IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Tenth day of October Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice S. BASKARAN

CRIMINAL ORIGINAL PETITION No.3068 of 2017

D.SENTHIL [PETITIONER / ACCUSED]

Vs

THE DEPUTY DIRECTOR, [RESPONDENT]
DIRECTORATE OF ENFORCEMENT,
2ND & 3RD FLOOR NO.84,
MURUGESAN NAICKER OFFICE COMPLEX,
GREAMS ROAD, THOUSAND LIGHTS,
CHENNAI-600 006.

For Petitioner : M/S.P.SOLOMON FRANCIS Advocate

For Respondent : MR. N. RAMESH SPECIAL PUBLIC PROSECUTOR FOR CBI CASES

PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner, who was arrested on 04.01.2017, for the alleged offences under sections 3 and 4 of the Prevention of Money Laundering Act (hereinafter called as "PMLA"), in ECIR.No.CEZO/03/2016 on the file of the respondent-Directorate of Enforcement, seeks bail.

2.According to the petitioner, the case of the prosecution is that large number of complaints were lodged against one Sridhar, the brother of the petitioner herein and on the basis of those complaints, 38 FIRs were registered by the Police for alleged offences under Sections 120-B, 147, 148, 201, 290, 294(a), 294(b), 302, 307, 323, 324, 332, 341, 342, 364, 384, 395, 387, 506(i) and 506(ii) of IPC. Pursuant to the written request of the Superintendent of Police, Kancheepuram District on 03.03.2016, an FIR was registered by the respondent with Ref.No.CEZO/03/2016 on 09.03.2016.

3.The petitioner further states that it is alleged in the grounds for arrest that the respondent summoned the petitioner herein on 26.05.2016 and he appeared before the respondent and had given his voluntary statement. Pursuant to the statements, the respondent had attached the properties owned by the petitioner and others by an order of provisional attachment dated 02.09.2016. It is further alleged that the petitioner herein appeared again on 03.01.2017 and 04.01.2017 and had given his statements and on investigation, it was found that the petitioner herein had acted on the instructions of his brother Sridhar in purchasing and selling properties and that he did not reveal any information on the proceeds of crime, being the sale proceeds of various immovable properties in his name. He has also assisted his brother in laundering the proceeds of crime to the tune of 40 crores. It is further alleged in the grounds for arrest that the petitioner herein is in possession of evidence and is not divulging the same to the respondent and therefore warranting arrest by the respondent.

Thus, the petitioner contends that he is not an accused in any of the 38 cases registered against his brother and he has no links or connection with his brother Sridhar. The petitioner further states that he was arrested and remanded to judicial custody by the concerned Police in respect of various cases filed against him under I.P.C and subsequently, he has been enlarged on bail and as such, now, the respondent is not entitled to arrest him on the basis of F.I.R registered under PMLA, which arises out of those cases registered under the I.P.C. The petitioner further contends that he is having his own independent business and making income from the same. The petitioner is also an income tax assessee and he is not having anything to do with the activities of his brother. Hence, the petitioner seeks to enlarge him on bail.

4.On the other hand, opposing the same, the respondent has stated in the counter that this petitioner being the brother of Sridhar, who has been declared as a Proclaimed Offender by Court of Judicial Magistrate No.1, Kancheepuram, has been issued with summons and accordingly, the petitioner appeared before the Deputy Director, Directorate of Enforcement, Chennai Zonal Office, Chennai, on 26.05.2016, and gave a statement wherein, he inter alia, had stated that after discontinuing his studies he was assisting his brother in his illicit liquor business; that he did not know as to how much income he got from that illicit liquor business; that he was getting from his elder brother with regard to his expenses; that on several occasions he had been to jail when he was doing the illicit liquor business; that after the year 2008 with the income derived from the illicit liquor business his brother procured lands in his name and in the name of his wife, Smt.Kumari, converted the same into plots and they were selling the same.

5.According to the prosecution, during the course of investigation, it was observed that Sridhar has obtained/purchased several immovable properties in and around Kanchipuram in his name, in the name of his wife Smt.Kumari and in the name of his daughter Ms.Dhanalakshmi, out of the ill-gotten earnining from the crimes committed by him. After due investigation, certain immovable properties owned by Sridhar and his family members was totally valued to the tune of Rs.10 crores, which were identified as proceeds of various crimes committed by Sridhar along with others. The total income declared by Smt.S.Kumari, W/o.Sridhar and

D.Senthil, the petitioner herein during the period from the year 2002-2003 to 2014-2015 is together to the tune of Rs.40 lakhs, whereas the total amount of transactions held in the Bank Account No.50100001455442 held by S.Kumari, are to the tune of Rs.24.9 crores into credit and Rs.24.8 crores from debit during the period from 11.09.2013 to 17.03.2016, whereas the total amount derived by Smt.S.Kumari along with D.Senthil, the petitioner herein by selling various immovable properties during the period from 2011 to 2016 is to the tune of Rs.40 crores, which is as per the records.

