



CrI.OP.No.18814 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.08.2022

Date of Verdict : 26.08.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CrI.O.P.No.18814 of 2022

Vikas Kalra

... Petitioner

Vs.

The State rep. by
The Assistant Director,
Directorate of Enforcement,
Government of India,
Chennai.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 Cr.P.C, seeking to enlarge the petitioner on bail in connection with ECIR/CEZO-I/14/2017 on the file of the respondent.

For Petitioner : Mr.Sriram Panchu
for Mr.S.Ranjith Kumar
For Respondent : Mr.P.Sidharthan,
Special Public Prosecutor
for ED cases

ORDER

The petitioner, who was arrested and remanded to judicial custody on 13.06.2022 for the alleged offences punishable under Sections 3 and 4



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of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as “the PML Act”) in F.No.ECIR/CEZO-I/14/2017 pending on the file of the respondent, seeks bail.

2. The FIR has been registered in F.No.ECIR/CEZO-I/14/2017 with the allegation that during the year 2015, nineteen firms fraudulently opened current accounts in Punjab National Bank, Mint Street, Chennai, and the unknown public servants of the bank had entered into criminal conspiracy with 19 account holders and abused their official position and in furtherance to the criminal conspiracy, they were sending foreign exchange to Hong Kong without genuine business transactions. The modus operandi was that the remittances from various banks to their accounts by way of RTGSs and presented to make request, issued by foreign suppliers for 100% advance remittances. Each remittance amount was kept in such a way that it could not exceed the threshold limit of 1,00,000 USD in order to circumvent the regulatory requirements and applicability of RBI. There were around 700 advance remittances made for the import through various current accounts opened during the period



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from January 2015 to May 2015 to the tune of INR 424.58 Crores. All the advance remittances were routed through Nostro account maintained with HSBC, New York. The Bank verified the addresses of the said account holders on the advice of the Concurrent Auditors and found that none of the units were functioning in the available addresses. Thus, it is a case of money laundering through shell companies and there has been loss of foreign exchange to the tune of INR 424.58 Crores.

3. Further, it is alleged that the 19 bank accounts of Punjab National Bank, carried out 772 transactions and sent foreign exchange to the extent of USD 70871531.02/- equivalent to INR 449,78,62,434/- outside India under the guise of advance import remittance. Despite, no import had taken place and the majority of the amount got diverted to Hong Kong and United Arab Emirates. As far as the petitioner is concerned, he incorporated several entities along with the bank accounts.

4. The learned Senior Counsel appearing for the petitioner submitted that according to the prosecution, the petitioner had



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incorporated a company under the name and style of M/s. Mehul Mining Ltd., at Hong Kong and opened a bank account and had received a sum of Rs.14,20,52,090/- from India under the guise of export advance but corresponding exports to India were never made. Further allegations is that the petitioner is the Director of two other companies viz., M/s.Sunrise Trading Pvt. Ltd., registered at Hong Kong and M/s.VS Trading Pvt. Ltd., registered at Hong Kong. He received similar export advances through the above said two companies at Rs.4,74,83,511/-and totally a sum of Rs.18,95,35,601/-, which are proceeds of the crime since unaccounted tainted money has been sent from untraceable dummy entities accounts in India to Hong Kong under the guise of export advance.

4.1. He further submitted that the petitioner was never involved any such money laundering activity and crime as alleged by the prosecution. During the year 2007, the petitioner joined with Hindustan Coca Cola Company, Delhi. Therefore, the petitioner has no role to play in incorporation of the companies which were allegedly incorporated by the petitioner. No amount have been transferred to the personal account of the petitioner at any point of time and no evidence to show that the



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petitioner is involved in the offence under Section 13(2) and 13(1)(d) of the Prevention of Corruption Act.

4.2. He further submitted that the petitioner name does not find in the FIR and it has been registered only against 19 other entities and unknown officials of Punjab National Bank. Therefore, no offence is made out under the PML Act against the petitioner, since there is no proceeds of crime. Further under Section 3 of the PML Act, the generation of proceeds of crime is not an offence and it is only the act of legitimizing the tainted money and projection of the same as untainted money alone would constitute as an offence under the said Act. There is absolutely no material on record to show that the petitioner has involved in the generation of proceeds of crime or its concealment or attempt to legitimize or project the tainted money as untainted money.

