IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Eighteenth day of February Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Mrs Justice R. HEMALATHA

CRIMINAL MISCELLANEOUS PETITION Nos.12827 & 13640 of 2021

IN CRL A.619 of 2021

LIYAKHATH ALI [APPELLANT / PETITIONER / ACCUSED]

Vs

THE STATE REP BY [RESPONDENT / COMPLAINANT]
ASSISTANT DIRECTOR,
DIRECTORATE OF ENFORCEMENT,
CHENNAI REGIONAL OFFICE,
MURUGESA NAIYAKAR COMPLEX,
NO.84, GREAMS ROAD,
CHENNAI.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(i) Suspend the sentence the order in C.C.No.3 of 2017 dated 02.11.2021 on the file of the 12th Addl.Special Court for CBI Cases, Chennai and enlarge the petitioner on bail pending disposal of the above Crl.a.No.619 of 2021 and thus render justice.
[CRL.M.P.No.12827/2021]

(ii) Exempt the appellant from payment of a fine of Rs.1,00,00,000/- (One Crore) as of order in C.C.No.3 of 2017 dated 02.11.2021 on the file of the 12th Addl.Special Court for CBI Cases.
[CRL.M.P.No.13640/2021]

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.L.INFANT DINESH, Advocate for the Petitioner and of MR.N.RAMESH, Special public Prosecutor (ED) on behalf of the Respondent the court made the following order:-

[Order of the Court was made by R.HEMALATHA, J.]

These criminal miscellaneous petitions have been filed seeking to suspend the sentence imposed on the petitioner by judgment and order dated 02.11.2021 passed in C.C.No.3 of 2017 on the file of the XII Additional Special Court for CBI Cases, Chennai, and to enlarge the petitioner on bail and to exempt the appellant from payment of fine of Rs.1,00,00,000/- (one crore) pending disposal of the appeal.

2. This is a case of white colour crime in which the accused has been found guilty and convicted under Section 4 of the Prevention of Money Laundering Act 2002. Besides 7 years Rigorous Imprisonment and Rs.1,00,00,000/- fine, failing which to undergo one year simple imprisonment, the property / proceeds of crime of Rs.1,75,49,253/- has been ordered to be confiscated to Government under Section 8 (5) of the Prevention of Money Laundering Act 2002. Challenging the conviction and sentence, the petitioner has filed Crl.A.No.619 of 2021 with the present petitions for suspension of sentence and bail and to exempt the petitioner/appellant from payment of a fine of Rs.1,00,00,000/- (one crore) .

3. Heard Mr. L. Infant Dinesh, learned counsel for the petitioner and Mr.N. Ramesh, learned Special Public Prosecutor (ED), for the respondent.

4. The case of the prosecution in nutshell:

The accused was found to indulge in International trade based money laundering and to facilitate the same, he had not only forged identity documents, but also import documents in order to stash the proceeds of crime to different entities in foreign countries as outward remittances. M/s.Galaxy Impex was owned by the petitioner Liyakhath Ali. A current account in Indian Bank, Thousand Lights branch, in the name of M/s.Galaxy Impex, operated by Liyakath Ali, had made transactions to the tune of Rs.18,66,54,241/- by way of outward remittance through wire transfers against fake Import Bills / Bills of Exchange. It was also found that as many as six other current accounts opened in the names of M/s.Imperial Company, M/s. Grace Enterprise, Vaseem Liakath Ali, M/s.Snow City & Co., M/s. Metro Agency and M/s. Green International in the same bank were utilised to park funds and subsequently funds were transferred to M/s.Galaxy Impex. Later on, these funds were remitted to foreign countries through outward remittance based on fake Bills of Exchange. The amount involved was Rs.18,66,54,241/- The petitioner neither could justify the source of funds nor could show the actual imports. Such transactions have a huge adverse impact on the economy of our country in terms of causing serious erosion of foreign exchange reserve and also compromising the sovereignty and integrity of our country. It is also shown that the petitioner was in possession of four PAN cards which were found in different names though he was not an income tax assessee. He was not able to offer any explanation regarding this also.

5. Mr.L.Infant Dinesh, learned counsel appearing for the petitioner contended that the accused never opened any account in the said bank and it was only one Mani Anbalagan who opened the said accounts and therefore, his conviction itself was wrong and erroneous. His further contention is that the accused neither knows Mani Anbalagan nor has seen him and that the said Mani Anbalagan was examined as a witness in the trial court.

6. Per contra, Mr.N.Ramesh, learned Special Public Prosecutor (ED), contended that the petitioner / accused was found guilty of layering of funds through seven accounts opened by him in different names and subsequently effecting overseas wire transfers to the tune of Rs.18,66,54,241/- from M/s.Galaxy Impex using forged import documents making it appear to be genuine and bonafide import transactions. His act of money laundering without revealing either the source of funds or the beneficial owner abroad is a serious crime against our nation and therefore, the petitions filed by the petitioner should not be considered for any reason. In order to counter the petitioner's contention that he never opened any account in the said bank, the respondent had adduced CCTV footage (M.O.1) and also the extract of the Cheque Book Register, which showed the petitioner receiving the cheque book for the account M/s.Galaxy Impex. All the fake bills of exchange were counter signed by the petitioner.

7. At this stage, this court cannot go into the merits of the case. This crime cannot be treated at par with any other crime punishable under any other law, for the simple reason that the accused in the instant case was given ample opportunity to prove his credentials in terms of documentary evidence as to the genuineness of the transactions and also by way of revealing the source of funds. Moreover, in Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi), the Supreme Court has held that the relief of suspension of sentence is not an automatic one and that the presumption that the accused is innocent which is normally available for regular bail is not available in the case of suspension of sentence and that the normal rule is jail and not bail. Earlier bail granted at the time of trial cannot be a valid ground for grant of suspension of sentence at this stage. Considering the manner in which the crime has been alleged to have been committed and also the gravity of the offence, we are of

the opinion that this is not a fit case either to grant suspension of sentence and bail to the petitioner or to exempt the petitioner from paying the fine amount of Rs.1,00,00,000/-. Accordingly, Crl.M.P.No.12827 of 2021 and Crl.M.P.No.13640 of 2021 are dismissed.

-sd/-
18/02/2022

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 12TH ADDITIONAL SPECIAL
COURT FOR CBI CASES, CHENNAI.

2 THE ASSISTANT DIRECTOR,
DIRECTORATE OF ENFORCEMENT,
CHENNAI REGIONAL OFFICE,
MURUGESA NAIYAKAR COMPLEX,
NO.84, GREAMS ROAD, CHENNAI

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI.

4 THE SPECIAL PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

C.C. to M/S.L.INFANT DINESH Advocate on payment of necessary charges

Order
in
CRL MP.12827 & 13640/2021
in
CRL A.619/2021

Date :18/02/2022

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format

JPA 21/02/2022