HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
MONDAY, THE TWENTY SEVENTH DAY OF NOVEMBER
TWO THOUSAND AND SEVENTEEN

:PRESENT:
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRL .P. NOS:7503 & 8151 of 2017

Crl.P. No. 7503 of 2017:
Between:
The Assistant Director, Directorate of Enforcement, Hyderabad Zonal Office, Hyderabad
Rep. by Spl. Public Prosecutor,

..... Petitioner/Complainant

AND

1. Mahender Khatri s/o. Shri Mohan Lal Khatri, R/o. 5-2-502, 1st Floor, Kishan Gunj, Near Nala, Hyderabad-12
2. **2.** Vinod Ojha S/o. Mohan Khatri, R/o. 5-1-154, Jambagh, Pusalabasti, Near Gowliguda Telephone Exchange, Hyderabad

.....Respondents/Accused Nos. 1 & 2

Counsel for the Petitioner : SRI T.V.SUBBA RAO. SPECIAL P.P.

Counsel for the Respondents : SRI R.SATYANARAYANA REDDY

Petition under Section 439 (2) of Cr.P.C., praying that in the circumstances stated in the petition and the grounds filed herein, the High Court may be pleased to cancel the bail order granted by Metropolitan Sessions Judge, Cyberabad, at LB Nagar in Crl.MP.No. 2490/2017 in ECIR. No.7/2017 dated 07.08.2017 for the offences under Sec. 3, 4 19(1) of Prevention of Money Laundering Act in favour of Accused No.1 and 2 in the interest of justice.

CRL.P.MP. NO. 7901 OF 2017:

Petition under Section 482 of Cr.P.C., praying that in the circumstances stated in the petition filed herein, the High Court may be pleased to direct the respondents/accused No.1 and 2 to appear before the investigating agency i.e. petitioner's department by suspending the condition imposed by the Metropolitan Sessions Judge, Cyberabad, at L.B. Nagar, in Crl.M.P. No. 2490 of 2017 in ECIR. No. 7/2017, dt. 7-8-2017 to appear before the above court on every working Saturday between 10.00 am. to 5.00 pm. till further orders.

CRL. P. NO:8151 of 2017
Between:
The State of Telangana, rep. by Assistant Director, Directorate of Enforcement, Hyderabad Zonal Office, Hyderabad.

..... Petitioner/Complainant

AND

Anand Kumar Bidarkar S/o. Arun Kuamr Bidarkar, R/o. Flat No.404, N.V.S. Heights, Near Divis Laboratories Office, Gachibowli, Hyderabad - 2

.....Respondent/Accused No.3

Counsel for the Petitioner : SRI T.V.SUBBA RAO, SPECIAL P.P.

Counsel for the Respondent : SRI T.CHANDRA SHEKAR

Petition under Section 439 (2) of Cr.P.C., praying that in the circumstances stated in the petition and the grounds filed herein, the High Court may be pleased to cancel the bail order granted by Metropolitan Sessions Judge, Cyberabad, at LB Nagar in Crl.MP.No.2530/2017 in ECIR No.7/2017 in Crime No.341/2017 dated 25.07.2017 for the offences under Sec. 3, 4 19(1) of Prevention of Money Laundering Act in favour of Accused No.3 in the interest of justice.

CRL.P.MP. NO. 8665 OF 2017:

Petition under Section 482 of Cr.P.C., praying that in the circumstances stated in the petition filed herein, the High Court may be pleased to direct the respondent/accused No.3 to appear before the investigating agency i.e. petitioner's department by suspending the condition imposed by the Metropolitan Sessions Judge, Cyberabad, at L.B. Nagar, in Crl.M.P. No. 2530 of 2017 in ECIR. No. 7/2017 in Crime No. 341/2017, dt. 25-7-2017 to appear before the above court on every working Saturday between 10.00 am. to 5.00 pm. till further orders.

The Court made the following Common Order:

"These Criminal Petitions are filed under Section 439(2) Cr.P.C. by the Assistant Director, Director of Enforcement, Hyderabad Zonal Office, Hyderabad, to cancel the bail granted to the respondents-A.1 to A.3 by Metropolitan Sessions Judge, Cyberabad at L.B.Nagar (for short, 'the Court below') by order dated 07.08.2017 in Crl.M.P. No.2490 of 2017 in ECIR No.7 of 2017 and the order dated 25.07.2017 in Crl.M.P. No.2530 of 2017 in ECIR No.341 of 2017.

2. Heard Sri T.Y.Subba Rao, learned Special Public Prosecutor for the petitioner in both the petitions, Sri R. Satyanarayana Reddy, learned counsel for the respondents-A.1 and A.2 in Crl.P. No.7503 of 2017, and Sri T.Chandra Shekar, learned counsel for the respondent-A.3 in Crl.P. No.8151 of 2017, apart from perusing the material available on record.