6.It is further stated by the respondent that Provisional Attachment Orders were issued under the provisions of Section 5(1) of PMLA, 2002 on 02.09.2016 vide Nos.19/2016 and 20/2016 attaching the movable and immovable properties, which were identified as proceeds of crime committed by Sridhar along with others and held in the names of Sridhar, S.Kumar, Ms.Dhanalakshmi and D.Senthil, the petitioner herein, totally valued at Rs.15 crores, which is as per the registered documents and the guideline value for the same being Rs.80 crores(approx) whereas the fair market value of the properties under attachment is estimated to be few hundred crores and the provisional attachment orders under section 5(5) of PMLA, 2002, have been confirmed by the Adjudicating Authority.

7.The prosecution submits that in order to identify the remaining proceeds of crime derived by Sridhar and his family members including D.Senthil, the petitioner herein, the custodial interrogation of the petitioner herein is very much necessary and the entire proceeds of crime derived by Sridhar and his family members are yet to be ascertained whereas the petitioner D.Senthil has knowingly assisted his brother in laundering the proceeds of crime to the tune of Rs.40 crores, which was enjoyed, used, dealt with and diverted for his personal and family benefits. The investigation under the provisions of PMLA, 2002 is being conducted in order to identify the proceeds of the crime committed vide Scheduled offences by the petitioner/accused herein, along with his associates. Hence, the respondent seeks dismissal of the petition.

8.Before adverting to the rival contentions, it is necessary to state here that the edifice of the offence under Section 3 of PMLA is predicated upon the acquisition of property by utilising the process of crime by committing an offence mentioned in the schedule of PMLA and projecting the same as untainted property.

9.Further, a person accused of an offence under Section 3 of PMLA, whose property is attached and proceed against, shall discharge the onus of proof (Section 24) by disclosing the source of his income, earnings or assets and the means by which the property attached by the respondent was purchased so as to discharge the burden on him, that the property does not constitute proceeds of crime.

10.In that background, it is to be seen whether the allegation against the petitioner that he is involved in money laundering by making use of proceeds of crime is rebutted and whether he fulfills the twin conditions under Section 45 of PMLA namely i)the court must be satisfied that the accused is not guilty of such offence ii)that he is not likely to commit any offence of similar nature, while on bail. As stated above, the petitioner is alleged to have associated with his brother one Sridhar and involved in money laundering. However, the learned counsel for the petitioner disputed the same and stated that there is nothing on record to prove the fact of petitioner colluding with or assisting the said Sridhar in any of the offence under PMLA.

11.According to the prosecution, there are 38 cases under various provisions of I.P.C including 307, 302 I.P.C, Section 3 r/w Section 25 of the Arms Act, 1959, Section 5 r/w Section 3(B) of the Explosives Act, 1884 and also Section 4 of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992 against the said Sridhar and co-accused. The petitioner is also stated to be involved in several number of those cases with his brother Sridhar. The petitioner has stated in paragraph No.3 of his affidavit that he is not an accused in any of those cases registered against his brother. However, in the same paragraph No.3, it is stated that even if cases are pending, there is no evidence to show that the petitioner or his brother enriched themselves by committing those crime and thereby earning proceeds of the crime. However, in paragraph No.6 of the affidavit, the petitioner states that in respect of the cases registered under I.P.C, he has already been enlarged on bail and as such, there is no need for his further detention in this case, which is registered on the basis of the cases registered under I.P.C. It is therefore clear that even as per the averments in the affidavit of the petitioner, there are number of cases registered under I.P.C against the petitioner as well as his brother and are pending.

12.According to the respondent, 38 cases have been registered in various police stations at Kancheepuram District in Tamil Nadu under different provisions of I.P.C, Arms Act, 1959, Explosives Act, 1884 against the petitioner herein as well as his brother Sridhar and their associates. It is pointed out by the respondent that the petitioner has committed offences along with his brother and other associates including the offences under Sections 302, 307 and other provisions of I.P.C as well as under Section 25 of the Arms Act, 1959 which come under the category of scheduled offences under PMLA. Even though it is contended on behalf of the petitioner that he was involved only in illicit liquor business till the year 2008 and suffered imprisonment on several occasions for the said illicit liquor business and he is not involved in any other offences, the averments in the affidavit itself will disprove the claim. Admittedly, the petitioner has narrated himself as 'accused' in various cases under the provisions of I.P.C and other acts as stated above and he was enlarged on bail. It is therefore clear that the petitioner is alleged to have been involved in scheduled offences under PMLA.

