IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2023

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

Crl.O.P.No.4566 of 2023

Suresh Kumar ... Petitioner/A22

Vs.

The State represented by,
The Assistant Director,
Directorate of Enforcement,
Government of India, Ministry of Finance,
Department of Revenue, 84, Greams Road,
Thousand Lights, Nungambakkam,
Chennai-600 006.
ECIR No.CEZ0-I/40/2020/Chennai. ... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C., pleased to enlarge the petitioner/accused on bail, pending trial in Spl.C.C.No.2 of 2022 on the file of the learned IX Additional Special Judge for CBI cases, Chennai.

For Petitioner : Mr.N.R.Elango, Senior Counsel
for Mr.A.S.Aswin Prasanna

For Respondent : Mr.P.Sidharthan
Special Public Prosecutor

O R D E R

The petitioner who was arrested and remanded to judicial custody on 07.03.2022 for the offence punishable under Sections 4 of Prevention of Money Laundering Act, 2002 in connection with Spl.C.C.No.02 of 2022 on the file of the learned IX Additional Special Judge for CBI Cases, Chennai arising out of the registration of Enforcement Case Information Report (ECIR) No.CEZO-I/40/2020/Chennai-I, seeks bail.

2. The case of the prosecution is that the petitioner/A22 had helped Sudalaimuthu/A1, in creating fake Fixed Deposit receipts, which were created on the basis of the original FD receipts, which were obtained by A25/ Gurunathan and through one T.Esakki, the same have been handed over to Chennai Port Trust, with active connivance of Raghu Bernard/ A30. It is further alleged that A22/Suresh Kumar, the petitioner herein under active connivance with, A1/Sudalaimuthu, forged and fabricated Chennai Port Trust profile, Board resolutions, Authorization letters, bearing specimen signatures, and Rubber Stamps of Chennai Port Trust Officials, Employee ID cards, etc., for the purpose of opening fake Current Account in the name of

Chennai Port Trust General Insurance Fund with Indian Bank, Koyembedu Branch, by way of impersonation by A4/Ganesh Natarajan and thereby, facilitated the Port Trust Fund into different accounts and misappropriated the same. The further allegation is that the petitioner / A22 also indulged in the act of money laundering.

3. The learned counsel for the petitioner submitted that the petitioner/ A22 has been falsely implicated in this case and the allegation levelled against him is nothing but imagination and not supported by any material on record to substantiate a prima-facie case. He also relied on Section 3 of Prevention of Money laundering Act and submitted that the ingredients of the said Section would not apply to the case of the petitioner. Nor he is liable for the penal provision under Section 4 of the PMLA, besides he also submitted that he was not served with notice under Section 41-A Cr.P.C, which is mandatory and non- compliance, of the same on the part of the investigating agency is also a ground for grant of bail. He further submitted that the case is at the stage of framing of charges and investigation is almost completed, and as there is such change of circumstances and as this is the third application, he prayed for bail and he is prepared to abide by any

stringent conditions that may be imposed by this Court. He also pointed out that the petitioner was already granted conditional bail, for Scheduled offences mentioned therein Crl.M.P.No.7532 of 2022 in C.C.No.16 of 2022 on 27.10.2022, by the Court below and in that case, charge sheet was also filed by the CBI/ACB/Chennai, and so, there is no possibility of tampering with the witness and hampering the evidence, even if any such objection is raised by the prosecution.

4. By way of reply, the learned Special Public prosecutor appearing for the respondent raised a strong objection stating that, during investigation, the petitioner / A22, had helped A1/ Sudalai Muthu by creating fake Fixed Deposit receipts, which was created based on the FD original receipts and it was handed over to A1 through one Esakki, who in-turn delivered the same to Chennai Port Trust with the help of Chennai Port Trust official A30/RahuBernard. He further argued that colluding with A1/Sudalaimuthu, the petitioner prepared the forged documents such as a Chennai Port Trust Profile, Board of Resolution, Authorization letter bearing the Specimen signatures and Rubber Seal of self-inking stamp of Chennai Port Trust officials, Employee ID card, forging/copying/scanning the

signature of the Chennai Port Trust officials in the Board Resolution and authorization letter and also fabricated official letter format of Chennai Port Trust by using the name as "Port of Chennai" and its logo, and thus the petitioner had directed his known person Shri Shafiq Ahamed to prepare the fake documents in the aspect of Board Resolution, Authorization letter, Employee ID card, fixed deposit receipts. These documents were used for the purpose of creating fake account bearing No.6867825525 in the name of Chennai Port Trust, by impersonating of A4/ Shri Ganesh Natarajan as official of Chennai Port Trust and the fake FD receipts were delivered to Chennai Port Trust against the investment made by them. Furthermore, as per the statement given by A1/Sudalaimuthu, recorded under Section 15 of the Prevention of Money laundering Act, in the Central prison, Puzhal, in which inter-alia, he stated that as per the petitioner's instruction only, he downloaded the documents from the Port whatsapp and after downloading he handed over all the documents to the petitioner. Further, he also stated that, he downloaded the KYC document of Chennai Port Trust and handed over the same to the petitioner near Porur, for handling over the same to A1/Sudalai Muthu.

