IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :10.03.2022

Pronounced on :16.03.2022

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.Nos.3372 and 3779 of 2022

Crl.O.P.No.3372 of 2022:

S.R.Kavin Sidhaarth, M/A 42 years
Earlier Known as R.Senthil Kumar
S/o Ramachandran .. Petitioner

/versus/

State rep.by
The Deputy Director,
Directorate of Enforcement,
Chennai. .. Respondent

Prayer: Criminal Original Petitions have been filed under Section 439 of Cr.P.C., praying to enlarge the petitioner on bail in Spl.C.C.No.7 of 2021 pending trial on the file of the XII Additional Special Judge for CBI Cases at Chennai.

For Petitioner :Mr.R.Sami

For Respondent :Mr.N.Ramesh
Spl.Public Prosecutor
(Enforcement)

Crl.O.P.No.3779 of 2022:

S.Kiyam Mohammed, Male/Aged
about 36 years)
S/o Shri.Shajahan .. Petitioner

/versus/

The Deputy Director,
Directorate of Enforcement
Chennai Zonal Office II
Govt.of India
5th Floor, III Block, B-Wing,
Shastri Bhavan, Haddows Road,
Chennai 600 006. ..Respondent

Prayer: Criminal Original Petitions have been filed under Section 439 of Cr.P.C., praying to enlarge the petitioner on bail in Spl.C.C.No.7 of 2021 pending trial on the file of the XII Additional Special Judge for CBI Cases at Chennai in ECIR No.ECIR/CEZO-II/05/2017, dated 01/04/2017 on the file of the respondent.

For Petitioner :Mr.B.Dhanasekaran

For Respondent :Mr.N.Ramesh
Spl.Public Prosecutor
(Enforcement)

COMMON ORDER

The petitioner in **Crl.O.P.No.3372 of 2022**, who arrested on 22.09.2019 and remanded into judicial custody on 24.09.2019 for the alleged offence punishable under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 in Crime No.ECIR/CEZO-II/05/2017 on the file of the respondent police, seeks bail.

The petitioner in **Crl.O.P.No.3779 of 2022**, who arrested and remanded into judicial custody on 13.01.2022 for the alleged offences punishable under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 in Crime No.ECIR/CEZO-II/05/2017 on the file of the respondent police, seeks bail.

2.The bail petitions in Crl.O.P.No.3372/2022 and Crl.O.P.No. 3779/2022 are by the first and the seventh accused respectively in Spl.C.C.No.7 of 2021 pending on the file of XII Additional Special Judge for CBI cases, designated to try cases under PMLA offences.

3.The factual background for the arrest of these petitioners and the grounds canvassed for bail are as below:-

Initially, CCB-1, Chennai registered a case in Cr.No.63/2017 dated 06/03/2017 under Sections 465,467,468, 471 and 420 IPC against P.Kannan and others. The crime being related to scheduled offences under the Prevention of Money Laundering Act, 2002, (in short "PMLA"), ECIR NO.CEZO-II/05/2017 dated 01/04/2017 was recorded by the Directorate of Enforcement/ Respondent herein.

4.The material gathered by the respondent reveals that, one B.Kannan claiming himself as a sole Proprietor had opened a current account in Indian Bank, Thousand Light Branch in the name and style of M/s B.K.Electro Tool Products. This account was in operation only for three months i.e between 31/08/2016 and 05/10/2016. During this period there was cross border wire transaction of USD 1,205,550.69 equivalent of Indian Rs.8,09,17,723.00 on 13 different occasions towards direct import of goods.

5.The Assistant Commissioner of Police, Forgery Investigation Wing, Greater Chennai, investigating Cr.No.63/2017, informed the Directorate of Enforcement about the arrest of B.Kannan, the second accused in this case. Pursuant to this information, the Officers of

Directorate of Enforcement went to Puzal Prison, where the said B.Kannan was detained. Under Section 50 of the PMLA, the statement of B.Kannan was recorded in the presence of the jail authorities.

6.The statement of the said B.Kannan revealed that, he registered M/s B.K.Electro Tool Products at the behest of one Iqbal. He stated that the photograph found in the account opening form and KYC form is not his photo. The signatures found in the import documents are not his signatures. He was working as housekeeper for a salary of Rs.13,500/- p.m.

7.Based on the information furnished by B.Kannan (A-2), Extensive comparison of the photo found in the account opening form of M/s B.K.Electro Tools Products leads to identify of Kavin Sidhaarth, who was known as Senthil Kumar during the relevant period.

8.During the interrogation, Kavin Sidharth (A-1) had admitted that he opened the current account using the ID card of B.Kannan and affixing his photograph. He represented in the Bank under the assumed name B.Kannan. He also admitted that he affixed the signatures found in the account opening form and KYC documents. He disowned the signatures found in the 13 import documents related to the fund transferred to M/s Flourish Noble Ltd, HongKong.

