IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.06.2022

Date of Verdict : 24.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.13789 of 2022

Abdul Haleem ... Petitioner

Vs.

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

PRAYER: Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail in Spl. C.C.No.7 of 2021 in ECIR No. ECIR/CEZO-II/05/2017 on the file of the learned XII Additional Special Judge for CBI & PMLA Cases at Chennai and on the file of the Deputy Director, Directorate of Enforcement, CZO, Chennai respectively.

For Petitioner : Mr.A.Ganesh

For Respondent : Mr.N.Ramesh
Special Public Prosecutor for ED cases

ORDER

The petitioner, who was arrested and remanded to judicial custody on 28.01.2022 for the offences under Sections 3 & 4 of the Prevention of Money Laundering Act, 2002 (herein after referred to as "the PML Act") in Spl.C.C.No.7 of 2021 in ECIR No. ECIR/CEZO-II/05/2017 on the file of the learned XII Additional Special Judge for CBI & PMLA Cases at Chennai, seeks bail.

2. The case of the prosecution is that the Enforcement Case Information Report (ECIR) No.CEZO/05/2014 dated 01.04.2017 was recorded by the respondent on the basis of an FIR registered in Crime No.63 of 2017 for the offences under Sections 465, 467, 468, 471 and 420 of IPC, registered by the City Crime Branch-1, Egmore, Chennai, as against the accused persons. Since, these offences are scheduled offences under Sections 2(1)(x) and 2(1)(y) of the PML Act, ECIR was recorded by the respondent.

3. During the course of the investigation, it was noticed that one of the business entities arraigned as suspected person in the name and style of M/s. B.K.Electro Tool Products and it is a sole proprietorship concern. Its proprietor one B.Kannan opened a current account in the name of M/s. B.K. Electro Tool Products with Indian Bank, Thousand light Branch, Chennai, on 31.08.2016. He was assigned with current account number and the same was operated from 31.08.2016 to 05.10.2016. During that period, the first accused made foreign outward remittance to the tune of 1,205,550.69 USD equivalent to INR 8,09,17,723.00 on thirteen different occasions towards direct import of goods.

4. The first accused had opened the current account by impersonating himself as B.Kannan and he submitted fabricated documents in respect of M/s. B.K.Electro Tool Products. The said B.Kannan was examined under Section 50 of the PML Act and it revealed that in the current account opening form he had not affixed his photographs and signature. On investigation, identified the accused person, who affixed the photographs and signature in the account opening form. Thereafter, he was examined and on his admission revealed that he entered into the Indian Bank for the purpose receiving cheque book in the name of M/s. B.K.Electro Tool Products.

5. The third accused one A.Thamim Ansari, who layered a sum of Rs.4,78,39,852/- through the business entity viz., M/s. Levensun Global Solutions Pvt. Ltd., into the account of M/s. B.K.Electro Tool products. This fund layered by the petitioner herein using his business entity in the name of M/s.Levensun Global Solutions Pvt. Ltd. The fourth accused submitted the account opening form and import documents on behalf of M/s. B.K.Electro Tool Products to the Indian Bank attributed to one Mukesh from Anna Nagar and one Murali Krishna as a person at whose behalf he had acted, but failed to identify the persons.

6. The fifth accused filed account opening form in the name of M/s. B.K.Electro Tool Products attributed to one Kiyam Mohammed (A7) as a person at whose behalf he had acted, but failed to identify the person. Therefore, the investigation initiated in the case with proceeds of crime of 1,205,550.00 USD equivalent INR 8,09,17,723/-, in respect of M/s. B.K.Electro Tool Products. In one and same IEC and PAN number in the name of M/s. B.K.Electro Tool Products, the first accused made overseas wire transfer to the tune of 4,346,715.87 USD equivalent INR 33,79,45,856.39 and the second accused made overseas wire transfer of 3,890,292.08 USD equivalent INR 25,67,57,904.07 without making any corresponding imports in the country. After completion of investigation the prosecution filed complaint in C.C.No.46 of 2021 and now transferred to the learned XII Additional Special Court for CBI Cases, Chennai, in Spl.C.C.No.07 of 2021.

7. The learned counsel appearing for the petitioner would submit that the petitioner was arrested and remanded to judicial custody on 28.01.2022. He is suffering from kidney problem and was under constant medication. Therefore it is not able to take medication in prison and now he is suffering from acute pain and in urinating. Apart from that, he is also suffering from Piles and bleeding. However, the jail authorities are not providing proper treatment. In support of this, the petitioner's wife also filed an affidavit before this Court.

7.1. He further submitted that the ingredients of the offence under Section 3 of the PML Act is not attracted as against the petitioner, since he is neither importer nor made any outward remittance of foreign exchange. In fact, his name is not found in the letter of Commissioner of Customs or in the FIR or in the case registered by the respondent herein. He has no connection or whatsoever with the second accused or his company M/s. B.K.Electro Tool Products. He is neither director nor employee of M/s. Levensun Global Solutions Pvt. Ltd. Therefore, he cannot be held responsible for the transaction between the accused 1 & 3. Even as per the statement recorded from the petitioner, he helped the accused 1 & 3 to open the account in the name of M/s. Levensun Global Solution Pvt. Ltd., whereas the accused 1 & 3 are only the name lenders and not real owners as alleged by the prosecution.

