BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Reserved on: 21/06/2021
Pronounced on:28/06/2021

PRESENT

The Hon`ble Mr.Justice G.ILANGOVAN

CRL OP(MD). No.7966 of 2021

Suresh N.Patel ... Petitioner/Accused No.9

Vs

State Rep. by
The Assistant Director(PMLA),
Directorate Enforcement,
Government of India,
(In ECIR.No.RCIR/MDSZO/5/2018). ... Respondent/Complainant

For Petitioner : Mr.Shanmuganathan.VR, Advocate.
For Respondent : Mr.R.Vijayarajan, Spl. Public Prosecutor

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

PRAYER :- For Bail in ECIR No. ECIR/MDSZO/5/2018 on the file of the respondent.

ORDER : The Court made the following order :-

The petitioner is in custody from 04.03.2021. This petition has been filed to enlarge the petitioner/accused on bail in connection with the case in ECIR No.RCIR/MDSZO/5/2018 on the file of the respondent, for the offence under Section 3 of the Prevention of Money Laundering Act, 2002 and punishable under Section 4 of the said Act.

2. (i) The case of the prosecution is that the petitioner along with other accused persons, mentioned in the First Information Report, availed loan facilities on various dates, from the year 2009, from the Corporation Bank by showing inflated valuation report of the property and after committing willful default of repayment and indulged in diversion funds and thereby, they committed various offences under Sections 406, 420, 468, 471 r/w 120-B IPC. On the basis of the complaint, given by the Corporation Bank officials, the CBI BS & FC, Bangalore, registered First Information Report in FIR No.RC.17/E/2018-BS&FC BLR.

(ii) The main allegation is that the petitioner and the other persons belongs to Patel family and they run various groups of Companies in different names. All the group of Companies are called 'Prabhat Group'. It established units in Trichy, Dindigul and Tenkasi. Their main business place is Trichy District. The total exposure of the groups from various branches of the Corporation Bank was Rs.829 Crores, as on 07.04.2014. During the course of business transactions, the Corporation Bank Officials found 34 accounts contained fraudulent transactions. The total outstanding amount was estimated as Rs.390.21 Crores. So, the case was declared as fraud by the Bank, on 06.12.2017. It has also noticed that they have made cash deposits worth about Rs.17.10 Crores during the demonetization period.

(iii) Based upon the complaint given by the Corporation Officials as mentioned earlier, the above case was registered and simultaneously, proceedings were initiated under Section 2 (1) (y) of Prevention of Money Laundering Act, 2002. The proceedings were 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 petitioner and 35 other people. The petitioner was arrested on 04.03.2021. Ever since, he is in judicial custody. It is also informed that CBI has not filed charge sheet sofar.

3. The specific allegation against the petitioner is that he interacted with the lender Bank for loan facilities in various names of family members; looked after the banking and financial dealings; submitted the loan documents and RTGS/Cheques for movements of funds on the guise of genuine sales between the different groups and other firms without genuine transactions; without proper trading activities, he ensured movements of funds from one group entity to another; Later, the loan funds were siphoned off and so, he derived proceeds of crime.

4. As detailed in the petition, bail application moved by the petitioner before the Special Court, came to be dismissed. He moved bail application in Crl.OP(MD)No.6883 of 2021. It was heard along with the bail application filed by the 14th accused in Crl.OP(MD) No.6037 of 2021 and by the common order, dated 01.06.2021, both the petitions were dismissed.

5. The earlier petition was dismissed, mainly on the ground that this petitioner has not satisfied the requirement of Section 45 (1) of Prevention of Money Laundering Act. It is also observed that the banking frauds running to several crores like economic offences are capable of destablishing the very sustenance of penniless Indian majority. Mainly on these two grounds, the earlier application came to be dismissed. This second bail application came to be filed containing some change of circumstance. The 14th accused, whose bail application was heard along with this petitioner's application, has not moved any second application.

6. During the course of argument, the learned counsel for the petitioner has submitted that the main allegation is only against the 14th accused. But, I am unable to agree with this line of argument, for the simple reason that specific overtacts as mentioned above, have been clearly mentioned in the complaint. So, the contention that only the 14th accused is responsible for the entire business transactions that was undertaken by the Company cannot be accepted, at this stage. So, this first ground pressed by the learned counsel for the petitioner, cannot be accepted.

7. The second ground is that compliance of Section 45 (1) of Prevention of Money Laundering Act. As mentioned earlier, there is a clear findings, on the part of this Court on the earlier occasion that the petitioner has not satisfied the condition that there is no material on record to show that he is not guilty of such offences.

8. Now, the learned counsel for the petitioner would make elaborate arguments on this point. In strict sense, this argument cannot be termed as a 'change of circumstance' and it can be taken only as 'further arguments' or 'clarificatory arguments'. In narrow sense, we can say that the petitioner wants to review its earlier order. But, without going into those technical aspects, let me concentrate on the arguments, advanced by the learned counsel for the petitioner, on this point.