5. Per contra, the learned Special Public Prosecutor appearing for the ED Cases submitted that during the investigation, it revealed that the petitioner has incorporated M/s. Mehul Mining Limited at Hong Kong



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and the said company is the recipient of the proceeds of crime. Further the petitioner was also the Director of other two companies viz., M/s. Sunrise Trading Pvt. Ltd., and M/s.VS Trading Pvt. Ltd., at Hong Kong. They carried out international trade based money laundering at the instance of undisclosed beneficial owner and end-use, which caused depletion of foreign exchange reserves of India. Foreign exchange as advance was received by the petitioner through M/s Mehul Mining Ltd., to the tune of Rs.14,20,52,090/- on 23 occasions from India but corresponding exports to India were never made. Likewise M/s. Sunrise Trading Pvt. Ltd., and M/s.VS Trading Pvt. Ltd., received remittances as advance towards export to the tune of Rs.4,74,83,511/- from India but corresponding exports to India were never made.

5.1. He further submitted that the petitioner received a sum of Rs.18,95,35,601/- through the above said three companies which are nothing but proceeds of crime since unaccounted tainted money has been sent from untraceable dummy entities accounts in India to Hong Kong. The money was sent with the sole intention of siphoning the money out of



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the India. He further submitted that the person who are not charged in the predicate offence case, but who had dealt with proceeds of crime directly or indirectly had also comes under the ambit of PML Act, as it is treated as an independent offence as observed in a catena of cases. The investigation is under progress and there is every possibility that the petitioner may tamper/destroy the incriminating evidences available against him. The petitioner may also dissuade the persons who are acquainted with the facts of the cases from disclosing the same to the respondent. Therefore, he vehemently objected to grant bail to the petitioner.

6. Heard Mr. Sriram Panchu, learned Senior counsel appearing for the petitioner and Mr.P.Sidharthan, learned Special Public Prosecutor (ED cases) appearing for the respondent.

7. It is seen that originally the FIR was registered on 08.09.2017 as against M/s.Pajero Impex and 18 other entities and unknown public servants of Punjab National Bank and others. However,



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it is pertinent to mention that the petitioner is not named as an accused in the FIR and he was arrested, without following due safeguards provided under Section 41 A Cr.P.C., which position has been iterated by the Hon'ble Supreme Court in the case of *Arnesh Kumar Vs. State of Bihar*, reported in **2014 8 SCC 273** for the offences alleged by the prosecution punishable with seven years or less period of imprisonment, as such the bail application can be considered liberally when compared to bail applications for other offences where the punishment is more than seven years.

8. It is to be noted that the petitioner has no role in the predicate offences and without the existence of a predicate offence, there can be no proceedings under the PML Act. The Court cannot proceed on the basis of the preponderance of probabilities in cases of the PML Act. It is against common sense and against the very concept of PML Act that an offence of money laundering can exist in absence of a Scheduled Offence, since in the absence of Scheduled Offence, there is no crime and without crime, there is no tainted money, without which there is nothing to be laundered. Thus, since there are otherwise no allegations against the



petitioner of having committed the predicate offence, he cannot be proceeded under the PML Act by the respondent.

9. The relevant provisions of the Prevention of Money Laundering Act, 2002 are as under:

(i) Section 2 (1) (U) defines “proceeds of crime” as under:

“Proceeds of crime” means any property derived or obtained, directly or indirectly, by any person, as a result of criminal activity relating to a scheduled offence.”

(ii) Section 3 defines the offence of “money-laundering” as under:

“Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process of activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.”

Thus, the proceeds of crime render essence and indispensable element of



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the offence of money laundering. Without existence of proceeds of crime, there cannot be any commission of an offence of money laundering. The receipt of money or possession of foreign money would attract the contravention of Foreign Exchange Management Act, 1999 (in short “FEMA”) and the said contravention is not punishable under the FEMA. Even according to the case of the prosecution, the petitioner received a sum of Rs.18,95,35,601/-.

10. The learned Senior Counsel relied upon various judgments of the Hon'ble Supreme Court of India for consideration of bail applications in the economic offence. It held that, even if allegation is one of the grave offence, it is not a rule that bail should be denied in every case. The variety of cases that may arise from time to time that cannot be safely classified and it is dangerous to make an attempt to classify the cases. Further, the statements recorded under Section 50 of the PML Act are to be tested during trial, and are not credible evidence to deny bail.

11. On a perusal of the materials available on records, it reveals that originally, the FIR was registered on 08.09.2017 as against



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M/s.Pajero Impex and 18 other entities and unknown public servants of Punjab National Bank and others, wherein the petitioner or his entity M/s. Mehul Mining Limited was not named as accused. The case has been registered alleging that the 19 entities had entered into criminal conspiracy with public servants of Punjab National Bank and abused their official position and were sending foreign exchange to Hong Kong without genuine business transactions. The modus operandi was that the customers got remittances from various other banks to their accounts by way of RTGSs and presented their request with a quotation issued by foreign supplier for 100% advance remittances.

