IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.03.2021

PRONOUNCED ON : 09.04.2021

Coram

The Hon'ble Mr. Justice **P.N.PRAKASH**
and
The Hon'ble Mr. Justice **V.SIVAGNANAM**

Crl.O.P. No. 4496 of 2021

Mohammed Riyaz .. Petitioner

Vs.

The Deputy Director,
Directorate of Enforcement,
Chennai Zonal Office-II,
Government of India,
3rd floor, III Block, B- wing,
Shastri Bhavan, Haddows Road,
Chennai-600 006 .. Respondent

Criminal Original Petition filed under Section 439 of Criminal Procedure Code praying to enlarge the petitioner on bail, pending investigation in the above C.C.No.26 of 2019 on the file of the learned XII Additional Sessions Judge and Designated Special Court for PMLA Cases, Chennai.

For Petitioner : Mr.R.Rafi Babu

For Respondent : Mr.Rajnish Pathyil
Special Public Prosecutor
(Enforcement Directorate)

ORDER

V.SIVAGNANAM,J.

This Criminal Original Petition has been filed to enlarge the petitioner on bail, pending investigation in C.C.No.26 of 2019 on the file of the learned XII Additional Sessions Court, Special Court for PMLA Cases, Chennai.

2.The petitioner herein is A1 in C.C.No.26 of 2019 on the file of the learned XII Additional Sessions Court, (Special Court for PMLA Cases), Chennai, in the prosecution launched under the Prevention of Money Laundering Act, 2002 (for short the "PMLA"). The petitioner and co-accused persons have been arrested on 05.07.2019 for the offences under Sections 3 and 4 of the PMLA. Hence, the petitioner seeks bail.

4. Learned counsel for the petitioner submitted that the punishment attracted for the offence is imprisonment for only 3 to 7 years; the petitioner has been in custody from 05.07.2019; the Supreme Court has observed that bail can be granted for the offence for which the maximum imprisonment is 7 years; the petitioner is ready to oblige any condition imposed by this Court and he would not evade the trial and pleaded to grant bail.

5.The learned Special Public Prosecutor for the respondent objected to grant bail based on the following grounds:

The petitioner/A1, by using forged identity document (Driving Licence) which was recovered at his residential place during a search by the Respondent, opened a current account with Syndicate Bank, Armenian Street Branch in the name and style of M/s Astral Exim & co., using the assumed name of "Mohammed Sammy". By using the said forged document as genuine, the Petitioner/ A1 derived a sum of Rs.14,53,69,600/-, in his account within a period of two months. After integrating the said amount from different account holders across the Country by way of receipt of RTGS/NEFT, the Petitioner/ A1 requested the Authorised Dealer bank, i.e., Syndicate bank, Armenian Street Branch to make foreign Outward remittances in the months of August and September 2015 by submitting declaration and therefore, projecting as if they were bona fide current account transactions permissible under Foreign Trade Policy without making any corresponding imports into the Domestic Tariff Area at any later point of time; the Petitioner/ A1 is having no financial background to integrate a sum of Rs. 14,53,69,600/- into his account. The integration of Rs. 14,53,69,600/-, into his account within a period of two months, that too, in an assumed name with complete anonymity is the proceeds of crime and the conduct of the Petitioner/A1 in sending a sum of USD 2,184,785 equivalent INR 14,47,87,000/-, out of the amount accrued in the account of M/s Astral Exim & Co. by signing declaration before the bank official is projecting the proceeds of crime as untainted money before the Authorised Dealer bank, who is acting as an agent of the Reserve Bank of India; the foreign outward remittances with complete anonymity and hiding the illicit origin and transferring the same to foreign country, not only affects the financial system of the country but also the sovereignty and integrity of both our and recipient nation. Thus, the petitioner/A1 committed International Trade Based Money Laundering and is liable for penal consequences under

Sections 3 and 4 of the PMLA. After completion of investigation following due process of law, based on evidences collected by the Respondent under the provisions of the PMLA and without any undue delay, the Respondent filed the prosecution complaint setting out the role played by the Petitioner/A1 and the role played by the co-accused who had acted in tandem with one another in the matter of carrying out the international Trade Based Money-Laundering.