9.The said Kavin Sidhaarth @ SenthilKumar had admitted that he along with his friend Thamim Ansari(A-3) registered a business in the name and style of M/s Levensun Global Solutions Private Limited, in his real name Senthil Kumar. He transferred a sum of Rs.4,78,39,852.00 from the bank accounts maintained at ICICI Bank, Nungambakkam and IOB, Royapuram to the account of M/s B.K.Electro Tool Products, Indian Bank, Thousand Light Branch and layered the money.

10.He had admitted that he opened a bank account in the name and style of M/s I Square Enterprises as a sole Proprietor in his real name Senthil Kumar and from that account, he transferred a sum of Rs.2,59,06,487.00 to the account of M/s B.K.Electro Tool Products and layered a sum of Rs.2.59 crores.

11.While admitting his active participation and contribution to the crime, he has implicated one Shahul as the person, who exploited his poverty and instigated him to lend the name. However, he has not disclosed the real identity of the said Shahul.

12.In respect of the company M/s Levensun Global Solutions Pvt Ltd, one of its Directors Kavin Sidhaarth @ Senthil Kumar attributes his action to Shahul, without disclosing his identity. The other Directors Thamim Ansari attributes his action to one Abdul Haleem. When Abdul Haleem was confronted with the statement of Thamim Ansari (A-3), he has admitted that he floated the company M/s Levensum Global Solution with ROC, based on the details and request made by one Ameen from Burma Bazaar, Chennai for a commission of Rs.5000/-. The said Ameen of Burma Bazaar used to get instructions from one Kiyam Mohammed. He identified the photograph of Kiyam Mohammed (A-7), but has not disclosed the identity of Ameen to verify his statement regarding Ameen.

13.The money so, layered into the account of M/s B.K. Electro Tool Products was later siphoned out from the country by way of outward remittance. 5 certificates in Form-15 CB in favour of M/s B.K. Electro Tool Products was used for making the foreign outward remittances for a tune of USD 514,471.20 equivalent INR 3,45,45,182.90

through SBT, Mount Road Branch. Mr.Murali Krishna Chakrala, S/o Muniram Prasad Chakrala of Kondamitta Srikalashasti, Chittoor District, the Chartered Accountant, who gave these 5 certificates, had stated that he gave these certificates at the request of Kiyam Mohammed. Also had admitted that at the request of Kiyam Mohammed he has given certificates in Form 15 CB in favour of M/s Metal Traders, M/s Horizon Trading, M/s Geo Visits Tours & Travels, M/s Neo Space Trading and M/s Premier Solutions. All these companies were found to be shell companies floated to facilitate the laundering of tainted money.

14.The said Murali Krishna Chakrala (A-6) had furnished the photograph of Kiyam Mohammed (A-7), VAT registration details and IEC application and also the identified Kiyam Mohammed and his place of business.

15.Kiyam Mohammed (A-7) in his statement has admitted his role in floating M/s B.K.Electro Tool Products. According to his statement, he received the documents relating to the said company from one Haleem at the instruction of one Jalaludeen (who later died in the year 2018) and handed over to the Chartered Accountant Murali Krishna (A-6).

16.While the facts narrated above, based on documents and statement of witnesses, which corroborates the voluntary statements of the persons accused, complaint ECIR/CEZO-II/05/2017 under Sections 44 and 45 of PMLA for offence under Section 3 punishable under Section 4 filed before the trial Court. The same was taken on file in Spl. C.C.No.07/2021 by the Special Court, Kavin Sidhaarth @ Senthil Kumar (A-1) arrested on 22/09/2021 and Kiyam Mohammed (A-7) arrested on 13/01/2022 are before this Court seeking bail.

17.The version of Kavin Sidhaarth (A-1), who is the petitioner in Crl.O.P.No.3372 of 2022 is that, in the year 2016, he met one Shahul friend of B.Kannan for job. The said Shahul and his friend Iqbal, informed him that they wanted to start a business at Dubai and keep him as working partner in that business. As such, M/s Levensun Global Solution Pvt. Ltd. was registered. In which himself and Thamim Ansari (A-3) were its Directors. On the instruction of Shahul and Iqbal, he registered M/s I Square Enterprises. On their instruction, he went to Indian Bank Thousand light and gave his driving license, PAN card, Voter ID and photographs and opened the bank account in Indian Bank.

Without his knowledge and with connivance of the Bank officials, bank account in the name of B.Kannan, affixing his photograph was opened. He is not aware of any transaction alleged in the complaint. Only on arrest of Shahul and Iqbal, he came to know about the foul played by them.

18.On receipt of summon from the respondent, he appeared on 22/09/2021 and told everything which was within his knowledge and belief. He was kept in illegal custody for three days and remanded to judicial custody on 24/09/2021. Till filing of the complaint, they did not seek for custodial interrogation. The second accused already released on bail. The investigation completed and final report filed. Therefore, his custody is no more required.

