



CRL OP(MD). No.17925 of 2023

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

Reserved on : 19/10/2023

Pronounced on : 20/10/2023

PRESENT

The Hon`ble Mr.Justice V. SIVAGNANAM

CRL OP(MD). No.17925 of 2023

Shri Villayutham

... Petitioner/ Accused No.1

Vs

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

... Respondent/Complainant

For Petitioner : Mr.M.Ajmalkhan,
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 :-

To enlarge the petitioner on bail in connection with ECIR MDSZO/13/2021 on the file of the respondent.

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



CRL OP(MD). No.17925 of 2023

Laundering Act, 2022, punishable under Section 4 of the said Act in ECIR MDSZO/13/2012, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on the strength 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 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 Prevention of Money Laundering Act, 2002 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 in pursuance of the case registered in crime No.95 of 2021 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 under Section 2(1) (x) and (y) of the PML Act, 2002, this case has been registered in ECIR MDSZO/13/2021, on 24.05.2021 for the offence under Section 3 of the Prevention of Money-Laundering Act, 2002, punishable under Section 4 of the said Act. He would further submit that the petitioner herein was arrested and remanded to judicial custody and further, now, the investigation in this case has been completed and final report was filed and hence, the custodial interrogation of the petitioner is not necessary. He further contended that the petitioner is suffering from following diseases:

- Lumbar lordosis maintained.
- Vertebral body height and alignment normal.
- Intervertebral disc space appears normal.
- Disc dessication noted at L2-L3, L3-L4 and L5-S1 level.
- Subtle posterocentral disc bulge causing anterior thecal sac indentation at L2-L3 level.
- L3-L4: Left foraminal disc herniation causing neural foraminal narrowing and impingement of left traversing nerve root.



CRL OP(MD). No.17925 of 2023

WEB COPY

- L4-L5: Diffuse disc bulge causing anterior thecal sac indentation and bilateral neural foraminal narrowing causing mild impingement of bilateral exiting nerve root.
- L5-S1: Diffuse disc causing anterior thecal sac indentation.

The learned Senior counsel further contended that in view of the sick of the petitioner the proviso of Section 45(i) of the Prevention of Money Laundering Act, 2002, exception from the rigorous under section 45 for the persons who are sick or infirm. Therefore, he may seeking to release him on bail. In support of his arguments, he relied upon the following Judgments, which reads as follows:

Sl. No.	PARTICULARS
1.	Parmanand Katara Vs. Union of India reported in 1989 (4) SCC 286
2.	Gautam Kundu Vs. Directorate of Enforcement reported in 2015 (16) SCC 1
3.	Re-In Human Conditions In 1382 Prisons reported in 2017 (10 SCC 658)
4.	Pranjil Batra Vs. Directorate of Enforcement reported in 2022 SCC Online P&H 4188
5.	Vijay Agarwal Through Parokar Vs. Directorate of Enforcement reported in 2022 SCC Online Del 4494
6.	Kewal Krishnan Kumar Vs. Enforcement Directorate reported in 2023 SCC Online Del 1547
7.	Sanjay Jain Vs Enforcement Directorate reported in 2023 SCC Online Del 3519



CRL OP(MD). No.17925 of 2023

WEB COPY

4. The learned Special Public Prosecutor appearing for the respondent objected to grant bail to the petitioner. He has submitted that it is a second bail petition and the earlier petition filed by the petitioner was dismissed by this Court on merits on 22.06.2023 in CrI.O.P(MD).No.10348 of 2023. All the contentions raised by the petitioner before this Court was considered while dismissing that application. In view of the above, without change of circumstances, the second application would not be maintainable which is also not permissible under the criminal law as it would be deem to be seeking review of earlier order to support his arguments. He has also relied upon the Judgment of the Hon'ble Supreme Court reported in **2001(1) SCC 169 in the case of Hari Singh Mann Vs. Harbhajan Singh Bajwa and another**. The learned Special Public Prosecutor further submitted that the sick or infirm of detention of person has to be inferred from the materials available in each individual case. The Medical condition was considered by the Dean Government Rajaji Hospital, Madurai. In his replay he submitted that “on investigation hemoglobin 12.08. gms, RBS-113 / dcl, RFT – Urea; 25 mg/dcl, Creatinine – 14 mg/dcl, LFT-Normal, Echo-Grade I diastolic dysfunction, USG-Grade I, fatty liver. At present patient doesn't have bleeding per rectum and his cardiac status is stable as per Cardiologist opinion”. In these circumstances, there is no serious that it is life



CRL OP(MD). No.17925 of 2023

threatening and the treatment is so specialised that it cannot be provided in the jail hospital. Therefore, prayed to dismiss the bail application.

5. Heard the learned Senior counsel appearing for the petitioner and the learned Special Public Prosecutor appearing for the respondent police and perused the materials available on record.