6. We have heard Mr.R.Rafi Babu, learned counsel for the petitioner and Mr.Rajnish Pathyil, learned Special Public Prosecutor (Enforcement Directorate) appearing for the respondent and we have also perused the materials on record.

7. We have considered this petition as the fourth petition inasmuch as previously the petitioner filed Crl.O.P.Nos.30810 of 2019, 20748 of 2019 and Crl.O.P.No.10980 of 2020, which were dismissed on 07.01.2020, 29.08.2019 and 05.08.2020 respectively.

8.The Supreme Court, while considering the bail petitions in ***Nikesh Tara Chand Shah Vs. Union of India,*** reported in ***[2017 SCC Online SC 1355],*** *has held as follows:*

> *"29. It is important to notice that Section 45 classifies the predicate offence under Part A of the Schedule on the basis of sentencing. The learned Attorney General referred to a number of judgments in which classification on this basis has been upheld. It is unnecessary to refer to these judgments inasmuch as the classification of three years or more of offences contained in Part A of the Schedule must have a reasonable relation to the object sought to be achieved under the 2002 Act. As has already been pointed out, the 2002 Act was enacted so that property involved in money laundering may be attached and brought back into the economy, as also that persons guilty of the offence of money laundering must be brought to book. It is interesting to note that even in the recent 2015 amendment, the Legislature has used the value involved in the offence contained in Part B of the Schedule as a basis for classification. If for example, the basis for classification of offences referred to and related to Offences under the 2002 Act With a monetary limit beyond which such offences would be made out, such classification would obviously have a rational relation to*

the object sought to be achieved by the Act i.e. to attach properties and the money involved in money laundering and to bring persons involved in the offence of money laundering to book. On the other hand, it is clear that the term of imprisonment of more than 3 years for a scheduled or predicate offence would be a manifesily arbitrary and unjust classification, having no rational relation to the object sought to be achieved by an Act dealing with money laundering. Again a few illustrations would suffice to prove the point."

9. On perusal of records, it is alleged that the petitioner and co-accused transferred a sum of Rs.14,47,87,000/- outside the country without making any import; all the amount has been parked outside India; if the petitioner is released on bail, tampering of evidence is possible and he will evade the trial.

10. This Court, while considering the bail application in Crl.O.P.No.10980 of 2020 has observed as follows:

"8. Whereas in the case on hand, the petitioner have committed very serious offence in nature and there

are ample chances to tamper the evidences and hamper the witnesses. Now the respondent laid charge sheet and the same has been taken cognizance in C.C.No.26 of 2019 on the file of the Principal Session Judge Chennai and it is pending. This Court already dismissed the bail petition on two occasions and this Court does not find any change of circumstances to consider the bail application filed by the petitioner and this Court finds no change of circumstances to consider the third bail petition of the petitioner. Therefore this Court is not inclined to grant bail to the petitioner. However, the trial Court is directed to complete the trial within a period of twelve months from the date of receipt of a copy of this order."

11.Considering the serious nature of the offence, this Court declines to grant bail.

In the result, the Criminal Original Petition is dismissed.

(P.N.P.,J.) **(V.S.G.,J.)**

09.04.2021

Index: Yes/No
vsn

To

1.The Deputy Director,
Directorate of Enforcement,
Chennai Zonal Office-II,
Government of India,
3rd floor, III Block, B- wing,
Shastri Bhavan, Haddows Road,
Chennai-600 006

2.The XII Additional Sessions Judge and Designated Special Court for PMLA Cases,
Chennai.

3.The Superintendent of Prison,
Central Prison-II,
Puzhal.

3.The Public Prosecutor,
High Court, Madras.

P.N.PRAKASH, J.

and
V.SIVAGNANAM, J.

vsn

Pre delivery order in
Crl.O.P.No. 4496 of 2021

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