19.The version of Kiyam Mohammed(A-7) the petitioner in Crl. O.P.No.3779 of 2022 is that, he is innocent of the said commission of the offence as alleged against him. He never knowingly involved in any illegal act as alleged. He is not aware of the M/s B.K. Electro Tools Products and its activities or persons involved in it. He has not given any statement voluntarily admitting his role in the alleged crime. The statement is retracted and the same cannot be relied by the respondent to keep him under prolonged custody, even after filing of complaint on completion of investigation

20.Heard the learned counsels representing for the petitioners and the learned Special Public Prosecutor for the respondent. The documents relied by the prosecution and annexed to the complaint perused.

21.The origin of the case is that the complaint lodged by the Deputy General Manager of Indian Bank on against 8 account holders who has sent outward remittance by submitting forged title of goods/Bill of Entry. The Custom Authorities found those outward remittance (imports) are not genuine and instructed the bank to freeze those accounts vide letter dated 14/10/2016. These current accounts were opened hardly one and half month prior to this complaint. This complaint was only the tip of the iceberg. B.Kannan in whose name the account of M/s B.K. Electro Tools stood was arrested, he has spilled beans making damning disclosure of crime of money laundering. This has prompted the Assistant Commissioner of Police, CCB to intimate the respondent.

22.The investigation held by the respondent, *prima facie* provides evidence for the respective role of the accused persons in registering shell companies using forged documents and layer the tainted money into the accounts of these company, later pooling it into the account of M/s B.K. Electro Tools and by producing fake outward remittance siphoning the layered tainted money as genuine. The petitioners herein, who are the first and seventh accused, had played pivotal role in the crime and but, for their participation, the chain of laundering could not have got completed.

23.The investigation has brought to light that Kavin Sidharth @ Senthil Kumar (A-1) adopting the same modus operandi through 3 more bank accounts had layered a sum of Rs.25.70 crores to launder the tainted money. To facilitate the laundering, Mani Anbazhagan (A-4) has submitted the import documents in the name of Murali Krishna (A-5) on behalf of M/s B.K. Electro Tool Products to the Indian Bank, Thousand Light Branch . The said Murali Krishna (A-5) who filed the Account Opening Form of M/s B.K.Electo Tool Products in his own handwriting attributes to Kiyam Mohammed as the person, who instructed to fill the form and produce import documents. The investigation initiated in this case with a crime proceeds of USD 1,205,550 equivalent INR 8,09,17,723/- in connection with B.K.Electro Tools Product. It has ended up in indentification of crime proceeds to a tune of USD 8,237, 007.95 equivalent INR 59,47,03,760.46 through 7 other banks.

24.The trail of the money layered into the account of M/s B.K. Electro Tool Products, had passed several stage, which is typical for any crime of money laundering. The limited admission of the petitioners in their bail petition, leave along their voluntary statement sufficient enough to hold that there is *prima facie* materials to prosecute them. Neither the conduct of A-1, who has impersonated B.Kannan using alias name to screen his identity and the conduct of A-7, who received the document relating to B.K. Electro Tools Products from A-8 and A-6, the Charteredd Accountant, produced to the Bank for the outward remittance, do indicate this petitioner is not merely a name lender and innocence person as pleaded. Particularly, this petitioner has collected Form 15 CB from A-6. As per the statement of A-6, he gave these 5 Form 15CB certificates at the request of Kiyam Mohammed. Also had disclosed that at the request of Kiyam Mohammed, he has given certificates in Form 15 CB in favour of other five companies viz M/s Metal Traders, M/s Horizon Trading , M/s Geo Visits Tours & Travels, M/s Neo Space Trading and M/s Premier Solutions. All these companies were found to be shell companies.

25.Turning to the twin conditions laid in Section 45(1) of the PMLA regarding grant of bail, it is suffice to say that the validity of this provision when came to be challenged in ***[Nikesh Tarachand Shah v. Union of India and another]*** reported in ***[2018(11)SCC-1]***, the Hon'ble Supreme Court declared this provision as unconstitutional and violative of Article 14 and 21, in view of the classification, without nexus to the object. Later, the Parliament cured the defect and amended the provision. The amended provision is now under challenge before the Hon'ble Apex Court, but the operation of Section 45 (1) of the PMLA is not stayed and in force. Till the Court declares this provision unconstitutional, no presumption can be drawn that a validly passed legislation is unconstitutional.

26.Dehors of the restrictions and twin conditions laid in 45 (1) of the Act and the question of its constitutional validity, in the instant case , the incriminating materials before the Court and the gravity of the crime and its intricacy, clearly indicates that if the petitioners are released on bail, pending trial, there is every reason to believe that the evidence will be tampered and witnesses will be gained. Therefore, this Court dismisses both the bail petitions.

27.Accordingly, these Criminal Original Petitions are dismissed.

16.03.2022

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Index:yes
Speaking order/non speaking order

Dr.G.JAYACHANDRAN,J.

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Common Order made in
Crl.O.P.Nos.3372 and 3779 of 2022

16.03.2022