IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Fifth day of December Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

CRIMINAL ORIGINAL PETITION No.24692 of 2018

IN

C.C.NO.3 OF 2017

[On the file of the Hon'ble XII Additional Sessions Judge & Designated Special Court for PMLA Cases, Chennai)

K.LIYAKATH ALI [PETITIONER / ACCUSED]

Vs

DEPUTY DIRECTOR OF ENFORCEMENT, [RESPONDENT]
DIRECTORATE OF ENFORCEMENT,
CHENNAI ZONE OFFICE,
MURUGESA NAICKEN COMPLEX,
NO.84, GREAMS ROAD,
CHENNAI 600006.
(CR.NO.3 OF 2017)

For Petitioner : MR.B.KUMAR SENIOR COUNSEL FOR
M/S.V.VIJAYASHANKAR Advocate

For Respondent : MR.N.R.RAMESH SPECIAL PUBLIC PROSECUTOR

PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

This is the third bail application and the earlier bail applications in Crl.O.P.Nos.13307 and 25485 of 2017 have been dismissed by this Court on 16.08.2017 and 18.01.2018 respectively. Though the facts of the case have been set out in detail in the orders passed by this Court in the earlier bail applications, yet, for the purpose of deciding this bail application, it may not be out of place to briefly recapitulate the allegations against the petitioner.

2. Admittedly, investigation in this case has been completed and the Enforcement Directorate has filed a complaint in C.C.No.3 of 2017 and trial has begun. The predicate offence under the IPC originated on the complaint lodged by the Deputy General Manager of Indian Bank, Chennai, to the Commissioner of Police, Chennai; eight persons, including the petitioner herein, had opened eight different current accounts in the Bank and had made outward remittances based

on fabricated Bills of Entry. The customs authorities were alerted and they froze all the eight accounts. The Deputy General Manager of Indian Bank informed the Enforcement Directorate also, pursuant to which, the Enforcement Directorate registered a separate case in ECIR No.CEZOB/5/2017 and took up investigation. Investigation conducted by the Enforcement Directorate showed that the petitioner had opened a current account, bearing No.6468307845 with Indian Bank, Thousand Lights Branch and signed all import documents and submitted the same to the Bank with a request to make outward remittance without making any actual imports. It was found that a sum of Rs.21,27,50,000/- had come into the said account, out of which, Rs.19,52,00,747/- has left the country. The import documents, viz., the Bill of Entry, etc. were found to be forged ones and it came to light that the petitioner had not actually imported any goods into India, whereas, Rs.19,52,00,747/- has gone out of India unaccounted.

3. Mr.B.Kumar, learned Senior Counsel for the petitioner reiterated the same arguments which he had made in the earlier bail applications and submitted that the provisions of the Prevention of Money-Laundering Act, 2002 [hereinafter referred to as "the PMLA"] will not apply in this case and that the petitioner could have been prosecuted only under the Foreign Exchange Management Act [for short "the FEMA"] for illegally siphoning off accounts out of India and that the offence under the FEMA is not a scheduled offence under the PMLA Act. Further, relying on the following portion of the judgment in **Nikesh Tarachand Shah vs. Union of India and another [(2018) 11 SCC 1]**, the learned Senior Counsel contended that since charge sheet has not been filed in the predicate offence under the IPC by the local police, the further detention of the petitioner in the present case is illegal.

> "31. The statutory history of Section 45, read with the Schedule, would, thus show that in its original avatar, as Clause 44 of the 1999 Bill, the section dealt only with offences under the Act itself. Section 44 of the 2002 Act makes it clear that an offence punishable under Section 4 of the said Act must be tried with the connected scheduled offence from which money laundering has taken place. "

4. Per contra, Mr.N.Ramesh, learned Special Public Prosecutor for the respondent refuted the contentions and submitted that the money generated by the accused with the help of forged documents has gone out of India and has been secreted in some unknown destination and just because the Enforcement Directorate have not been able to lay their hands on the proceeds of crime, the petitioner cannot be let off.

5. This Court gave its anxious consideration to the rival submissions.

6. Coming to the observation of the Supreme Court in **Nikesh Tarachand Shah** (supra) relied upon by the learned Senior Counsel, it is to be seen that it was made in the context of interpreting the bail provisions under the PMLA. In the said case, the issue before the Supreme Court was not whether in all cases, as a thumb rule, the trial in the PMLA case and the predicate offence should go together. In the humble opinion of this Court, the predicate offence is a trigger point for initiating prosecution under the PMLA. The investigation in the predicate offence that is normally conducted by the State police machinery may stand still for various reasons and may even be closed, that, however, will not mean that the prosecution of the offender under the PMLA would also *ipso facto* fail. That could never have been the intent of the legislature. The objective of the PMLA is to break the economic power at the hands of the offenders by freezing the ill-gotten wealth, be it in any form, so that they do not contaminate the society and pollute the State apparatus, including the judicial system.

7. Coming to the judgments in **Chhagan Chandrakant Bhujbal vs. Assistant Director, Directorate of Enforcement & another [CDJ 2018 BHC 822]** and **Raj Kumar Goel vs. Directorate of Enforcement [CDJ 2018 DHC 423]** of the Bombay High Court and Delhi High Court respectively, relied upon by Mr.B.Kumar, this Court is unable to follow the same, because, on facts, in this case, the petitioner has many names. When he opened the Bank Account, he claimed himself as Waseem Liyakath Ali, Proprietor of M/s Galaxy Impex. He has identity cards to show that he is K.Liyakath Ali. There are materials to show that he is also called Shahid Liyakath Ali and Abdul Liyakath Ali. That apart, the trial has begun and the prosecution have examined over 5 witnesses, whom the petitioner has not chosen to cross-examine for reasons best known to him. In the opinion of this Court, if this petitioner is granted bail, he would become scarce and will not be available for trial.

In the result, this petition is dismissed as being devoid of merits.

-sd/-
05/12/2018

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 XII ADDITIONAL SESSIONS JUDGE &
DESIGNATED SPECIAL COURT FOR PMLA CASES,
CHENNAI

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE DEPUTY DIRECTOR OF ENFORCEMENT,
DIRECTORATE OF ENFORCEMENT,
CHENNAI ZONE OFFICE,
MURUGESA NAICKEN COMPLEX,
NO.84, GREAMS ROAD,
CHENNAI 600006.

+2CC to M/S.V.VIJASHANKAR Advocate on payment of necessary charges SR NO.23354

CRL OP.24692/2018

Date :05/12/2018

MK:10/12/2018