13.In such circumstances, it is to be seen as to whether the petitioner discharged the onus on him under Sections 24 and 45 of PMLA that the property purchased or assets standing in his name are not purhased out of proceeds of crime and he will not indulge in any offence in similar nature, if released on bail.

14.According to the prosecution, the petitioner herein has assisted his brother Sridhar in buying and selling large number of immovable property and the proceeds of crime derived from such activities is to the tune of Rs.40 crores. The prosecution states that the petitioner has not disclosed his source of income to purchase those properties. The petitioner who is an income tax assessee has only shown Rs.2,94,690/- as his income for the period 2003-04 to 2005-06, but, he has purchased properties worth Rs.3 crores being the document value, guideline value of the property being Rs.22 crores and the market value being Rs.40 crores. Admittedly, the petitioner gave voluntary statement on three different dates i.e 26.05.2016, 03.01.2017 and 04.01.2017, wherein, he has stated that he is running a CD Shop at Kancheepuram for the past 10 years and getting a monthly income around Rs.20,000/-. He has not declared any other income or paid any income tax on the same, as per the available records. In the statement given by him, petitioner has admitted to the respondent about his involvement in assisting his elder brother in the business of buying and selling lands. It is therefore clear that the petitioner, on whom the burden lies to discharge the onus of showing the proceeds of crime is not utilized for purchasing or acquiring the property, has failed to do so. Thus the petitioner has not produced any proper account for the properties purchased in his name and as he is alleged to have involved in various offences, which fall under Schedule A of PMLA, his claim that the Provisions of Section 3 of PMLA will not be attracted against him cannot be accepted at this stage. As stated above, in a case of this nature, the twin conditions under Section 45 of PMLA has to be satisfied before the plea of the petitioner can be entertained.

15.The learned Additional Public Prosecutor contended that the plea of the petitioner cannot be entertained, in view of the condition imposed under Section 45 of PMLA and in support of his claim, he relied upon a ruling reported in **CDJ 2015 Supreme Court 982**, (**Gautam Kundu Vs Manoj Kumar, Assistant Director, Directorate of Enforcement (Prevention of Money Laundering Act**) Government of India, wherein, it has been held as follows:

"29.Section 45 of the PMLA starts with a non obstante clause which indicates that the provisions laid down in Section 45 of the PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. Section 45 of the PMLA imposes following two conditions for grant of bail to any persons accused of an offence punishable for a term o f imprisonment of more than three years under Part-A of the schedule of the PMLA: (i)That the prosecutor must be given an opportunity to oppose the application for bail; and ii)That the court must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is no likely to commit any offence while on bail.

30.The conditions specified under Section 45 of the PMLA are mandatory and needs to be complied with which is further strengthened by the provisions of Section 65 and also Section 71 of the PMLA. Section 65 requires that the provisions of Cr.P.C shall apply in so far as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of the PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of Cr.P.C would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under Section 439 of Cr.P.C. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the Authority or the Court shall presume that proceeds of crime are involved in money laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant."

16.Further, the learned Additional Public Prosecutor also relied upon the ruling reported in **CDJ 2011 SC 1070 (Union of India Vs Hassan Ali Khan and another)** to contend that the burden of proof is on the person accused of an offence under Section 3 of PMLA to show that the property acquired were not the proceeds of crime and the petitioner is bound to discharge that burden. In the said ruling, it is held as follows:

"23.Having carefully considered the submissions made on behalf of the respective parties and the enormous amounts of money which the respondent No.1 had been handing through his various bank accounts and the contents of the note signed by the respondent No.1 and notarized in London, this case has to be treated a little differently from other cases of similar nature. It is true that at present, there is only a nebulous link between the huge sums of money handled by the respondent No.1 and any arms deal or intended arms deals, there is no attempt on the part of the respondent No.1 to disclose the source of the large sums of money handled by him. There is no denying the fact that allegations have been made that the said monies were the proceeds of crime and by depositing the same in his bank accounts, the respondent No.1 had attempted to project the same as untainted money. The said allegations may not ultimately be established, but having been made, the burden of proof that the said monies were not the proceeds of crime and were not, therefore, tainted shifted to the respondent No.1 under Section 24 of the PML Act, 2002."