3. The case and contention of the prosecution is as follows:

On 20.05.2017 at 18-00 hours, the *de facto* complainant-Smt. K.Sailaja, Branch Manager of HDFC Bank, Chandanagar Branch, lodged a report with the police alleging that in the course of their banking business, three accounts were opened in the month of May, 2014, as per the guidelines of the bank. The bank was informed that the account holders were dealing in import-cum-trading business having licence, issued by the Director General of Foreign Trade for imports and exports and the customers gave written requests to the bank for foreign outward remittance in the form of advance payments for importing goods and quoted the license obtained for the said purpose. The customers have submitted proforma invoice along with request for making advance import remittances. As per the regulations, the customers have to submit bill of entry to the bank within stipulated period of 180 days as prescribed in Foreign Exchange Management Act, 1999. The customers have initiated 92 transactions within a short span of around 40 days amounting to approximately Rs.31.60 crores, the bank started following up of the customers for submissions of bill of entry well before the timeframe. In spite of telephone calls, there was no response from the customers and when the bank officials visited the premises of customers in the month of August, 2014, it was found that the customers were not present in the mentioned address and vacated the premises. On noticing the breach of FEMA by these customers, the bank filed STRs with FLU IND on 04.11.2015 in respect of all the three customers on account of failure in submission of the regulatory document, *i.e.,* bill of entry, even after the stipulated time after filing of STRs by the bank, the Enforcement Directorate through office of the Joint Directorate, Enforcement Directorate, Hyderabad, Zonal Office, started investigation in the matter. The Enforcement Directorate informed the bank that in depth scrutiny of proforma invoice reveals that the same were fabricated/forged to facilitate foreign exchange remittances to overseas entities. On these allegations, this case is registered in ECIR No.7 of 2017 of Directorate, Enforcement for the offences punishable under Sections 3, 4, 19(1) of the Prevention of Money Laundering Act, 2002 (for short, 'PML Act').

4. Learned Special Public Prosecutor for the petitioner-Enforcement Directorate would submit that the respondents-A.1 and A.2 and other accused floated three dummy firms in the name of persons known to them on the pretext of arranging loans to them; the respondent-A.1 got huge amounts transferred into these accounts by way of RTGS transfers through A.2, who is in cheque discounting business and A.3 who is in iron and steel business, mostly bill-trading activity; A.2 accepted huge sums of cash from A.1 and made RTGS transfers from his account and from the accounts of other traders into the accounts specified by A.1 for monetary consideration; A.3 opened several firms in the capacity of Director and Partner for trading in iron and steel products; A.3 in connivance with A.1 and A.2 reflected several bogus transactions in his books of account and transferred huge amounts by way of RTGS into several bogus and fictitious firms' accounts opened by A.1 in the guise of payments towards supplies by A.1's firms; A.3 indulged in bill transactions only without dealing with physical goods; the invoices issued to the firms are non-existent and dummy firms opened by A.1; as per the investigation, huge amount was transferred into bogus accounts, thereafter remitted towards his firms, in total, Rs.31.60 crores; as per the investigation, A.3's firms made RTGS transfers into several other accounts apart from the three firms referred in the report lodged by the Manager; as per the investigation, total foreign exchange remittances made to overseas firms is approximately Rs.200 crores; the Directorate of Enforcement is conducting further investigation; all the three accused indulged in illegal remittances and they have not revealed the actual *modus operandi*; in depth the investigation is warranted to ascertain the actual quantum of remittances made to overseas firms and the purpose for which such remittances are made and the persons to whom the said cash belong to and the overseas beneficiaries.

5. The petitioner-Enforcement Directorate filed counters in the bail applications of the respondents-A.1 to A.3 and contested the matter. However, the Court below granted bail to these respondents-A.1 to A.3 *vide* order dated 07.08.2017 in Crl.M.P. No.2490 of 2017 in ECIR No.7 of 2017 and the order dated 25.07.2017 in Crl.M.P. No.2530 of 2017 in ECIR No.341 of 2017. Learned Special Public Prosecutor would submit that the grant of bail to the respondents-A.1 to A.3 is erroneous and

contrary to law, as the matter is under investigation; and ultimately, prayed to cancel the bail granted to the respondents-A.1 to A.3. In support of the contentions, learned Special Public Prosecutor has relied on the following decisions:

> **(1) Gautam Kundu v. Manoj Kumar, Assistant Director, Eastern Region, Directorate of Enforcement (Prevention of Money Laundering Act) Government of India[1],**
> **(2) Afroz Mohamad Hasanfatta v. Deputy Director and another[2].**

