IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.08.2022

CORAM

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

Crl.O.P.No.19543 of 2022

Farzanali Kadri ... Petitioner

Vs.

The State rep. by
The Assistant Director,
Directorate of Enforcement,
Government of India,
Chennai 600 006.
F.No.ECIR/CEZO-I/14/2017 ... 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.A.Natarajan, Senior Counsel
for Mr.M.Venkadesh Kumar

For Respondent : Mr.P.Sidharthan,
Special Public Prosecutor
for ED cases

ORDER

The petitioner, who was arrested and remanded to judicial custody on 05.07.2022 for the alleged offences punishable under Sections 3 and 4 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 case of the prosecution is that CBI ACB, Chennai had registered an FIR No.RC.MA 1 2017 A00018 dated 08.09.2017 against M/s. Pajero Impex and 18 other entities and unknown public servants of Punjab National Bank (PNB) and others for offences punishable under Sections 120B r/w 420 of IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 against the accused persons for fraudulently opened 19 current accounts in the name of accused entities and had made foreign outward remittances during the period between January 2015 to May 2015 based on the quotation alleged to have been given by overseas entities/foreign suppliers on around 700 advances remittances.

3. Further the accused entities had fraudulently opened current accounts in Punjab National Bank, Mint Street, Chennai by colluding with unknow public servants of the said bank, and made foreign outward remittances on the guise of advance import remittance by producing quotations issued by foreign supplier. The official of the bank without deliberately verifying the genuiness of the transactions and without ascertaining the wherewithal of the accused entities allowed such huge foreign outward remittances routed through NOSTRO accounts maintained with transactions.

4. Further the accused entities while making request for foreign outwards remittances had made sure that the remittances does not excess the threshold limit of USD 100000 to circumvent RBI guidelines, that the modus operandi adopted by the above referred entities was that huge funds were received into their current account as deposits by way of RTGS, Cash deposits, etc., made from various co-operative societies, that the RTGS remittance, cash deposits etc., were made in the name of fictitious persons, that subsequently after integrating huge amounts into their accounts, the above referred entities had made foreign outward

remittances to Hong Kong, UAE and Taiwan etc., on the guise of advance import remittances and thus layered the remittances in the overseas accounts to the tune of INR 424.58 crores and cause loss to the foreign exchange reserves of the nation.

5. During the course of investigation, it was revealed that 19 bank accounts of Punjab National Bank, Mint Street carried out 772 transactions and sent foreign exchange to the extent of USD 70871531.02 equivalent to INR 449,78,62,434/- outside India in the guise of advance import remittance but in actuality no import took place. Majority of the money got diverted to Hong Kong and United Arab Emirates. The quantum of illicit financial outflow of unaccounted money is to the extent of INR 449,78,62,434 and the same were siphoned out of the country by way of 772 transactions. Further investigation revealed that certain Indian Citizens including the petitioner herein have travelled to Hong Kong and incorporated several entities along with bank accounts there in order to receive the above said tainted money in the entities bank accounts.

6. The learned Senior Counsel appearing for the petitioner

submitted that the petitioner is not a named accused. The petitioner was doing CHA business in shipping field in the name and style of Kailash Shipping and logistics from the year 2014. During the year 2014, his father fell ill, since being the elder brother of his family, he started to look after his father business. In the meanwhile, his father passed away in the year 2017. According to the case of the prosecution, the petitioner is the Director of the company names M/s. Brilliant Champ International Development Limited. It carried out international trade based money-laundering, at the instance of the undisclosed beneficial owner and end-use. In this regard, the petitioner was issued summon to appear on 05.07.2022. When the petitioner came for enquiry, he was arrested and remanded to judicial custody without disclosing the reason for his arrest. He further submitted that the co-accused in this case was already granted bail by this Court. Hence, he prayed to grant bail to the petitioner.

7. Per contra, the learned Special Public Prosecutor appearing for the ED Cases filed counter and submitted that the petitioner has been incorporated and he is the Director of M/s.Brilliant Champ International Development Limited, having its registered address at Hong Kong and

maintaining bank account at Hong Kong. It is the recipients of the proceeds of Crime. The petitioner 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 the Republic of India. Foreign exchange as advance was received by M/s. Brilliant Champ International Development Limited, to the extent of 2,81,338 USD equivalent to Rs. 1,79,52,033/- in three tranches from India but corresponding exports to India were never made. It was received by the company which are nothing but proceeds of crime since unaccounted tainted money had been sent from untraceable dummy entities accounts in India to Hong Kong in the guise of advance toward import but in actuality no exports were made in India from Hong Kong entities. Hence, he vehemently opposed for grant of bail to the petitioner.

8. Heard Mr.A.Natarajan, learned Senior counsel appearing for the petitioner and Mr.P.Sidharthan, learned Special Public Prosecutor (ED cases) appearing for the respondent.

9. 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, 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.

10. 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.

11. 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 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.1,79,52,033/-.

12. 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.

13. On a perusal of the materials available on records, it reveals 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, wherein the petitioner or his entity M/s. Brilliant Champ International Development 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.

14. 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.

15. The respondent has registered the case in the year 2017 and the petitioner was arrested and remanded to judicial custody on 05.07.2022. 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.

16. 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 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.

17. 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 05.07.2022, this Court is inclined to grant bail to the petitioner.

18. 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.2,00,00,000/- (Rupees Two 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 Principal District Court, Chennai, 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.

[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.

29.08.2022

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To

1. The Principal District Court,
   Chennai.

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.

G.K.ILANTHIRAIYAN, J.

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