9. A full and effective effort has been made by the learned counsel for the petitioner, on this aspect. In short, what he want to impress upon the Court, is that once Section 45 (1) as it stood before amendment in 2018, declared as unconstitutional by the Hon'ble Supreme Court in the judgment reported in Nikesh Tarachand Shah Vs. Union of India 2018 11 SCC 1, subsequent amendment in 2018, will not improve the position.

10. For better understanding, let me extract Section 45 (1) as it stood before amendment and after amendment.

Before Amendment:-

> 45.Offence 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;

After Amendment:-

Offences to be cognizable and non-bailable;-

(i) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), 'no persons 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.

11. According to the learned counsel for the petitioner, there is no much of difference between these two provisions. They are one and the same. So, as per the judgment of the Hon'ble Supreme Court in Nikesh Tarachand Shah Vs. Union of India case(cited supra) only Section 439 Cr.P.C must be taken into consideration, for deciding this petition.

12. Explaining further, on this aspect, the learned counsel for the petitioner would rely upon the following judgments:-

1) Sameer Bhujbal Vs. Assistant Director, Directorate of Enforcement in Bail Application No.286 of 2018, dated 06.06.2018.

2) Okram Ibobi Singh Vs.The Directorate Enforcement reported in 2020 SCC Onliine Mani 365.

3) Dr.Vinod Bhandari Vs.Assistant Director, Directorate of Enforcement.

4) Deepak Virendra Kochhar Vs. Directorate of Enforcement in Criminal Bail Application No.1322 of 2020, dated 25.03.2021.

13. All these cases have been decided to the effect that the amendment, does not improve the constitutional validity of the provision, so, Section 439 Cr.P.C must hold the field.

14. So, from the judgment cited by the learned counsel for petitioner, it is seen that Bombay, Manipur and Madya Pradesh High Courts have taken uniform stand. But, a different stand has been taken by the Kerala High Court in the judgment reported in Mr.Sivasankar Vs Union of India in Bail Application No.7878 of 2020, dated 25.01.2021. So, it appears that there are divergent views on this aspect.

15. So, to discuss this point, we have to go into the judgment reported in Nikesh Tarachand Shah Vs. Union of India case(cited

supra). In that case, Section 45 (1) was under dispute, in respect of offence, which are punishable more than three years under Part A of the Schedule of the Prevention of Money Laundering Act, 2002. The Hon'ble Supreme Court had discussed the origin, history and purpose etc., in an elaborate manner. It is also discussed the provision as it stood in the Bill and in the Act. Paragraph 9 of the judgment runs like this:-

> "9.When the Prevention of Money Laundering Bill, 1999 was tabled before Parliament, Section 44, which corresponds to Section 45 of the present Act, provided that several offences punishable under "this Act" are to be cognizable, and the twin conditions for release on bail would apply only insofar as the offences under the Act itself are concerned. When the Act was finally enacted in 2002 and notified in 2005, this scheme changed radically. Now, both the offence of money laundering and the predicate offence were to be tried by the Special Court, and bail is granted only if the twin conditions under Section 45 (1) are met, where the term of imprisonment is more that three years for the predicate offence. It is important to note that Clause 44 of the Bill referred only to offences under Sections 3 & 4 of the Bill, whereas Section 45 of the Act does not refer to offences under Sections 3 and 4 of the Act at all. Reference is made only to offences under Part A of the Schedule, which are offences outside the 2002 Act. This fundamental difference between the Bill and the Act has a great bearing on the constitutional validity of Section 45 (1) with which we are directly and immediately concerned."

16. This paragraph shows that the provision as it tabled in the parliament during the Bill, is not same, when it became an Act. So, this paragraph will answer the argument that has been advanced by the learned counsel for the petitioner on this aspect. This will be more cleared, when we discuss further.

17. The mischief occurred, when the provision was made only with reference to the offence mentioned in Part A of the Schedule. Later portion of paragraph 21 of the judgment reads under:-

> "21......... The change made by Section 45 is that, for the purpose of grant of bail, what was to be looked at was offences that were punishable for a term of imprisonment of three years or more under Part A of the Schedule, and not offences under the 2002 Act itself. At this stage, Part A of the Schedule contained two paragraphs - Para 1 containing Sections121 and 121 A of the Indian Penal Code, which deal with waging or attempting to wage war or abetting waging of war against the Government of India, and

conspiracy to commit such offences. Paragraph 2 dealt with offences under the Narcotic Drugs and Psychotropic Substances Act, 1985."

18. This observation of the Hon'ble Supreme Court makes the position very clear. While exercising the discretion under Section 45, for the purpose of granting bail, only the offence mentioned in para A of the Schedule which are punishable more than 3 years is the criteria and not the offence under 2002, itself. This mischief has been further taken to be explained by way of illustrations. The illustrations pointed out by the Hon'ble Supreme Court runs from paragraphs 22 to 27. Reading of the illustrations will clearly points out the cause and effect of the mischief. The mischief lies in relating the bail application provision only to the offences, which are mentioned in Para A of the Schedule, which are punishable more than three years. So, the bail provision does not related the offences, which are punishable under the Act, 2002. This is of the whole problem that caused the provision to be struck down as unconstitutional.