6. On the other hand, learned counsel for the respondents-A.1 to A.3 would submit that A.1 to A.3 are falsely implicated in this case; A.2 is only doing cheque discounting business through his firm for the last four years on commission basis at the rate of Rs.150/- per lakh and A.2 has nothing to do with the nature of business of his customers; A.1 and A.2 has nothing to do with the physical movement of the goods; the enforcement authorities have several times interrogated A.1 to A.3 and several documents were collected including the copies of license, etc.; A.3 is dealing with iron and steel business and he has no direct connection with A.1 and A.2; the ingredients of Sections 3 and 4 of the PML Act has no application; the entire material evidence is collected and there is nothing to recover from the possession of A.1 to A.3; even if the story of the prosecution is believed, the ingredients of alleged offences are not made out against the respondents-A.1 to A.3; the Court below had assigned valid reasons and granted bail to the respondents-A.1 to A.3; there is no infirmity in the bail order; and ultimately, prayed to dismiss these petitions filed for cancellation of bail orders. The learned counsel for the respondents-A.1 to A.3 has relied on the following decisions:

> **(1) State of Andhra Pradesh v. Byreddy Siddarth Reddy[3].**
> **(2) Aveena Gudipati v. Vangapandu Srikanth[4].**
> **(3) State of Telangana v. Bommareddy Rama Koti Reddy[5].**
> **(4) E.Sanjeeva Reddy v. State of A.P., Rep. by Public Prosecutor and another[6].**

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[1] Decided by Hon'ble Supreme Court on 16.12.2015 in Crl.A. No1706 of 2015
[2] Decided by the High Court of Gujarat on 05.10.2015 in Crl.M.A. (For Regular Bail) No.17000 of 2014
[3] 2015(2) ALD (Crl.) 437
[4] 2011(2) ALD (Crl.) 509 (AP)
[5] 2016(2) ALT (Crl.) 333
[6] 2011(3) ALT (Crl.) 211 (AP)

7. In view of the submissions made by both the parties, the point for determination is, whether the bail granted to the respondents-A.1 to A.3 is liable to be cancelled?

8. As per the material on record, A.1-Mahender Khatri had floated bogus firms and opened accounts in various banks and made foreign exchange remittances by submitting fabricated proforma invoices. A.2-Vinod Ohja, who is in cheque discounting business, has accepted huge cash in several crores of rupees from A.1 and infused the same into banking channels in a dubious manner using his firm and made RTGS transfers into various bank accounts specified by A.1. A.2 indulged in those transactions knowing fully well the implications of subject transactions, has rendered his services for monetary benefits from A.1. There is record to show that A.3-Anand Bidarkar, Managing Director of M/s. Ameya Smelters Private Limited started many entities in the capacity of proprietorship firms and partnership firms stating that the business activity is treating in iron and steel, ferrous and non-ferrous metals, MS scrap and transferred an amount of Rs.15 lakh and Rs.5 lakh through RTGs from the account of M/s. Sree Ganesh Enterprises to the account of M/s.G.S.Traders, on the request of A.2. Though he has no business transactions with the firms, he signed blank cheques and RTGS application forms and handed over to A.2, who made the RTGS transfers to various parties. A.3 received the amounts in cash and commission from A.2 for the RTGS transfers made by him. There is also record to show at the instance of A.2 several other parties of Delhi, Chennai, Mumbai, Kolkata etc., indulged in fictitious RTGS transfers. Most of the RTGS transfers were made by him in the name of A.1. That A.3-Anand Bidarkar along with other accused in this case carefully devised a plan to transfer amounts into various accounts through RTGS transfers and cheque transfers and subsequently utilized amounts for overseas transfers. The outward remittances were to facilitate under-invoiced imports to have a lower incidence of Customs duties or to facilitate over-invoiced exports with intent to avail export incentives such as drawback or DEPB Scheme. The outward remittances can also be proceeds of crime which could be laundered and brought back in the guise of FDI, *etc.,*

There is record to show that A.1 to A.3 indulged in outward remittance of Rs.31.6 crores from HDFC Bank, Chanda Nagar Branch, without any imports into India and caused substantial foreign exchange loss. The total outward foreign exchange remittance made by them will be at more and higher. The contention of the petitioner-Enforcement Directorate is that the subject crime requires further thorough and in-depth investigation to find out source of money and also purpose for remittance of overseas accounts. There are also allegations that A.1 to A.3 did not account the money transactions, the sources of money, *etc.,* and the beneficiaries in the foreign countries and the *modus operandi*. It is revealed that the remittances were made on the request of one person by name Ganpat Domrani. The RTGS transactions were made to several firms situated at different places.

