IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Second day of July Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

CRIMINAL MISCELLANEOUS PETITION Nos.6569 & 6570 of 2019

IN CRL A.272/2019

MANI ANBAZHAGAN [PETITIONER]

Vs

STATE REPRESENTED BY [RESPONDENT]
DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT,
GOVT.OF INDIA, MINISTRY OF FINANCE, DEPT.OF
REVENUE, MURUGESA NAICKER COMPLEX, 84,
GREAMS ROAD, CHENNAI

Petitions praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.272/2019 on the file of the High Court, the High Court will be pleased to

(i)suspend the sentence imposed on him by the Learned XII Special Court for CBI Cases at Chennai in CC No.18 of 2017 dated 13.03.2019 and enlarge him on bail pending disposal of the above Crl.A.No.272 of 2019.(IN CRL.M.P.No.6569 OF 2019)

(ii) suspend the fine amount imposed on him by the learned XII Special Court for CBI cases at Chennai in C.C.No.18 of 2017 dated 13/03/2019 and enlarge him till pending disposal of the above Crl.A.No.272 of 2019.(IN CRL.M.P.No.6570/2019)

Order : These petitions coming on for orders upon perusing the petitions and the Memorandum of Grounds in CRL A.272/2019 on the file of the High Court and upon hearing the arguments of M/S V.RAGHAVACHARI Advocate for MR. M/S.K.KALAICHELVAN, Advocate for the petitioner and of MR.N.RAMESH, Special Public Prosecutor, on behalf of the Respondent the court made the following order:-

Mani Anbazhagan, the petitioner herein, was prosecuted by the Directorate of Enforcement in C.C.No.18 of 2017 for the offence under Section 3 punishable under Section 4 of the Prevention of Money Laundering Act, 2002, (hereinafter referred to as "the PML Act") before the XII Additional Special Court for CBI Cases, Chennai and has been convicted on 13.03.2019 for the offence under Section 4 of the PML Act and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.1 crore, in default to undergo one year rigorous imprisonment. Challenging the said conviction and sentence, the petitioner has filed the present Criminal Appeal, along with which, he has filed Crl.M.P.No.6569 of 2019 seeking suspension of sentence and bail and Crl.M.P.No.6570 of 2019 seeking suspension of fine amount imposed on him.

2.Heard Mr.V.Raghavachari, learned counsel representing Mr.K.Kalaichelvan, learned counsel on record for the petitioner and Mr.N.Ramesh, learned Special Public Prosecutor appearing for the respondent.

3.This Court is aware that for grant of bail, the petitioner is required to pass the twin tests as laid down in Section 45(1) of the PML Act. Bearing the said provision in mind, this Court now adverts to the allegations against the petitioner in the complaint filed by the Directorate of Enforcement.

4.It is the specific case of the Department that Kannan, Proprietor of B.K.Electro Tools Products, Rasool Khan, Proprietor of Bold Trend Exim, Eliyas Peer Mohammed, Proprietor of Green International, Syed Haroon and Eliyas Peer Mohamed, Partners in the firm, M.Dhaurabudhin, Proprietor of Metal Tradus, Waseem Liyakath Ali, Proprietor of Galaxy Impex, H.Basha, Proprietor of Horizon Trading and R.Immanuvel, Proprietor of Augusta Hitech Trade, were known to one Murali Krishna for quite some time. These persons approached Murali Krishna for making certain outward remittances and requested him to arrange for opening of bank accounts. Murali Krishna is a friend of one Prakash Ramasamy (PW11), who, in turn, is a friend of the petitioner. According to Prakash Ramasamy (PW11), the petitioner was in the business of assisting people in opening bank accounts. When Murali Krishna approached Prakash Ramasamy (PW11), the latter introduced the petitioner to Murali Krishna, who, in turn, introduced all the above said persons to the petitioner. The petitioner took them to the Indian Bank, Thousand Lights Branch and helped them in opening bank accounts. After the bank accounts were opened in the name of eight entities, a sum of Rs.79 crores is alleged to have been sent by the eight entities to various countries, which vanished in thin air. The Directorate of Enforcement got wind of these transactions and took up the investigation of the case.

