IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.11.2022

Pronounced on : 25.11.2022

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THE HON'BLE **Dr.JUSTICE G.JAYACHANDRAN**

Crl.O.P.No.26677 of 2022

A.Arun ... Petitioner

Vs.

The Assistant Director,
Directorate of Enforcement, GOI,
Ministry of Finance, Department of Revenue,
2nd & 3rd Floor, C Block Murugesa Naicker Complex,
84, Greems Road,
Thousand lights, Chennai-6.
(ECIR No.CEZO-I/40/2020 of 2020) ... Respondent

Prayer:- Criminal Original Petition has been filed under Section 439 of Cr.P.C., praying to enlarge the petitioner on bail pending investigation before the Investigating Agency in ECIR No.CEZO-I/40/2020 of 2020.

For Petitioner : Mr.S.Ramesh for
Mr.R.C.Paul Kanagaraj

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

ORDER

The petitioner herein who is arrayed as one of the accused in a case of defrauding Chennai Port Trust seeks bail claiming that he is innocent person and nothing has been recovered from him. Though in depth the investigation conducted, except the confession statement of the co-accused, which is not an admissible evidence, there is no incriminating material against him collected in the course of investigation. Therefore, he may be released on bail to effectively defend his case lodged against him under the Prevention of Money Laundering Act (PMLA 2002).

2. This Court, while considering the bail petition on the earlier occasions taking note of the fact that the abscondance of the accused had caused impediment in recovering the crime proceeds. Therefore, his custodial interrogation is necessary.

3. However, the learned counsel for the petitioner as a change of circumstances submitted that, the petitioner was enlarged on bail predicating investigation by CBI for the alleged predicating offence. He co-operated with the investigation fully and as a result, CBI has already filed Final Report. While so, the Enforcement Directorate, which is investigated the case from money laundering angle, has also completed the investigation and filed Final Report. Hence, for effective defence, he must be released on bail. It was further submitted, the Investigation Agency has freezed 34 bank accounts, but none of the accounts maintained by the petitioner has been freezed, which indicates that the petitioner has not enriched with any proceeds of crime. When there is no recovery of property by the authority from this petitioner, the provisions of PML Act itself is not attracted.

4. The respondent has filed detailed counter, wherein, the role of this petitioner in the conspiracy to cheat Chennai Port Trust by inducing the Port Trust authorities to deposit of Rs.100 crores in the Indian Bank at Koyambedu and later by creating false documents and forged documents, opened fixed deposit accounts to siphon the money. The said money has been transferred to various persons including the petitioner.

5. Referring the CCTV camera footage, the learned Public Prosecutor (for ED cases) representing the respondent would submit that the visit of the petitioner and other persons to the Indian Bank establishes the footage and the confession statement gives corroboration to this footage. The petitioner herein foreclosed the Term Deposits held by the Chennai Port Trust with the Indian Bank and transferred the money into Current Account opened fraudulently in the name and style of "Chennai Port Trust Insurance Fund". After transferring to that fraudulent account, various withdrawal and transfer of money to the accounts held by the accused persons being effected. The whole scheme of money laundering has been spoken by the accused persons, which are both inculpatory and implicating the other co-accused.

6. The learned Public Prosecutor (for ED cases) referring the portion of the statement given by the witnesses who had spoken about the involvement of the accused in the crime and receiving commission for the act of arranging bank accounts. Even according to his own version, the petitioner has stated that the huge money which he got as commission for the crime has been spent for his health care and legal fees. That may probable be the reason why the proceeds of crime held by the petitioner cannot be retrieved. However, the medical record to gain sympathy to get bail would show that the petitioner has been treated for Spondylosis, Head ache, Migraine, Neck pain etc. by the Vijaya Medical & Educational Trust. The probable for the purpose of treating the said ailment, the petitioner has been spent the money, which alleged to have been received by him as commission for the crime.

7. The non recovery of the proceeds of crime is not the test to grant bail, whether the petitioner will co-operate with the trial or tamper the evidence is the test to be applied. In this case, the gravity of the offence which warrants custody of the accused/petitioner else, there is every possibility of abscondance and tampering the witnesses.

8. Accordingly, this Criminal Original Petition is dismissed for the above said reasons.

25.11.2022

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Index: Yes/No
Speaking Order/Non Speaking Order

To

1.The Assistant Director,
Directorate of Enforcement, GOI,

Ministry of Finance, Department of Revenue,
2nd & 3rd Floor, C Block Murugesa Naicker Complex,
84, Greems Road,
Thousand lights, Chennai-6.

2.The Public Prosecutor (for ED cases),
High Court of Madras, Chennai.

Dr.G.JAYACHANDRAN, J.

rpl

Delivery Order made in
Crl.O.P.No.26677 of 2022

25.11.2022