19. Another problem that has been pointed out by the Hon'ble Supreme Court in the above judgment. In paragraph 28 of the judgment and the same is extracted hereunder:-

> "Another interesting feature of Section 45 is that the twin conditions that need to be satisfied under the said Section are that there are reasonable grounds for believing that the accused is not guilty of "such offence" and that he is not likely to commit any offence while on bail. The expression "such offence" would be relatable only to an offence in Part A of the Schedule. Thus, in an application made for bail, where the offence of money laundering is involved, if Section 45 is to be applied, the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of the offence under Part A of the Schedule, which is not the offence of money laundering, but which is a completely different offence. In every other Act, where these twin conditions are laid down, be it the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985, the reasonable grounds for believing that the accused is not guilty of an offence is in relation to an offence under the very Act in which such section occurs. (See for example, Section 20(8) of TADA and Section 37 of the NDPS Act). It is only in the 2002 Act that the twin conditions laid down do not relate to an offence under the 2002 Act at all, but only to a separate and distinct offence found under Part A of the Schedule. Obviously, the twin conditions laid down in Section 45 would have no nexus whatsoever with a

bail application which concerns itself with the offence of money laundering, for if Section 45 is to apply, the Court does not apply its mind to whether the person prosecuted is guilty of the offence of money laundering, but instead applies its mind to whether such person is guilty of the scheduled or predicate offence. Bail would be denied on grounds germane to the scheduled or predicate offence, whereas the person prosecuted would ultimately be punished for a completely different offence namely,money laundering. This, again, is laying down of a condition which has no nexus with the offence of money laundering at all, and a person who may prove that there are reasonable grounds for believing that he is not guilty of the offence of money laundering may yet be denied bail, because he is unable to prove that there are reasonable grounds for believing that he is not guilty of the scheduled or predicate offence. This would again lead to a manifestly arbitrary, discriminatory and unjust result which would invalidate the Section."

20. So, reading of this paragraph will make out the mischief more clear. In my opinion, if the twin conditions that have been imposed under Section 45 (1) as it stood before the amendment, did relate to the offences under the Prevention of Money Laundering Act, 2002, the problem would not have occurred.

21. So, in the light of the above discussion, now, let us go back to the Pre and Post amendment Provision.

Pre-Amendment	Post-Amendment
(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	(i) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), 'no persons accused of an offence (under this Act) shall be released on bail or on his own bond unless

22.This comparative reading shows that Section 45 (1) has been completely replaced.

23. So, from complete replacement of earlier provision by new provision, I am of the considered view that it completely removed the mischief, which clause (1) played earlier. Now, all the

offences, which are punishable under the Act, are covered. The twin conditions must be satisfied. Even, a strong effort has been made by the learned counsel for the petitioner to convince this Court about the difference between the Pre and the Post-amendment Provision. In the light of the discussion made above I unable to satisfy myself. So, I am of the considered view to fall in line with the judgment of the Kerala High Court mentioned above. So, in the light of the discussions, the other judgments, cited by the learned counsel for the petitioner with regard to the legislative competency as discussed in AIR 1972 2205, 1999 1 L.W 245 and AIR 1972 SC 2250 need not be discussed in detail and we are discussing entirely different point.

24. So, in the light of the above discussion, I am of the considered view that still the twin conditions must be satisfied by the petitioner.

25. Here, the learned Special Public Prosecutor has raised his objection and filed counter also. In the counter, a ground has been taken to the effect that the petitioner is also involved another case in FIR No.RC 229 2019 A 0006. So, according to him, the petitioner is continuously engaged in certain sort of illegal activities. So, he is not entitled for bail.

26. As observed in the earlier bail order, the second condition that no material has been brought on record to show that he is not guilty of the offences still holds good. By this petition, the position is not improved.

27. So, I am of the considered view that nothing has been brought on record to show that the petitioner is not guilty of the offences punishable under the Act, except stating that he is suffering from several ailments. But, in the earlier stage an attempt was made by the petitioner to show that he was affected by Bio-polar disorder. But, during the course of argument, this ground was not pressed by the petitioner. Now, he says that he is suffering from several ailments and would say that he is undergoing treatment in the Prison Hospital.

28. The attempt, on the part of the petitioner to get bail on this ground, cannot be appreciated. The argument that since the entire case rests upon the documentary evidence, the chance of tampering the evidence does not arise, though may be correct, but, for the above said reasons, this ground cannot be considered.

29. As mentioned in the earlier order, even though, this provision is commented heavily as draconian in nature, but, as long as it remains in the statute Book, it has to be applied. No escape route can be found.

30. So, I am of the considered view that no change of circumstance even by this clarificatory discussion has been made out. So, the petition deserves dismissal and accordingly, the same is dismissed.

sd/-
28/06/2021

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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 ASSISTANT DIRECTOR(PMLA),
DIRECTORATE ENFORCEMENT,
GOVERNMENT OF INDIA,
MADURAI.
(IN ECIR.No.RCIR/MDSZO/5/2018).

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.7966 of 2021
Date :28/06/2021

DSS
JM/PN/SAR III/28.06.2021/9P/4C