5.The statements of Murali Krishna, the petitioner and the Branch Manager, Indian Bank, were obtained and CCTV footages were also obtained by the Directorate of Enforcement. On coming to know that the Directorate of Enforcement is behind them, except Waseem Liyakath Ali and Syed Haroon, rest of the accused absconded and their whereabouts are not yet known. The Directorate of Enforcement was able to arrest Waseem Liyakath Ali and Syed Haroon. The petitioner was interrogated by the Directorate of Enforcement for a period of 3 months and his statements under Section 50 of the PML Act, were recorded on 6 occasions. His house was searched and his bank accounts were scrutinized. Thereafter, the Directorate of Enforcement felt that he had complicity in the offence and so, he was arrested on 17.08.2016 and since then, he has been in custody. While in custody, he faced the trial and has been convicted and sentenced, as aforesaid. Thus, for the last two years, he has been in custody and the sentence imposed on him is 7 years rigorous imprisonment with fine of Rs.1 crore. Of course, that cannot by itself, be a reason to suspend the sentence in view of Section 45 of the PML Act.

6.In this case, the complaint in C.C.No.18 of 2017 has been filed only against the petitioner and separate complaints have been filed against Waseem Liyakath Ali in C.C.No.3 of 2017 and others. Thus, it is not the case of the Department that the petitioner had conspired with the eight entities in sending Rs.79 crores abroad. Had that been so, the respondent would not have filed a separate complaint against him and instead, he would have been arraigned as a co-accused with others with the aid of Section 120-B IPC.

7.Thus, the gravamen of the allegation against the petitioner is that he had facilitated for opening the bank accounts in the Indian Bank, Thousand Lights Branch. It is also alleged that he had handed over the import documents to the Indian Bank, which later turned out to be forged ones. However, it is the specific case of the prosecution that he had received a commission of Rs.3,45,000/- for the service rendered by him. In his statement to the Directorate of Enforcement, which is admissible, he has candidly accepted that on the introduction of Murali Krishna, he took the above said seven persons to the Bank and assisted them in opening accounts. He has also stated that, there was a mediator by name Mukesh who accompanied him to the bank. Strangely, in this case, Murali Krishna, though cited as a prosecution witness, was not examined. However, his statement to the Directorate of Enforcement has been marked as Ex.P37, Ex.P38 and Ex.P39.

8.Mr.V.Raghavachari, learned counsel for the petitioner, placed strong reliance on these statements to show that the petitioner was introduced for the first time to the seven principal accused only by Murali Krishna and by no stretch of imagination, the principal accused would have shared their clandestine operation with the petitioner. He further contended that, at the most, the petitioner could be held liable to have received a sum of Rs.3,45,000/- from the eight entities as commission for having facilitated in the opening of the bank accounts, for which, he has been in prison for over two years. He further contended that the prosecution initiated against Waseem Liyakath Ali and Syed Haroon have been stayed by this Court.

9.There appears to be sufficient force in the submission of the learned counsel for the petitioner, inasmuch as the prosecution should have examined Murali Krishna as a witness and his previous statements, viz. Ex.P37, Ex.P38 and Ex.P39 are not substantive evidence. The fact remains that the petitioner was in custody during trial and it is not the case of the prosecution that the petitioner was responsible for the non-examination of Murali Krishna during trial. The question of drawing adverse inference under Section 114 (g) of the Indian Evidence Act, 1872, for non-examination of Murali Krishna, would be decided by this Court during the final disposal of the appeal. As alluded to above, it is not the case of the prosecution that the petitioner had conspired with the seven accused in siphoning off Rs.79 crores out of India. It is their case that he had actively assisted them in the opening of eight bank accounts.

10.In the opinion of this Court, in the absence of conspiracy, the petitioner would have been the best witness for the prosecution against Waseem Liyakath Ali and others, whom, he is said to have taken to the Indian Bank, Thousand Lights Branch for opening bank accounts. Strangely, he has not been shown as a prosecution witness in those prosecutions. However, during the course of arguments on 19.07.2019, Mr.Raghavachari, learned counsel for the petitioner submitted that the petitioner is ready and willing to be a prosecution witness against the others and that, the petitioner will also file an affidavit to that effect.

