IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :15.06.2022

Pronounced on :22.06.2022

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.OP.Nos.11276 and 11277 of 2022

Crl.O.P.No.11276 of 2022:

S.R.Kavin Sidhaarth, M A 42 years
Earlier known as R.Senthil Kumar .. Petitioner

/versus/

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

Prayer: Criminal Original Petition has been filed under Section 439 of Cr.P.C., praying to pass an order enlarging the petitioner on bail in Spl.C.C.No.7 of 2021 on the file of the Hon'ble XII Additional Special Judge for CBI Cases at Chennai on such terms and conditions.

For Petitioner :Mr.R.Sami

For Respondents :Mr.N.Ramesh,
Spl.P.P.(ED cases)

Crl.O.P.No.11277 of 2022:

S.Kiyam Mohammed .. Petitioner

/versus/

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

Prayer: Criminal Original Petition has been filed under Section 439 of Cr.P.C., praying to enlarge the petitioner on bail in pending trial Spl.C.C.No.7 of 2021 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.M.R.Sheik Abdul Rahim

For Respondents :Mr.N.Ramesh, Spl.P.P.(ED cases)

COMMON ORDER

The Directorate of Enforcement has registered case in ECIR No.ECIR/CEZO-II/05/2017 under Sections 3 and 4 of the Prevention of Money-Laundering Act, 2002(in short "PMLA Act") in connection with money laundering to a tune of USD 1,205,550.69 approximately equal to INR 8,09,17,723.00. On completion of investigation, Directorate of Enforcement has filed a complaint in which Kavin Sidhaarth, the petitioner in Crl.O.P.No.11276 of 2022 is arraigned as first accused. Kiyam Mohammed, the petitioner in Crl.O.P.No.11277/2022 is arraigned as 7th accused.

2. Kavin Sidhaarth (A-1) was arrested on 24/09/2021 and Kiyam Mohammed (A-7) was arrested on 13/01/2022. These two petitioners earlier in Crl.O.P.No.3372 of 2022 and Crl.O.P.No.3379 of 2022 sought bail and it came to be dismissed recording reason for dismissal. The petitioners have revived their plea through these two petitions.

3. Beside pleading that they are innocent and the persons with no wherewithal to deal huge money of magnitude of several crores of rupees, they contented that they were used as tool by the other prime accused by name Siddique and Shagul (A-5 and A-6). Quoting the filing of complaint and the witnesses relied by the prosecution are all official witnesses, the learned counsels appearing for the petitioners states that the apprehension of tampering witness is not tenable. Further, pointing out that A-2 to A-6 in this case were not arrested and parity should be applied to all accused. Further, he pleaded that, in view of the challenge of the vires of Section 45 of the PMLA Act, the embargo of twin conditions referred in Section 45 of the PMLA Act cannot be a reason to deny bail to the petitioners, who have been in prison for more than 9 months in case of A-1 and more than 5 months in case of A-7.

4. The learned Special Public Prosecutor (ED Cases) submitted that, the reasons stated by this Court vide its order dated 16/03/2022 still hold good and there is no change of circumstances as claimed by the petitioners. As far as A-1[Kavin Sidhaarth], he is the accused, who has actively participated in the crime of opening current account in Indian Bank, Thousand Light Branch in the name and style of M/s B.K.Electro Tool Products showing one B.Kannan as its Proprietor. In fact, this petitioner (A-1) impersonated as Kannan and started the current account, which was used for laundering the money. This accused[A1] in the habit of changing his name to cover up his identity. Earlier, his name was (Senthil Kumar) for the sake of opening account, he has given his photo, but documents of Kannan. If the accused [A1] is released on bail, he will go incognito by changing his style, name and identity.

5.As far as A-7 [Kiyam Mohammed], he is the creator of the forged identity documents and forged import documents and that were used to open the account in the name and style of M/s B.K.Electro Tool Products in seven Banks to send the proceeds of crime outside the country to an extent of nearly 59 crores in Indian Rupees. The other accused namely Murali Krishna (A-5 ) and Abdul Haleem (A-8) have given statement incriminating this petitioner (A7). Therefore, if the petitioner(A7) released on bail, he may flee away from the country using the money parked outside the country.

6. Beside, the learned Special Public Prosecutor (EB Cases) submitted that, the final report clearly disclose the criminality of this accused to be charged under Sections 3 and 4 of PMLA Act. The twin conditions imposed in Section 45 of the PMLA Act, which though under challenge before the Hon'ble Supreme Court is still in force. Pendency of the petition challenging vires of any statute will not by itself make the statute otiose. In fact, the Hon’ble Supreme Court recently dismissed SLP. (Cri) No.620-622 of 2022 filed seeking bail in PMLA offence, holding that the accused has to satisfy the twin conditions imposed under Section 45of PMLA.

7. The learned Special Public Prosecutor (ED Cases) further submitted that some of the accused in this case were not arrested because the investigation has not disclosed possession of crime proceeds with them and their gravity of crime was minor. Whereas, these two petitioners are the prime accused but for them this crime of money laundering could not have completed.

8. Considering the rival submissions and the perusal of records, this Court finds that there is nothing new to consider the bail petition again. The objections raised by the respondent through the Special Public Prosecutor are sustainable. The magnitude of the crime and the pivotal role played by these two petitioners in successful completion of the crime, renders their bail petitions deserve void of merit. Therefore, these Criminal Original Petitions are dismissed.

-sd/-
22/06/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 XII ADDITIONAL SPECIAL COURT
FOR CBI CASES, CHENNAI

2 DEPUTY DIRECTOR,
DIECTORATE OF ENFORCEMENT,CHENNAI

3 THE DEPUTY DIRECTOR,DIRECTORATE OF ENFORCEMENT CHENNAI ZONAL
OFFICE-II, GOVT OF INDIAN,5TH FLOOR,
III BLOCK B WING, SHASTRIBHAVAN,
HADDOWS ROAD, CHENNAI-06.

4 THE SPECIAL PUBLIC PROSECUTOR
FOR ED CASES, HIGH COURT, MADRAS.

5 THE SUPERINTENDENT,CENTRAL PRISON,
PUZHAL JAIL, CHENNAI

CC to M/S R. SAMI Advocate on payment of necessary charges Sr.9711

CC to M/S N.RAMESH Advocate on payment of necessary charges Sr.9743

CRL OP.Nos.11276 and 11277 of 2022

Date :22/06/2022

RVR 23/06/2022