



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

Reserved on	Pronounced on
12.07.2021	16.07.2021

PRESENT

The Hon`ble Mr.Justice G.CHANDRASEKHARAN
CRL OP(MD) . No.9011 of 2021

WEB COPY

Vilayutham

... Petitioner/Accused No.1

Vs

The State represented by its
The Inspector of Police,
Jetty Police Station,
Ramanathapuram District.
Crime No. 95 of 2021.

... Respondent/Complainant

For Petitioner : Mr.S.Vidhyasagar
Advocate.

For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

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

PRAYER :-

For Bail in Crime No.95 of 2021 on the file of the Respondent Police.

ORDER :The Court made the following order :-

The petitioner, who was arrested on 17.06.2021 for the offences punishable under Sections 9, 50, 39(1), 51(1) of the Wildlife (Protection) Act, 1972 in Crime No.95 of 2021 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the defacto complainant had secret information about the illegal possession of sea cucumber. On 11.04.2021 at about 14.00 hours, proceeded to coconut thope of Vilayutham at Nethaji Nagar along with police party. On seeing the police party, Vilayutham and his son Vilva Bhuvaneshwaran and some others had escaped. The police gave a chase and apprehended one Thangasamy. The police made a search of the place and found preserved and unpreserved sea cucumber. They also found white colour Maruti Omni van bearing Registration No.TN-01-R-3236, Bolero Maxi Truck Mahindra Plus bearing Registration No.TN-65-T-5338. In Maruti van, they found 13 sacks with this sea cucumbers, 12 bags each with 40kg, one bag with 20kg. In Bolero Truck, they found 20 sacks each containing 50kg of sea cucumber, in a two wheeler bearing Registration No.TN-65-AM-3024, they found 25kg of sea cucumber and <https://hc.services.ecourtsofgov.in/services> bearing registration NO.TN-63-BX 7967, they found 26kg of sea cucumber. That apart, they also found 565kg of preserved sea cucumber and 689kg of un-preserved sea cucumber.



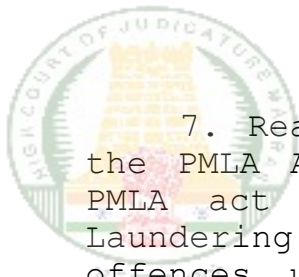
Totally, they found 2800kg of sea cucumber. Therefore, this case came to be registered.

3. The learned Counsel for the petitioner submitted that the petitioner is innocent and he has been falsely implicated in this case. The petitioner is a heart patient and he is taking treatment in the prison hospital. The police has no powers to file charge sheet/complaint in this case. Only the forest officials mentioned in Section 55(1) of the Wildlife (Protection) Act, 1972 are empowered to file complaint under this Act. Therefore, he seeks bail to the petitioner.

4. The learned Additional Public Prosecutor appearing for the State strongly opposes this petition on the ground that the investigation is not yet completed. It is his further submission that the petitioner has 13 previous cases pending against him and all these cases are registered for violating the provisions of Wild Life Protection Act. He further submits that if the petitioner is released on bail, there is a possibility of his committing in similar offences again. The value of the sea cucumber worth is about Rs.2,00,00,000/-. Therefore, he prays for dismissal of this petition.

5. It is seen from the allegations made in the complaint and the submissions made that the case of the prosecution against this petitioner and other accused is that they have illegally possessed 2800kg of sea cucumber. The value of this sea cucumber is worth about Rs.2,00,00,000/-. The main objection of the learned Additional Public Prosecutor is that the petitioner has 13 previous cases pending against him, registered under the Wild Life (Protection) Act.

6. In response to this submission, the learned Counsel for the petitioner submitted that Section 51 of the Wild Life (Protection) Act provides only for enhancement of fine from Rs.10,000/- to Rs.25,000/- for second or subsequent offence, keeping the imprisonment the same for the first offender and subsequent offender at imprisonment for not less than 3 years, but upto 7 years. It is his further submission that Section 51-A of the Act imposed certain conditions while granting bail. Similar conditions imposed in section 45 of the Prevention of Money Laundering Act, was declared as unconstitutional as it violates Article 14 and 21 of the Constitution of India, in the judgment of the Honourable Supreme Court in **Nikesh Tarachand Shah vs Union of India** reported in **2018 (11) SCC (Cri) .302**. The provision under Section 51A of the Wild Life (Protection) Act is pari materia with Section 45 of PMLA Act 2002. Therefore, this provision is also unconstitutional and therefore, the twin conditions imposed in Section 51A of the Wild Life (Protection) Act is unconstitutional. The petitioner cannot be denied for the reason that he has previous cases pending. These previous cases were registered by the authorities, with a view to harass the petitioner. Therefore, he seeks bail to the petitioner.



