BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on: 21/05/2021
pronounced on: 01/06/2021

PRESENT

The Hon'ble Mr.Justice G.ILANGOVAN

CRL OP(MD)Nos.6883 & 6037 of 2021

Suresh N.Patel ... Petitioner/Accused No.9
(in CRL OP(MD)No.6883 of 2021)

Hitesh S Patel ... Petitioner/Accused No.14
(in CRL OP(MD)No.6037 of 2021)

Vs

State rep. through
The Assistant Director (PMLA)
Directorate of Enforcement,
Government of India,
Madurai.
No.ECIR/MDSZO/5/2018 ... Respondent/Complainant
(in both petitions)

(in both petitions)

For Petitioners : Mr.S.Prabakaran
Senior Counsel for
Mr.AK.Azagarsami Advocate
(in CRL OP(MD). No.6883 of 2021) & for

Mr.S.Karthikeyan Sekar
(in CRL OP(MD). No.6037 of 2021)

For Respondent : MR.R.Vijayarajan,
Special Public Prosecutor for Enforcement

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

COMMON PRAYER :-

For Bail in the ECIR/MDSZO/5/2018 on the file of the respondent.

COMMON ORDER : The Court made the following order :-

The petitioners are in custody from 04.03.2021. These petitions have been filed to enlarge the petitioners/accused on bail in connection with the case in ECIR No.ECIR/MDSZO/5/2018 on the file of the respondent respectively.

2. The case of the prosecution:-

i) A complaint has been lodged by the Assistant General Manager, Zonal Office of the Corporation Bank, Tiruchirappalli, to the Superintendent and Head

of the Branch, CBI, Bank Securities and Fraud Cell, No.36, Bellary Road, Ganga Nagar, Bangalore - 560 032, which was registered in Crime No.17 of 2018.

ii) The main allegation against the petitioners is that the petitioners and the others, who are family members availed loans on the basis of inflated value of the properties mortgaged and indulged in wilful diversion of funds through various group accounts. The case has been declared as fraud by the Bank on 06.12.2017. The total outstanding amount as on 07.01.2019 is Rs.390.21 Crores. These group of companies are called as 'Prabhat Group' and this group established many units in Trichy, Dindigul and Tenkasi. Their main business is located in Trichy. The total exposure of the group from various branches of the Bank as on 07.04.2014 was Rs.829 Crores. But, in the complaint, it has been stated that likely loss to the Bank is Rs.325.08 Crores. The Bank has also noticed fraudulent connotations in 34 accounts of the group in 3 of their branches. It has also noticed cash deposits of Rs.17.10 Crores during the December 2016 (demonetization period).

iii) Based upon the complaint, a case in Crime No.17 of 2018 for the punishable offences under Sections 120-B r/w 406, 420, 468 and 471 of IPC was registered. Based upon the First Information Report investigation was undertaken. Simultaneously, proceedings was also initiated and summons were issued to the petitioners. Enquiry was conducted from 16.08.2019 to 04.03.2021. So,out of these offences, the offences under Sections 120-B r/w 406, 420 and 471 of IPC are scheduled offences in terms of Section 2 (1) (y) of Prevention of Money Laundering Act, 2002. After forwarding the details of the First Information Report, the proceedings are undertaken mainly with reference to the letter No. DPBSB2018/RC.17/E/2018-CBI/BS&FC/BLR/6073, dated 20.11.2018, which was registered against the petitioners and 35 others. The CBI has not filed a Charge Sheet so far.

3. During the course of enquiry, a specific overt acts have been found and in the complaint the following allegations are made.

4. The petitioner in Crl.OP(MD)No.6883 of 2021, is alleged to have interacted with the lendor Bank for loan facilities (CC/LC/OD) from Corporation Bank in various names of family members; alleged to have looked after the Banking and financial dealings; alleged to have submitted the loan documents and RTGS/Cheques for movements of funds on the guise of genuine sales between the group concerns and other firms with the premeditated notion of cheating. Without proper trading activities, he ensured movements of funds from one group entity to another. Later, the loan funds were siphonedoff and so, he derived proceeds of crime.

