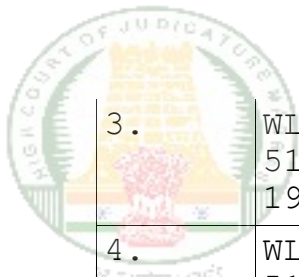


in possession of processing and smuggling 2800 kgs of processed and unprocessed sea cucumbers worth about Rs.2 crores. All the accused persons appeared to have committed an offence of money laundering under Section 3 of the PML Act, 2002 and as such, the respondent recorded the report on 24.05.2021. During the investigation, the FIRs and WLORs were registered against the petitioner and others for smuggling of sea cucumbers, a marine species protected under Schedule I of the Wildlife (Protection), Act, 1972. The petitioner is a habitual offender and is regularly involved in the coaching and smuggling of sea cucumber in and around Rameshwaram Town of Ramanathanapuram District. He had committed the offence of money laundering and he was in possession of proceeds of crime involved in money laundering. The period of incarceration cannot be ground to release him on bail when he committed such a serious and gravity offence and also his antecedents with regard to his involvement in similar types of offences. In support of his contention, he relied on the Judgment of the Honourable Supreme Court of India in Directorate of Enforcement Vs. Aditya Tripathi reported in 2023 Livelaw (SC) 433 and prayed for dismissal of the bail petition.

6. Heard the learned counsels appearing on either side and perused the materials available on record.

7. On perusal of the records revealed that originally, the Inspector of Police, Jetty Police Station, Rameshwaram had registered the F.I.R in Crime No.95 of 2021 on 11.04.2021 as against the petitioner and others for the offences under Sections 9, 39(1), 50 and 51(1) of the Wild Life (Protection) Act, 1972, on the allegation that they were in possession of processing and smuggling 2800 kgs of lifeless processed and unprocessed sea cucumbers worth about Rs.2 crores. These offences are covered under paragraph No.6 of Part A of the Schedule to the PML Act, 2002 under Sections 2(1) (x) and (y) of the said Act. All the accused persons appeared to have committed an offence of money laundering under Section 3 of the PML Act, 2002 and as such, the respondent recorded the report on 24.05.2021. During the investigation, the following FIRs and WLORs were registered against the petitioner and others for smuggling of sea cucumbers, a marine species protected under Schedule I of the Wildlife (Protection), Act, 1972, which reads as follows:-

S.No.	Crime No.	Station
1.	WLOR No.37/2010, U/S 9, 39(1), 50, 51(1) of Wild Life Protection Act, 1972.	Mandapam Forest Station
2.	WLOR No.26/2011, U/S 9, 39(1), 50, 51(1) of Wild Life Protection Act, 1972.	Mandapam Forest Station



3.	WLOR No.33/2011, U/S 9, 39(1), 50, 51(1) of Wild Life Protection Act, 1972.	Mandapam Station
4.	WLOR No.06/2009, U/S 9, 39(1), 50, 51(1) of Wild Life Protection Act, 1972.	Forest Department, Ramnad Range
5.	WLOR No.07/2009, U/S 9, 39(1), 50, 51(1) of Wild Life Protection Act, 1972.	Forest Department, Ramnad Range
6.	FIR No.96/2013, U/S 5(a) of Explosive Substances Act, 1908 and 9, 39(1), 50, 51(1) of Wild Life Protection Act, 1972.	Thirupalakudi Police Station
7.	FIR No.01/2008, U/s 13(1)(2) and 10(a)(4) of Unlawful Activities Prevention Act.	Q Branch, Ramanathapuram District
8.	FIR No.48/2021, U/s 9, 39(1), 50, 51(1) of Wild Life Protection Act, 1972	Mandapam Police Station
9.	FIR No.95/2021, U/S 9, 39(1), 50, 51(1) of Wild Life Protection Act, 1972	Rameswaram Jetty Police Station
10.	WLOR 18/2011, U/S 9, 39(1), 50, 51(1) of Wild Life Protection Act, 1972	Mandapam Forest Station
11.	WLOR No.13/2017, U/S 9, 39(1) & (3), 40(2), 50 and 51(1) of Wild Life Protection Act, 1972	Mandapam Forest Station
12.	WLOR No.12/2021, U/S 9, 39(1), 50 and 51(1) of Wild Life Protection Act, 1972	Mandapam Forest Station
13.	WLOR No.14/2021, U/S 9, 39(1) & (3), 40(2), 50, 51(1) and 57 of Wild Life Protection Act, 1972	Mandapam Forest Station
14.	WLOR No.06/2022, U/S 9, 39(1) & (3), 40(2), 50, 51(1) and 57 of Wild Life Protection Act, 1972	Mandapam Forest Station
15.	WLOR No.17/2022, U/S 9, 39(1) & (3), 40(2), 50 and 51(1) and 57 of Wild Life Protection Act, 1972	Mandapam Forest Station