12. In this regard, during the period from January 2015 to May 2015, totaling to the tune of INR 424.58 Crores remittances were routed through Nostro account, maintained with HSBC, New York. After verification of the addresses of the account holders on the advice of the Concurrent Auditors, the bank found that none of the units were functioning in the available addresses. Thereby, there has been loss of foreign exchange to the tune of INR 424.58 Crores.



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13. The respondent has registered the case in the year 2017 and the petitioner was arrested and remanded to judicial custody on 13.06.2022. As rightly pointed out by the learned Senior Counsel for the petitioner that the proceeds of crime means any property derived or obtained, directly or indirectly, by any person, as a result of criminal activity relating to a scheduled offence as defined under Section 2(1)(U) of the PML Act. The question is that, whether the petitioner had committed any scheduled offence or not. Without existence of proceeds of crime, there cannot be any commission of an offence of money laundering. Therefore, when there is no evidence to show that the petitioner has committed scheduled offence, then no offence is made out under the PML Act by the petitioner.

14. It is relevant to extract the provisions under Section 4 of the Foreign Exchange Management Act, 1999 read as under:

“4. Holding of foreign exchange, etc. -- Save as otherwise provided in this Act, no person resident in



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India shall acquire, hold, own possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.”

Therefore, any contravention under Section 4 of the FEMA is liable to penalty upto thrice the sum involved in such contravention, where such amount is quantifiable or upto Rs.2 Lakhs, where the amount is not quantifiable.

15. The learned Senior Counsel appearing for the petitioner also relied upon the judgment of the Hon'ble Supreme Court of India reported in **2022 SCC Online SC 929** in the case of ***Vijay Madanlal Chooudhary & ors Vs. Union of India & ors*** which held that from the bare language of Section 3 of the PML Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus,



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involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence except the proceeds of crime derived or obtained as a result of that crime.

16. Further held that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the PML Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable



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to be prosecuted for offence of money-laundering under the PML Act for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted.

17. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No.2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.

18. Further held that the authority of the Authorised Officer under the PML Act to prosecute any person for offence of money-laundering gets triggered only if there exists proceeds of crime within the



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meaning of Section 2(1)(u) of the PML Act and further it is involved in any process or activity. Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of “proceeds of crime” under Section 2(1)(u) of the PML Act will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence.

19. It is possible that in a given case after the discovery of huge volume of undisclosed property, the authorised officer may be advised to send information to the jurisdictional police (under Section 66(2) of the PML Act) for registration of a scheduled offence contemporaneously, including for further investigation in a pending case, if any. On receipt of such information, the jurisdictional police would be obliged to register the case by way of FIR if it is a cognizable offence or as a non-cognizable offence (NC case), as the case may be. If the offence so reported is a scheduled offence, only in that eventuality, the property recovered by the authorised officer would partake the colour of proceeds of crime under Section 2(1)(u) of the PML Act, enabling him to take further action



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under the Act in that regard.

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20. Even though, the PML Act is a complete Code in itself, it is only in respect of matters connected with offence of money- laundering, and for that, existence of proceeds of crime within the meaning of Section 2(1)(u) of the PML Act is quintessential. In the absence of proceeds of crime, as aforesaid, the authorities under the PML Act cannot step in or initiate any prosecution.

21. Further held that the twin conditions provided under Section 45 of the PML Act, though restrict the right of the accused to grant of bail, but it cannot be said that the conditions provided under Section 45 of the PML Act, impose absolute restraint on the grant of bail. The discretion vests in the Court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the PML Act.

22. Hence, the petitioner has satisfied the twin conditions contemplated under Section 45(1) of the PMLA. In view of the above facts and also considering the period of incarceration suffered by the petitioner from the date of his arrest viz., from 13.06.2022, this Court is



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inclined to grant bail to the petitioner.

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23. Accordingly, the petitioner shall deposit the immovable property stands in the name of the petitioner or in name of his friends or relatives, not less than worth of Rs.18,00,00,000/- (Rupees Eighteen Crores Only) along with the valuation certificate obtained from the authority concerned and on such deposit, the petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two blood related sureties, each for a like sum to the satisfaction of the learned Additional Chief Metropolitan Magistrate for EOI, Egmore, Chennai - 08 and on further conditions that:

[a] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioner shall report before the respondent police daily at 10.30 a.m. and 5.30 p.m., for a period of six weeks and thereafter as and when required for interrogation.

[c] the petitioner shall not abscond either during investigation or trial.



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[d] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**.

[f] If the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

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G.K.ILANTHIRAIYAN, J.

rts

To

1. The Additional Chief Metropolitan Magistrate for EOI,
Egmore, Chennai - 08
2. The Assistant Director,
Directorate of Enforcement,
Government of India,
Chennai.
3. The Superintendent,
Central Prison, Puzhal.
4. The Public Prosecutor,
Madras High Court.
Chennai.

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