5. The specific overt act against the petitioner in Crl.OP(MD) No.6037 of 2021 is that he created fraudulent transactions for the purpose of availing higher loan facility from the Corporation Bank. The bills and invoices raised within the group concerns and all the credits and debits were bogus in nature. The petitioner along with other family members master-minded such movements of funds. He is the main person, who ensured the money, which are due of the transaction and ultimately entered into the accounts of one of the group companies and also indulged in illegal activities for the purpose of maintaining the bank limits and also manipulated the accounts improperly. He also forged the income tax returns and financial statements furnished to Corporation Bank at the time of availing the loans. He furnished the bogus valuation report to the Corporation Bank. He used third party bank accounts by influencing them to lend their bank accounts, books of accounts on 87 occasions for accommodative purposes. By that process, an amount of Rs.113,89,08,395/- was laundered through various accounts of non-related entities. He also submitted the fake and fabricated partnership deeds to the Corporation Bank and also has shown bogus inflated turnover to the Banks, Income Tax Department and Sales Tax Department. He ensured that PoC of Rs.325.08 Crores obtained from the Corporation Bank was screened away after merging into the finances of running group concerns.

6. These are the main allegations that have been levelled against the petitioners as per the complaint.

7. The petitioners seek bail on the following grounds:-

It is denied that inflated values of mortgage properties were submitted. The petitioner repaid more than Rs.200 Crores interest and principal amount. Moreover, totally, Rs.43.50 Crores were also paid, which was received by the Corporation Bank. It is long term loan commenced from 2017. The value of the mortgaged properties is more than the loan availed to them. They are doing business in various fields such as, agriculture, sugar, timbers and other investments. So, fund transfer cannot be defined under Money Laundering Act. Because of the huge loss in the business, they were not in a position to repay the amount in time. Because of the demonetization process, default occurred. Without any proper basis, arrest has been made. The petitioners are ready to fully co-operate for the investigation. The petitioners have to repay Rs.360 Crores.

Whereas, the property, which was secured is worth about Rs.800 Crores and confiscation proceedings have been initiated. Moreover, all the documentary evidence has been recovered. The properties which belong to the petitioner and the other Companies are situated in Megamalai, Theni District, to an extent of 2200 acres along with the number of trees worth about more than Rs.250 Crores. Because of the order of stay passed by the Hon'ble Division Bench of this Court, the petitioners are not in a position to cut the trees and steps have been taken for vacating the stay. Moreover, the petitioners are also suffering from serious Bipolar Disorder. So, on that ground, both the petitioners seek bail.

6. Heard both sides.

7. The petitioners would rely upon the following judgments:-

1) **The State of Punjab Vs. Barkat Ram** reported in **1962 AIR 276.**

2) **Directorate of Enforcement Vs. Deepak Mahajan and Others** reported in **Manu/SC/0422/1994.**

3) **Arnesh Kumar Vs. State of Bihar and Another in Crl.A.No.1277 of 2014.**

4) **Rajbhushan Omprakash Dixit Vs. Union of India and Another in W.P.(Crl.)363/2018 & Crl.M.A.2151/2018.**

5)**N.Umashankar @ N.M.Umashankar Vs V.Janarthanan and Others in Crl.OP.Nos.3381, 3383 & 3385 of 2021.**

8. They produced documents in the typed set of papers showing the health condition of the petitioners and details of the property etc., Counter has also been filed by the respondents.

9. The case is very simple in nature. There was non-payment of secured loan by the petitioners on behalf of the Companies as mentioned in the complaint. Because of the non-payment of the loan amount, it was transferred to NPA account and the Corporation Bank Officials found smelt rat in the transaction. So,they lodged a complaint with the CBI, upon which, the case was registered as detailed above. Now, the investigation is undertaken by CBI with regard to the offences under Sections 120-B, 406, 420 etc., Simultaneously, the proceedings under Prevention of Money Laundering Act, has also initiated. Both the petitioners were arrested and remanded to judicial custody. Now, they are in custody for more than 70 days.

10. The petitioners also filed separate bail applications before the Concerned Court namely, II Additional District Court/ Special Court (CBI Cases), Madurai, which were dismissed by the orders dated 15.03.2021 and 17.05.2021 respectively. The *modus operandi that* has been adopted by the petitioners are stated above. We need not to go into those aspects.

11. A simple point, which arises for consideration is **whether in the facts and circumstances of the case, bail can be granted under Section 45 (1) of Prevention of Money Laundering Act.** This

provision has undergone amendment in the year 2018. Originally, this provision stood as,

"45. Offences to be cognizable and non-bailable.