7. Reading of the aforesaid judgment shows that Section 45 of the PMLA Act was declared as unconstitutional for the reason that PMLA act has scheduled offences and the offences under Money Laundering Act. Money Laundering is a stand alone offence. The offences under money laundering are dealt under Section 3 and punishment is dealt under Section 4. Prevention of Money Laundering Act 2002 has a Schedule. The Schedule details various offences under various penal Codes viz., the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Explosives Substances Act, 1908, the Unlawful Activities (Prevention) Act, 1967, Arms Act, 1959, the Wildlife (Protection) Act, 1972, the Immoral Traffic (Prevention) Act, 1956, the Prevention of Corruption Act, 1988, the Explosives Act 1884, the Antiquities and Arts Treasures Act, 1972, the Securities and Exchange Board of India Act, 1992, the Customs Act, 1962 the Bonded Labour System (Abolition) Act, 1976, the Child Labour (Prohibition and Regulation) Act, 1986, the Transplantation of Human Organs Act, 1994, the Juvenile Justice (Care and Protection of Children) Act, 2000, the Emigration Act, 1983, the Passports Act, 1967, the Foreigners Act 1946, the Copyright Act, 1957, the Trade Marks Act, 1999, the Information Technology Act 2000, the Biological Diversity Act, 2002, the Protection of Plant Varieties and Farmers' Right Act 2001, the Environment Protection Act 1986, the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002, the Companies Act, 2013 and the Customs Act, 1962. The accused while committing offences under these Acts, if commits offence of Money Laundering, he can be prosecuted under Prevention of Money Laundering Act. That is not the case in Wild Life (Protection) Act. The Wild Life (Protection) Act deals with offences under Wild Life Protection Act and has provisions for grant of bail and punishment. Therefore, no parallel can be drawn between these two enactments. There are similar enactments like Narcotic Drugs and Psychotropic Substances Act, which provides for these twin conditions. Taking into consideration that unlike other enactments, Prevention of Money Laundering Act sought to impose restrictions for the bail on the basis of offences committed under Part-A of the Schedule, the Court declared that provision is unconstitutional. Dealing with PMLA Act, the Honourable Supreme Court has observed in the above stated judgment as follows:

" 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

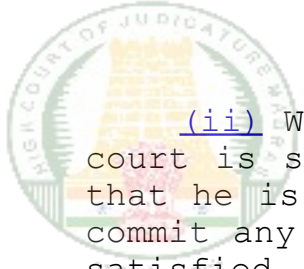


Schedule, which is not the offence of money laundering, but which is a completely different offence. In every other Act, where these twin conditions are laid down, be it the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and *Psychotropic Substances Act*, 1985, the reasonable 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. "

Therefore, the Honourable Supreme Court found that the offences based on sentencing of the Scheduled offence would have no rational relation to the object of the 2002 Act and to the granting of bail for offences committed under the Act and therefore, have to be annulled on the basis of the equal protection clause.

8. With regard to the submission that the twin conditions imposed in Section 51-A of the Act will not stand in the way of considering the petition for bail in favour of the accused is concerned, this Court is of the view that both these provisions in *stricto sensu* cannot be considered in *pari materia* with each other. Section 45 of PMLA Act deals with grant of bail to a person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule. When such person files a bail application, he cannot be released on bail, unless

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



(iii) While 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. Only if these two conditions are satisfied, the accused is entitled for bail.

9. Section 51-A of the Wild Life (Protection) Act deals with a situation where a person, who had been previously committed an offence under this Act, shall not be released on bail, unless

(a) the Public Prosecutor has been given an opportunity of opposing the release on bail; and

(b) 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.