9. The offences alleged against A.1 to A.3 are under Sections 3, 4 and 19(1) of the PML Act are cognizable and non-bailable offences. While considering the bail applications for the aforesaid offences, the provisions of Section 45 of the PML Act are required to be considered; the Court below has to satisfy twin conditions, *i.e.,* there are no reasonable grounds for believing that the applicants are not guilty of such offences, and the applicants are not likely to commit any such offence while on bail. In the bail orders, the Court below observed that there is no doubt with regard to the involvement of the respondents-A.1 to A.3 in the alleged offences under the PML Act, wherein huge amount of public money was involved. Further, the Court below observed in its orders that it is to be seen that the police filed custody petition for the purpose of investigation and the same was allowed. The respondents-A.1 to A.3 were given custody for five days. On completion of five days police custody, it can be presumed that the investigation against the respondents-A.1 to A.3 was completed with regard to obtaining the required bank account details. Learned Special Public Prosecutor submitted that even after police custody, the investigation is not completed. The Court below observed that the learned Special Public Prosecutor did not mention as to which purpose, the further investigation is required and ultimately granted bail to the respondents-A.1 to A.3. As seen from the bail orders passed in both the cases, the twin conditions required under Section 45 of the PML Act were not satisfied.

10. As per the record placed before this Court Rs.31.6 crores were remitted outward from HDFC Bank, Chanda Nagar Branch, without any imports into India and cause substantial foreign exchange loss. A.1 floated bogus firms and opened accounts in various businesses and made foreign exchange remittances by submitting fabricated proforma invoices. A.2 knowingly discounted and infused the same into banking channels in a dubious manner using his firm's name and made RTGS transfers into various bank accounts and started many proprietorship firms and partnership firms, transferred huge amounts by way of RTGS in false entities and got transferred. Though A.3 has no business transactions with number of firms, he signed blank cheques, RTGS applications and indulged in transfer of several crores of rupees, at the instance of A.2, and the money has been floated in violation of the PML Act. A.1 to A.3 were arrested in these cases on 23.06.2017 and were granted bail on 25.07.2017 and 07.08.2017 respectively. The learned Sessions Judge did not record the satisfaction of the twin conditions referred in Section 45(1)(ii) of the PML Act. The allegations are grave. Huge amount has been involved and huge loss has been caused to the State exchequer. The *modus operandi*, the names of the beneficiaries and the persons indulged in money laundering are yet to be identified. In view of the allegations leveled against the respondents-A.1 to A.3, the Investigating Officers have to examine voluminous documents and number of persons; they have to check the veracity of the bank transactions, which is a time taking process. If the respondents-A.1 to A.3 are enlarged on bail, there is every possibility of their winning over the witnesses, causing disappearance of the material documents and other evidence. Stringent punishment is prescribed for the alleged offences. Under these circumstances, there is no justification for grant of bail to the respondents-A.1 to A.3. Therefore, the bail granted to the respondents-A.1 to A.3 is liable to be cancelled.

11. In the result, the bail granted to A.1 and A.2, respondents in Crl.P. No.7503 of 2017, *vide* order dated 07.08.2017 in Crl.M.P. No.2490 of 2017 in ECIR No.7 of 2017, and the bail granted to A.3, respondent in Crl.P. No.8151 of 2017, *vide* order dated 25.07.2017 in Crl.M.P. No.2530 of 2017 in ECIR No.341 of 2017, by the Court

below, are cancelled. Accordingly, the respondents-A.1 to A.3 are directed to surrender before the Metropolitan Sessions Judge, Cyberabad at L.B. Nagar, within three (3) days from the date of this common order. Failing which, the petitioner-State is at liberty to arrest and remand the respondents-A.1 to A.3 to judicial custody.

12. The Criminal Petitions are allowed accordingly. As a sequel, miscellaneous petitions, if any, pending in these Criminal Petitions shall stand closed."

Sd/- B.SATYAVATHI
ASSISTANT REGISTRAR

//TRUE COPY//

For ASSISTANT REGISTRAR

To
1. The Metropolitan Sessions Judge, Cyberabad, L.B. Nagar.
2. The Station House Officer, Chandanagar PS, Cyberabad
3. One CC to Sri T.V. Subba Rao, Advocate (OPUC)
4. One CC to Sri T. Chandra Shekar, Advocate (OPUC)
5. One CC to Sri R.Satyanarayana Reddy, Advocate (OPUC)
6. one Spare Copy

HIGH COURT

AB
DRAFTED ON 27-11-2017

DR.SA,J

DATE: 27-11-2017

ORDER

CRL.P. NOS. 7503 & 8151 OF 2017

PETITIONS ALLOWED