7.2. He further submitted that on perusal of documents, the company was registered with the Registrar of Companies and the directors are the accused 1 & 3. In fact, on perusal of ICICI bank account opening form, the names of the accused 1 & 3 are available. Even according to the case of the prosecution, the petitioner alleged to assist them in opening the bank account. Further the first accused gave statement that he is the partner and proprietor of M/z. Levensun Global Solutions Pvt. Ltd. He also accepted his signatures found in the Memorandum of Articles of Association submitted before the Registrar of Company and the photo therein. He never stated that the petitioner assisted him to open the account. Likewise the third accused had accepted the signature in the account opening for and the articles of Association of M/s. Levensun Global Solutions Pvt. Ltd., and he did not even whisper about the name of the petitioner as if he helped to open the account. That apart, there is no evidence to show that the petitioner was only operated the account of M/s. Lavensun Global Solutions Pvt. Ltd.,

7.3. He further submitted that the respondent had searched the premises of the petitioner on 24.09.2021 at business premises and residential premises and it shows that Section 17 of PML Act is not complied with. On perusal of the complaint there is no document to show that on which information received or reason to believe the authorization to search order was passed. The Joint Director has to record his reasons of belief and thereafter he has to pass an order of authorization. Therefore, the search itself vexatious and violation of Section 17(1) of the PML Act. During search they had seized various files and they were not controverted when they examined the petitioner under Section 50 of the PML Act. It shows that the filed which were seized from the premises nothing to do with the case.

7.4. He also pointed out that after effecting amended to Section 45(1) of the PML Act, the words “under this Act” are read to sub-Section (1) of Section 45 of the Act. On a comparative reading of Section 45(1) of the Act, pre-amendment and post-amendment, as could be observed, original sub-Section 45(1)(ii) of the Act is neither revived or resurrected by the amending Act and the notification dated 29.03.2018 is silent about its retrospective applicability. In this regard to relied upon the judgment of the Hon'ble Supreme Court of India reported in 2020 (13) SCC 791 in the case of P.Chidambaram Vs. Directorate of Enforcement, which reads as follows :-

“23. Thus from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the Rule and refusal is the exception so as to ensure that the Accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the Accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the Accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a Rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case to case basis on the facts involved therein and securing the presence of the Accused to stand trial.”

The Hon'ble Supreme Court of India while granting bail observed that irrespective of nature and gravity of charges, the precedent of another case alone will not be the basis for either grant of refusal of bail.

7.5. He further submitted that no substantive amendment was proposed with express intention to apply limitations on grant of bail as contained under Section 45(1) of the Act, in respect of persons accused of such offences which were earlier. Therefore, the twin limitations in grant of bail contained under Section 45(1) are not applicable qua a person accused of such offences. He further prayed that the petitioner may be granted interim bail for a period of one year for getting proper treatment for his various ailments.

8. The learned Special Public Prosecutor for ED cases filed counter and submitted that the petitioner is arrayed as A8 and involved in the economic offence. He further submitted that the petitioner along with other accused made foreign outward remittance to the tune of Rs.59.47 crores. Hence he vehemently opposed to grant of bail to the petitioner.

9. Heard Mr.A.Ganesh, learned counsel appearing for the petitioner and Mr.N.Ramesh, learned Special Public Prosecutor for ED cases, appearing for the respondent.

10. On perusal of the counter affidavit filed by the respondent revealed that the main complain was filed as against five accused in which the first accused alone arrested. The economic offences particularly the international trade based money laundering carried out by the high society and carried out by exploiting the poverty of the name lenders. It is the version of the third accused that he acted at the behest of the petitioner. Further as per the version of the seventh accused, he received forged identity document and forged import documents of M/s.B.K.Electro Tool Products from the petitioner herein. The combined reading of the version of the co-accused establishes the involvement of the petitioner in the offence of money laundering.

11. The petitioner involvement in the financial transaction of M/s. B.K.Electro Tool Products, search of his residential place resulted in unearthing many skeleton in his cupboard in the form of operating the proceeds of crime sent outside the country through the net banking. The combined reading of the main complaint and the supplementary complaint establishes that all the ingredients required to prove the offence of money laundering and the role played by the petitioner are clearly made out. The petitioner indulged in layering of funds into the account of M/s. B.K.Electro Tool Products through the name lenders viz., the accused 1 & 3 from their account in the name of M/s.Lavensun Global Solutions Pvt. Ltd., and M/s. I Square Enterprises and operated the accounts where the proceeds of crime

parked at Hong Kong.