10. There is a difference between these sections. Section 45 of PMLA Act speaks about schedule offence and the offence of money laundering. Scheduled offences may come under I.P.C., NDPS Act or P.C. Act. Whereas Section 51-A of the Wild Life (Protection) Act deals with a person, who had been previously convicted of an offence under this Act. ie., the offences covered under the Wild Life (Prevention) Act. This Court is of the considered view that the aforesaid judgment relied on by the learned Counsel for the petitioner for proposition that the twin conditions imposed under Section 51A of the Act will no way affect the petitioner's claim for bail is not applicable. As stated above, the petitioner along with other accused were found in illegal possession of 2800kg of preserved and non-preserved sea cucumber, which is valued at Rs.2,00,00,000/-. Sea cucumber is becoming an extinct species. Number of cases registered for illegal capture and possession of sea cucumber is on the increase. It is used for food and traditional medicine. It costs even crores in the international market. Destroying the sea cucumber can have a serious impact on marine eco system.

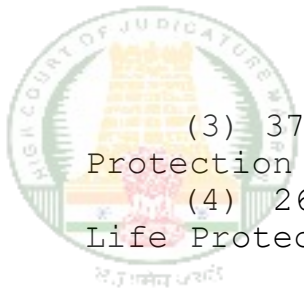
11. With regard to the legal submissions made by the learned Counsel for the petitioner that the police is not empowered to file final report in this case, there is no second opinion about that. However, the police officer not below the rank of Sub-Inspector of Police, has power to search and arrest and detain a person involved in commission of offences under this Act. It means that the police can register a case and they have to send the records to the concerned officer of Forest Department for filing complaint. Therefore, filing of F.I.R., and arrest of the accused and seizure of material objects cannot be found fault and it is in accordance with law.

12. Petitioner has 13 previous cases and the details are as follows:

(1) 01/2009, under Sections 9, 39(1), 50, 51(1) of Wild Life Protection Act;

<https://hcservices.ecourts.gov.in/hcservices/>

(2) 03/2009, under Sections 9, 39(1), 50, 51(1) of Wild Life Protection Act.



(3) 37/2010, under Section 9, 39(1), 50, 51(1) of the Wild Life Protection Act.

(4) 26/2011, under Sections 9, 39(1), 50, 51(1) of the Wild Life Protection Act.

(5) 33/2011, under Sections 9, 39(1), 50, 51(1) of the Wild Life Protection Act.

(6) 13/2017, under Sections 9, 39(1), 50, 51(1) of the Wild Life Protection Act.

(7) 03/2004, under Section Tamilnadu of Wild Life Protection Act, 1972.

(8) Ramnad Range W.L.O.R.No.06/2009 U/S Schedule 1 (iv)C of Wild Life Protection Act 1972 Amendment Wild Life Protection Act 2002 Section 9, 39(1), 50, 51(1) of the Wild Life Protection Act.

(9) Ramnad Range W.L.O.R.No.07/2009 U/S Schedule 1 (iv)C of Wild Life Protection Act 1972 Amendment Wild Life Protection Act 2002 Section 9, 39(1), 50, 51(1) of the Wild Life Protection Act.

(10) Thangachimadam Forest W.L.O.R.No.06/2011 U/S Section 9, 39(1), 50, 51(1) of the Wild Life Protection Act 1972. Amendment Wild Life Protection Act 2002.

(11) Thirupalakudi PS Cr.No.96/2013, under Section 5(a) of Explosive Substances Act 1908, 9, 39(1), 50, 51(1) of the Wild Life Protection Act 1972. Amendment Wild Life Protection Act 2002.

(12) Q Branch Case 01/2008, under Section 13(1)(2) Unlawful Activities Prohibition Act and 10(a)(4) Unlawful Activities.

(13) Rameswaram Town PS Cr.No.96/2004, under Section 341, 332, 343, 323, 353 I.P.C., r/w 51(1) of Wild Life Protection Act 1972.

13. This list shows that the petitioner is a repeat offender under the Wild Life Protection Act. The investigation in this case is not completed. This Court finds merits in the submission of the learned Additional Public Prosecutor that if the petitioner is released on bail, there is possibility of his committing similar offence again. Taking all these facts and circumstances, this Court is not inclined to grant bail to the petitioner. If the petitioner has any health issues, he can avail treatment from prison hospital or Government Hospital on the advise of prison Doctor. In this view of the matter, this Criminal Original Petition is dismissed.

Sd/-

16/07/2021

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

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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 INSPECTOR OF POLICE,
JETTY POLICE STATION,
RAMANATHAPURAM DISTRICT.
2. THE OFFICER INCHARGE, DISTRICT PRISON,
RAMANATHAPURAM.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL OP (MD) No.9011 of 2021

Date :16.07.2021

VB/JM/SAR.III/27.07.2021/7P/4C