17.In the case on hand, as stated earlier, the petitioner is admittedly arrayed as an accused in number of cases falling under Schedule-A of PMLA and he has himself given a statement to the respondent that he has assisted his brother in purchasing and selling various properties, whose market value is stated to be Rs.40 crores. The petitioner who claims to be an income tax assessee has disclosed only the fact that he is carrying on CD business in Kancheepuram and his monthly income is about Rs.20,000/-. It is therefore clear that the source of income and the amount of income disclosed by the petitioner is not sufficient to discharge the onus on him namely that the property acquired were not out of proceeds of crime. It is pointed out that the brother of the petitioner is a proclaimed offender and he has left India and staying in abroad for the past several years. It is the case of the prosecution that the petitioner is actively involved in purchasing and selling various properties in the name of his brother, his brother's wife and in his name and that is done out of income from scheduled offences committed during the relevant period.

18. In such circumstances, the learned Additional Public Prosecutor relying upon, a ruling reported in **CDJ 2015 GHC 270, (Afroz Mohmad Hasanfatta Vs. Deputy Director & another)**, contended that a prima facie case has been made out against the petitioner and the petitioner has not satisfied the twin requirements under Section 45 of PMLA to get the relief of bail and he prays for dismissal of the petition. In the said ruling, it is held as follows:

"26......Under the circumstances, having regard to the involvement of the applicant in the offences in question as indicated hereinabove, it would not be possible for this Court at this stage, to state that there are reasonable grounds for believing that the applicant is not guilty of the offences alleged against him. It may be reiterated that while considering the question of grant of bail in the present case, since the applicant is an accused in the scheduled offence, the rigours of Section 45 of the PML Act would apply and the court is required to record twin satisfaction, one that, there are reasonable grounds for believing that the applicant is not guilty of such offence and second that, he is not likely to commit any offence while on bail. Having regard to the fact that this Court has found that the first condition precedent, viz., that there are reasonable page 47 of 48 ground for believing that the applicant is not guilty of such offence has not been satisfied, it is not necessary to record any finding as regards the second condition precedent. In the light of the fact that one of t he conditions precedent, namely, that the applicant is not guilty of such offence, is not satisfied, the applicant is not entitled to be released on bail under Section 45 of the PML Act."

19.The learned Additional Public Prosecutor also relied upon an order passed in Crl.O.P.No.24859 of 2015, by this Court on 26.10.2015, wherein, it has been held as follows:

"12.In view of the seriousness of the charges and prima facie materials available in support thereof, the stringent provisions of the PML Act and as there are no reasonable grounds for believing that the petitioner is not guilty of the offences involved by him, this Court is not inclined to enlarge the petitioner on bail."

20. It is clear from the above said ruling and the discussion that the petitioner has not disclosed his source of income for acquiring the properties in his name. It is further alleged that the petitioner is in possession of proceeds of crime and also used it and enjoyed the same for his personal and family benefits. It is stated by the respondent that investigation under PMLA has

clearly revealed the involvement of the petitioner in money laundering and there is every possibility of him indulging in similar offence, if enlarged on bail. In such circumstances, this Court finds no merit in the petition and the same has to fail. The point is answered accordingly.

21.In the above said circumstances, it is clear that the twin conditions imposed under Section 45 of PMLA are not satisfied by the petitioner and his plea to enlarge on bail cannot be entertained.

22.In the result, this Criminal Original Petition is dismissed.

-sd/-
10/10/2017

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
NO. 1, KACHIPURAM.

2 THE CHIEF JUDICIAL MAGISTRATE
CHENGALPATTU [FOR INFORMATION]

3 THE PRINCIPAL SESSIONS JUDGE
(SPECIAL COURT FOR PMLA CASES) CHENNAI.

4 THE SPECIAL PUBLIC PROSECUTOR
FOR ENFORCEMENT CASES,HIGH COURT, MADRAS.

5 THE DEPUTY DIRECTOR,
DIRECTORATE OF ENFORCEMENT, 2ND & 3RD FLOOR
NO.84, MURUGESAN NAICKER OFFICE COMPLEX,
GREAMS ROAD, THOUSAND LIGHTS, CHENNAI-600 006.

6 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI.

+1CC to M/S.P.SOLOMON FRANCIS Advocate on payment of necessary charges SR.NO. 19093

CRL OP.3068/2017

Date :10/10/2017

EGR 12/10/2017