12. Further it is not the version of the prosecution that the petitioner is a Director of M/s. Levensun Global Solutions Pvt. Ltd., or employee of M/s.I Square Enterprises. He engaged the accused 1 & 3 as a name lender for layering the funds through the above said companies. The first and third accused while tendering their statement under Section 50 of the PML Act, made it clear that they had the life style of hand to mouth and had no wherewithal to mobilize such a huge funds. Further the first and third accused identified that they acted at the instance of the petitioner. The petitioner operated the accounts that received proceeds of crime at Hong Kong as shown in the material object filed along with the complaint.

13. Further as per the version of the seventh accused, he received forged identity documents and forged import documents of M/s. B.K.Electro Tool Products from the petitioner. The second accused also stated that he has not operated the account of M/s. B.K. Electro Tool Products while tendering statement under Section 50 of the PML Act. Thus, it is clear that the petitioner is a highly placed person in the society and carried out the offence of money laundering by engaging name lender by exploiting their economic status and that too without leaving any piece of evidence of his involvement in the crime.

14. Insofar as the authorization for search is concerned as contemplated under Section 17 of the PML Act, there is a mandate to file an application before the ajdudicating authority as contemplated under Section 8(4) of the PML Act, for retention of document seized during the course of search. In fact, the respondent followed the procedure in the matter of search and the petitioner also participated in O.A.No.580 of 2022 before the Adjudicating authority by way of filing the reply statement. The Joint Director issued the authorization for search and it is open for the petitioner to examine him about the fulfilment of the necessary conditions to issue authorization under Section 17 of the PML Act for conducting search. There is overwhelming evident as against the petitioner that he carried out the offence of money laundering in the matter of sending the proceeds to the crime to the tune of 59.47 crores to the undisclosed beneficial owner and end-use at Hong Kong, thereby the petitioner has committed very heinous white-collar crime and he is the main conspirator of the offence of money laundering.

15. Insofar as the twin conditions as contemplated under Section 45 of PML Act, the Hon'ble Supreme Court of India repeatedly held in many cases that the duty of the Court is to examine the jurisdictional facts including the mandate of Section 45 of the PML Act, which must be kept in mind. Even post Nikesh Tavachand Shah Vs. Union of Idia & anr. case, the Section 45 of the PML Act saw

amendment vide from 19.04.2018. After effecting amendment to Section 45(1) of the PML Act, the words “under this Act” are read to sub Section (1) of Section 45 of the PML Act. On a comparative reading of Section 45(1) of the PML Act, pre-amendment and post-amendment, as could be observed, original sub-Section 45(1)(ii) is neither revived or resurrected by the amending Act. The notification dated 29.03.2018 is silent about its retrospective applicability. Therefore, the legislature has not withdrawn the twin conditions from Section 45 of the PML Act, though in the case of Nikesh Tavachand Shah Vs. Union of Idia & anr., the Hon'ble Supreme Court of India has struck down the same as being unconstitutional. Therefore, the twin conditions under Section 45 of the PML Act still remain in the Statute book.

16. Further the Hon'ble Supreme Court of India has directed the concerned Court to hear the matters on merits, without application of the twin conclusion contained in Section 45 of the Act, as declared as unconstitutional. But the twin conditions still continue. The amendment Act of 2018 which introduces the expression “under this Act” to Section 45 of the PML Act, in no uncertain terms can obliterate or dilute the direction issued by the Hon'ble Supreme Court of India. In view of the offence committed by the petitioner this Court is not satisfied with the grounds raised by the petitioner for grant of bail. Therefore, the twin conditions as contemplated under Section 45(1) of the amendment Act have to satisfy not withstanding of the judgment of the Hon'ble Supreme Court of India in the case of Nikesh Tavachand Shah Vs. Union of Idia & anr.,

17. Insofar as the submission made by the learned counsel appearing for the petitioner with regard to treatment, no report in respect of special treatment or urgency or surgery filed by the petitioner before this Court. Therefore, this Court finds that the petitioner is not entitled for interim bail on the medical ground. In case of any medical emergency and if the petitioner is required to be admitted to the hospital for any treatment, the petitioner can very well approach the authority concerned for proper treatment. If any urgent required made by the petitioner, the authorities concerned are directed to give adequate treatment to the petitioner.

18. In view of the above discussion, this Court is not inclined to grant bail to the petitioner. Accordingly, the Criminal Original Petition stands dismissed.

-sd/-
24/06/2022

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 THE XII ADDITIONAL SPECIAL JUDGE,
FOR CBI & PMLA CASES, CHENNAI

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI

3 DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT,
CHENNAI ZONAL OFFICE, GOVERNMENT OF INDIA 5TH FLOOR,
III BLOCK B -WING, SHASTRI BHAVAN,
HADDOWS ROAD, CHENNAI 600 006.

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

CC to M/S.A.GANESH Advocate on payment of necessary charges Sr.9892

CRL OP.13789/2022

Date :24/06/2022

RVR 27/06/2022