6. On perusal of the records it is noticed that earlier, the Inspector of Police, the Jetty Police station, Rameshwaram, Ramanathapuram District, registered a case in crime No.95 of 2021 on 11.04.2021 as against the petitioner and others 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 under Section 2(1) (x) and (y) of the PML Act, 2002, on the allegation that they were in processed and smuggled 2800 Kgs of lifeless processed and unprocessed Sea Cucumbers worth about Rs.2 Crores. In pursuance of this schedule offence, the present case has been registered in ECIR MDSZO/13/2021, on 24.05.2021 for the offence under Section 3 of the Prevention of Money-Laundering Act, 2002, punishable under Section 4 of the said Act by the Directorate of Enforcement, Madurai Sub Zonal Office and the petitioner herein was arrested and remanded to judicial custody on 13.03.2023.



CRL OP(MD). No.17925 of 2023

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7. It is not in dispute that the earlier bail application filed by the petitioner in CrI.O.P(MD).No.10348 of 2023 was dismissed by this Court on 22.06.2023 and thereafter, the final report has been filed. Now, based on the change of circumstances, the petitioner is suffering from the following diseases:

- Subtle posterocentral disc bulge causing anterior thecal sac indentation at L2-L3 level.
- L3-L4: Left foraminal disc herniation causing neural foraminal narrowing and impingement of left traversing nerve root.
- L4-L5: Diffuse disc bulge causing anterior thecal sac indentation and bilateral neural foraminal narrowing causing mild impingement of bilateral exiting nerve root.
- L5-S1: Diffuse disc causing anterior thecal sac indentation.

seeking to grant bail under Section 45(i) of the Prevention of Money-Laundering Act, 2002.

8. Section 45(i) of the Prevention of Money-Laundering Act, 2002 reads as follows:



CRL OP(MD). No.17925 of 2023

WEB COPY

45. *Offences to be cognizable and non-bailable:*

..

. Provided that a person, who is under the age of sixteen years or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees] may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by-

(i) the Director; or

(ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.

9. The Hon'ble Supreme Court in the Judgment reported in 2015(16)SCC in the case of (*Gautam Kundu Vs. Directorate of Enforcement (Prevention of Money - Laundering Act*, observed as follows:



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57. In *Devki Nandan Garg (supra)*, I have held as under:

35. Thus, the proviso to Section 45(1) of the PMLA carves out an exception from the rigorous Section 45 for persons who are sick or infirm. Once a person falls within the proviso of Section 45(1), he need not satisfy the twin conditions under section 45(1) as elucidated in the dicta of *Gautam Kundu* case. [*Gautam Kundu V. Directorate of Enforcement*, (2015) 16 SCC 1: (2016) 3 SCC (Crl) 603]”

10. Though no straight jacket formula can be laid down as to what is the level of sickness that a person is to suffer to entitle him to bail under Section 45(1) proviso, the thumb rule is that the sickness should be so serious that it is life threatening and the treatment is so specialised that it cannot be provided in the jail hospital. In the view of the above, the report of the Dean reads as follows:

“this is to inform you that Medical report of accused Villayutham, 56/M, (RP.No.4827/2023) S/o. Veluthevar, admitted in Ward No.113, under II Medical Unit I.P.No.63999) has Hypertension / Diabetes mellitus / Coronary Artery disease / Lumber disc Disease / hepatitis B positive with



CRL OP(MD). No.17925 of 2023

WEB COPY

complaints of black coloured stools / bleeding per rectum and abdomen pain was found to have Fissure in Ano. On investigation hemoglobin 12.08 gms, RBS-113 / dci, RFT- urea : 25 mg/ dci, Creatinine-1.4mg/dci, LFT-Normal, Echo-Grade I diastolic dysfunction, USG-GRade I fatty liver. At present patient dont have bleeding per rectum and his cardiac status is stable as per cardiologist opinion."

11. In view of the above medical condition, it is noticed that the petitioner is not in serious condition.

12. Considering the facts and circumstances of the case and also considering the nature of allegations made against the petitioner and the gravity of offence and the role attributed by the petitioner and the applied law laid down by the Hon'ble Supreme Court in the decision stated supra, this Court finds no merit in this petition.

13. Accordingly, this Criminal Original Petition is dismissed.

sd/-

20/10/2023

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

TRP



CRL OP(MD). No.17925 of 2023

TO
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- 1 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 2 THE DIRECTORATE OF ENFORCEMENT,
MADURAI SUB ZONAL OFFICE,
NO.1A, P AND T NAGAR, MADURAI

ORDER
IN
CRL OP(MD) No.17925 of 2023
Date :20/10/2023

SS/VRS/SAR- /25/10/2023/11P/3C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023