(i) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless—]

(ii) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(iii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail: Provided that a person who is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the special court so directs:

12. This section was challenged before the Hon'ble Supreme Court in the judgment reported in **Nikesh Tarachand Shah Vs. Union of India AIR 2017 SC 5500** and the same was declared as unconstitution on various grounds. Later, the Central Government has amended this provision and after amendment, the Section reads as under:-

" ***Offences to be cognizable and non-bailable;-***

i) ' Notwithstanding anything contained in the code of Criminal Proceedure 1973 (2 of 1974), 'no person accused of an offence (under this Act) shall be released on bail or on his own bond unless

ii) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

iii) where the Public Prosecutor opposes the bail application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

- This came in to effect on 19.4.2018.

13. So, the question which arises for consideration is, **whether, the petitioners have satisfied the twin conditions set out in the Section.**

14. Before we go into this aspect,one thing must be kept in mind, the FIR was registered only after the amendment i.e., on 26.9.2018 and the proceedings were initiated on 29.11.2018.

15. The main ground that has been raised in the petition is that the petitioners are affected by Bipolar Disorder. To a specific

question put to the learned senior counsel for the petitioners, it was submitted by him that they are not pressing this ground.

16. Now, coming back, in view of the amendment, the twin conditions must be satisfied, who seeks bail. A reading of this provision, will take us to the twin conditions that are imposed in Section 37 of NDPS Act. The wording 'in both the Section' are verbatim similar in nature. So, this shows the real purpose and object for which, this amendment has been introduced. So, I am of the considered view that the Parliament thought it fit to treat the offences against the economy on par with the offences against the health. That is why, we see verbatim reproduction of words used section 37 in NDPS Act into the provision of Money Laundering Act.

17.The reason can be seen in the present day situation. At one end the economy of the country is growing and at another end, Offences against the economy, more particularly, Banking frauds are on the rise running to several Crores. The economic offences are more capable of destablishing the very sustenance of penniless Indian majority than affecting the society at large. When we approach this provision from this angle, we see more reason than one expressed in the words used. But, this is also greatly commented as draconian in nature. But as long as it remains in the Statute Book, it has to be applied with its full vigour and force.

18. So, I am of the considered view that unless the petitioners satisfy the above important condition under Section 45 (1) of the Prevention of Money Laundering Act, they cannot be granted bail even though they are in custody for more than 70 days.

19. In the light of the above discussion, we will discuss the points raised. Argument advanced by the learned Senior Counsel for the petitioners mainly revolves around the value of the secured assets of their property. According to them, value is more than what is due to the Bank; the Bank is at liberty to assess the value of the entire property and realise the amount. So, according to them, the loans obtained from the Bank have been fully secured and so, the Bank is not at loss. Further submitted that the petitioners being respectable persons from reputable family, are suffering humiliation because of their arrest and detention.

20. Next ground urged is that the entire case depends upon the documentary evidence, So, the question of tampering the evidence will not arise. So, according to the learned Senior counsel, continuation of detention will not serve any purpose. They are also ready to surrender their Passports; ready to abide any condition that may be imposed by this Court and also ready to co-operate with the investigation conducted by CBI as well as the Enforcement Directorate. According to them, these undertakings are sufficient enough for granting bail.

21. Except these grounds, no other materials have been brought on record to satisfy the important condtion that reasonable grounds exist for believing that the petitioners are not guilty of the offences.

22. Serious allegations have been levelled against these petitioners that they siphoned off the loan amount obtained from the Bank and forged documents for the purpose of laundering the money.

23. Considering the stringent provision, the amount involved, the *modes operandi* adopted, they are not entitled for Bail. Hence, both the bail Petitions are dismissed.

sd/-
01/06/2021

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/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. THE II ADDITIONAL DISTRICT JUDGE
   SPECIAL JUDGE (CBI CASES), MADURAI.

2. THE SUPERINTENDENT,
   CENTRAL PRISON, MADURAI.

3. THE ASSISTANT DIRECTOR,
   (PMLA) DIRECTORATE OF ENFORCEMENT,
   GOVERNMENT OF INDIA, MADURAI.

4. THE SPECIAL PUBLIC PROSECUTOR FOR ENVIRONMENT,
   MADURAI BENCH OF MADRAS HIGH COURT,
   MADURAI.

ORDER
IN
CRL OP(MD)Nos.6883 & 6037/2021
Date :01/06/2021

DSS
TE/VR/SAR-IV : 01/06/2021 : 7P/5C