11.Today, Mr.Raghavachari has filed an affidavit dated 20.07.2019 sworn to by the petitioner in the presence of the Jailor, Central Prison-I, Puzhal, wherein, the petitioner has stated as follows :

> "I state that I am willing to co-operate and be a witness in the complaint lodged by the Indian Bank, Thousand Lights branch as against the accused and against whom cases have also been registered. I respectfully state that I can identify Murali Krishna and those were present in the Thousand Lights branch on 21.09.2016, 22.09.2016 and 04.10.2016. I affirm that I will fully co-operate with the prosecution."

12.Though the petitioner has come forward to be a prosecution witness in the other cases, this Court cannot compel the Department to examine him as a prosecution witness because, it is the exclusive prerogative of the prosecuting agency to enlist him as a witness. It is open to the prosecuting agency to file an application under Section 311 Cr.P.C. before the trial Court for examining the petitioner as a witness. It is not even necessary to give tender of pardon to the petitioner for enlisting him as witness in those cases because, he has not been arraigned as an accused.

13.In fact, in Laxmipat Choraria Vs State of Maharashtra [AIR 1968 SC 938], the Supreme Court has held that the prosecution can take a person who is an accused as a witness, even without resorting to tender of pardon. However, in this case, as stated above, the petitioner has not been shown as accused in the prosecutions against others.

14.As alluded to above, in this case, the finding of the trial Court is that, the petitioner had received Rs.3,45,000/- as commission for assisting the principal accused in opening the bank accounts and nothing more. It is neither the case of the prosecution nor the finding of the trial Court that the petitioner had conspired with other accused in siphoning off Rs.79 crores out of India. The minimum sentence prescribed by the PML Act for the overt act of the petitioner is 3 years rigorous imprisonment, out of which, the petitioner has already served 2 years.

15.In view of the above, this Court is of the view that the petitioner herein is entitled to the relief of suspension of sentence.

16.Coming to sentence qua fine, the trial Court has slapped a fine of Rs.1 crore on the petitioner, which he seeks to suspend on the ground that he has absolutely no means to raise the amount. Mr.Raghavachari, learned counsel for the petitioner submitted that the petitioner has no means to pay the fine and even according to the Directorate of Enforcement, no properties were available in the name of the petitioner, except a share in his ancestral property. In Satyendrakumar Mehra Vs State of Jharkhand [(2018) 15 SCC 139], the Supreme Court has held that in deserving cases, the appellate Court has the power to suspend the sentence of fine also.

17.In the opinion of this Court, this is one such case. However, the petitioner shall pay a fine of Rs.5 lakhs instead of Rs.1 crore.

18.To sum up, the substantive sentence of imprisonment and fine are suspended and the petitioner is ordered to be released on bail on his paying fine of Rs.5 lakhs and executing a bond for a sum of Rs.10,000/-(Rupees ten thousand only) with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned XII Additional Special Judge (CBI Cases), Chennai and on further condition that:

(i) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Special Judge may obtain a copy of their Aadhaar card or Bank pass Book to ensure their identity.

(ii) the petitioner shall appear before the Department on every Monday at 10.30 a.m. until further orders.

-sd/-
22/07/2019

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 SPECIAL COURT FOR
CBI & PMLA CASES, CHENNAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL.

3 THE SPECIAL PUBLIC PROSECUTOR FOR (ENFORCEMENT)
HIGH COURT, MADRAS.

4 THE DEPUTY DIRECTOR,
DIRECTORATE OF ENFORCEMENT,
GOVT.OF INDIA, MINISTRY OF FINANCE, DEPT.OF REVENUE,
MURUGESA NAICKER COMPLEX, 84, GREAMS ROAD,
CHENNAI

+1 C.C. to M/S.K.KALAICHELVAN Advocate on payment of necessary charges SR.15097

+1 C.C. to M/S.N.RAMESH Advocate on payment of necessary charges SR.15026

Order

in
CRL MP.NOS.6569 & 6570/2019

in
CRL A.272/2019

Date :22/07/2019

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rvr 24/07/2019