8.It is clear that from the year 2008, the petitioner had committed various offences under the Wildlife Protection Act, 1972, Explosive Substances Act, 1908 and the Unlawful Activities (Prevention) Act, 1967. In fact, he was arrested on multiple occasions in connection with the smuggling of sea cucumbers. He is a



habitual offender and is regularly involved in the coac and smuggling of sea cucumber in and around Rameshwaram Town of Ramanathanapuram District. He had committed the offence of money laundering and he was in possession of proceeds of crime involved in money laundering. Further, he had floated business entities, namely M/s.VVN Sea Foods, M/s.VV Agency, M/s.Hotel Raamajayam, M/s.VV Sea Shell Mark, M/s.VV1 Dry Fish Process and M/s.Hotel Raamajayam Restaurant either in his name or in the names of his family members and thereby he had used the crime proceeds for his business activities. Though the petitioner was given multiple opportunities as contemplated under Section 50 of the PML Act, 2002, to explain the source of funds for the purchase of the properties and for cash deposits amounting to multiple crores in the Bank accounts, he failed to provide any satisfactory explanation so far. It shows that the said money was obtained from illegal smuggling activities and then placed into the legal system, layered to distance it from its criminal origins and subsequently projected as untainted. Though the respondent filed a charge-sheet, it cannot be the ground for his release.

9.In the Judgment relied on by the learned Central Government Senior Panel Counsel appearing for the respondent in Directorate of Enforcement Vs. Aditya Tripathi reported in 2023 Livelaw (SC) 433, the Honourable Supreme Court of India held as follows:-

"6.3 From the impugned judgment(s) and order (s) passed by the High Court, it appears that what is weighed with the High Court is that chargesheet has been filed against respective respondent No.1 - accused and therefore, the investigation is completed. However, the High Court has failed to notice and appreciate that the investigation with respect to the scheduled offences under the PML Act, 2002 by the Enforcement Directorate is still going on. Merely because, for the predicated offences the chargesheet might have been filed it cannot be a ground to release the accused on bail in connection with the scheduled offences under the PML Act 2002, Investigation for the predicated offences and the investigation by the Enforcement Directorate for the scheduled offences under the PML Act are different and distinct. Therefore, the High Court has taken into consideration the irrelevant consideration. The investigation by the Enforcement Directorate for the scheduled offences under the PML Act, 2002 is till going on."



10. Thus, it is clear that merely because for the offences, the charge-sheet might have been filed it cannot be ground to release the accused on bail in connection with the Scheduled Offences under the PML Act, 2002.

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11. Further, the petitioner committed grave offences and the importance of sea cucumbers has been explained by the respondent as follows:-

"a) Sea cucumbers are echinoderms with soft, nutrients and excrete nitrogen, ammonia, and calcium carbonate, key ingredients for coral reefs. Their feeding also helps to slow the oceans' acidification from human activity.

b) Holothuroidea species, due to their international demand, are targeted by the local fishermen and traders.

c) Sea cucumbers are in great demand in China and Southeast Asian countries, where they are regarded as a culinary delicacy and used in traditional medicines. This has fueled an incredibly lucrative trade in the endangered animals, one that has grown steadily in recent decades.

d) In the 1980s, sea cucumbers fetched less than Rs. 1000/Kg and now prices have risen to raging from Rs. 10,000-15,000/Kg.

e) Over the years, Palk Bay and the Gulf of Mannar have witnessed extreme overfishing of sea cucumbers. Population of Sea cucumbers have been drastically declining due to illegal poaching and smuggling, tubular bodies resembling their namesake vegetable.

f) It is classified under the Class Holothuroidea and plays a vital role in ocean ecosystems. As they feed on the detritus in sediment, they help to recycle".

12. Therefore, the incarceration of the petitioner becomes indispensable in curbing these types of illegal smuggling activities related to marine species. The period of incarceration cannot be ground to release him on bail when he committed such a serious and gravity offence and also his antecedents with regard to his involvement in similar types of offences. That apart, there is a bar under Section 45 of the PML Act, 2002. Accordingly, an accused can



be granted bail only if the Court is of the view that the petitioner has not committed any offence under the said Act.

13. In the case on hand, there are sufficient materials very much available in order to establish the culpability on the part of the petitioner. Therefore, the petitioner failed to fulfil the twin conditions as contemplated under Section 45 of the PML Act, 2002. Therefore, this Court is not inclined to grant bail to the petitioner.

14. Accordingly, this Criminal Original Petition is dismissed.

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22/06/2023

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/07/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

PS

TO

1. THE SUPERINTENDENT,
CENTRAL PRISON,
MADURAI.

2. THE DIRECTORATE OF ENFORCEMENT,
DIRECTORATE OF ENFORCEMENT,
MADURAI SUB ZONAL OFFICE,
NO. 1A, P AND T NAGAR,
MADURAI (ECIR MDSZO/13/2021)

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

+1. CC TO M/S. AJMAL ASSOCIATES ADVOCATE SR.NO.30221,
DT.23.06.2023.

+1 CC TO M/S. K.R. LAXMAN, ADVOCATE (SR-30297, DATED 23.06.2023)

ORDER

IN

CRL OP(MD) No.10348 of 2023

Date : 22/06/2023

SI (04.07.2023) 7P/ 6C