5. Knowing fully well that he has indulging, in creating all the fake documents and using the forged document, FD Accounts were created in the name of Chennai Port Trust and subsequently, mis-appropriated the terms of Deposits and were in enjoyment and possession of the crime by considering Fixed original and projected and claimed as untainted and as such, there appears to be a prima-facie case of Money Laundering, as for the offence under Section 3 of Prevention of Money laundering Act, he is punishable under Section 4 of Prevention of Money laundering Act . The offence of money laundering, involves, several stages like concealing original documents and investigation has to be analysed. So far as this petitioner is concerned, he has not disclosed the concealment with regard to the placement of layering of the proceeds and the crime derived by the Commission of Schedul offence, that is fore-closed in the deposits maintained by the Chennai Port Trust and subsequently withdrew and transfer from the Current Account, its end use placement etc. So, with regard to further investigation, the petitioner is very much necessary and essential and if he is released on bail, he may tamper with the evidence and there is every possibility of dislocating the proceeds and the crime which is in possession of the petitioner/accused might be further layered into several

accounts, which will defeat the object of the Prevention of Money laundering Act itself. Further, the learned Special public prosecutor pointed out, that totally there are 45 criminals in this case and so far, the attachment of the property recovered was approximate Rs.7 crores and the remaining amounts are nearly Rs.35 crores are yet to be recovered and further Enforcement Directorate had clearly reflected that investigation has not yet been concluded and the presence of the accused is required for further investigation. He also pointed out that the accused is a habitual offender and in the year 2009, he was stated to have committed similar offence.

6. To establish the same, prosecution relied the another similar FIR.No.RC.14/E/2009-CBI-EOW/Chennai dated 04.09.2009 was registered by the CBI, EOW, Chennai against Sh.T.V.Krishna & Others including this petitioner under Sections 120-B read with Sections 419, 420, 467, & 471 of IPC, which are Scheduled offences under the Prevention of Money Laundering Act, 2002 in case No.ECIR/07/CZO/PMLA/2009 against Sh.T.V.Krishna & others. It was alleged that an amount of Rs.25 Crores belonging to M/s.Northern Coalfields Limited (M/s.NCL) was fraudulently transferred by Sh.T.V.Krishna Rao to the Current Account No.3014563150

of his Company M/s.Krishna Builders, Chennai and subsequently the same has been transferred/withdrawn & deposited within 6 days i.e. between 24.07.2009 and 29.07.2009 from the Bank Account of M/s.Krishna Builders to the accounts of several persons / companies for the purpose of projecting the ill-gotten money as legally earned money. Further, the learned Special Public Prosecutor submitted that during the PMLA investigation in the above case, it was revealed that the petitioner herein was actively involved in the offence of money laundering. It was revealed that as per instructions from Sh.T.V.K.Krishna Rao, during the last of week of July, 2009, Sh.T.Arun along with Sh.G.Padmanabhan, Sh.Suresh Kumar/petitioner and his friend Sh.Rajesh Sai Ram approached ICICI bank and opened Savings Bank Account in the name of Sh.G.Padmanabhan. In the above said case in C.C.No.4 of 2014, this petitioner is arrayed as A14 therein and he knowingly indulged in the act of Money Laundering and directly attempted himself and knowingly involved in the process connected with the proceeds of the Crime along with A1 and other accused. Hence, he prayed to dismiss the petition as devoid of merits.

7. Considering both sides submissions, it is seen that the foremost contention raised on the side of the petitioner is that there are no materials on record, but he appoint this petitioner that he was activity indulged in Money Laundering activities, but, he was falsely implicated under Section 3 of Prevention of Money laundering Act. The learned counsel for the petitioner further pointed out that, as per the prosecution case, this petitioner / A22 helped A1/ Sudalai Muthu by creating fake FD receipts and so, he was charged under Sections 120-B, 419, 420, 467, 471 of IPC and Section 13(1)(a) read with 13(2) of Prevention of Corruption Act, for the scheduled offence for that he was already arrested and now released on condition bail in that case.

8. He further argues that there is no materials against this petitioner for creating fake FD receipts for handling over the same to A1 and as such, it is not sufficient Prima-facie conclude that he actively indulged knowingly to help the accused persons who are laundering with the proceeds of crime either directly or indirectly. Even as per the allegation against the petitioner herein, he was involved in the alleged fabrication of the fake FD receipts which were handed over to A1's Bank Account to commit forgery and he did

not involve knowingly in the offence of money laundering, when there are no materials on the side of the investigating agency to prove that he was involved in creation of the fake FD receipts with an intention projecting the proceeds of Crime as untainted money and to support his contentions the learned Counsel for the petitioner relied on the ratio laid down by **Hon'ble Division Bench of this Court, in Crl.O.P.No.29533 of 2015 and M.P.Nos.1 & 2 of 2015, dated 27.01.2022, N.Raveendranatha Reddy vs. The Deputy Director,** in which it is held as follows:

> *7. For fastening Criminal liability under Section 3 r/w 4 of the PML Act, the following ingredients are required to be satisfied:*
>
> *i. a scheduled offence should have been committed;*
>
> *ii. proceeds of crime should have been generated by committing the scheduled offence;*
>
> *iii. proceeds of crime should have been projected as untainted property.*
>
> *The above view stands fortified by the following observations of the Hon'ble Supreme Court in* ***Nikesh Tarachand Shah vs. Union of India and Another [(2018) 11 SCC 1]:***
>
> *"11. Having heard the learned counsel for both sides, it is important to first understand what constitutes the offence of money laundering. Under Section 3 of the Act, the kind of*

persons responsible for money laundering is extremely wide. Words such as "whosoever", "directly or indirectly" and "attempts to indulge" would show that all persons who are even remotely involved in this offence are sought to be roped in. An important ingredient of the offence is that these persons must be knowingly or actually involved in any process or activity connected with proceeds of crime and "proceeds of crime" is defined under the Act, by Section 2(1) (u) thereof, to mean any property derived or obtained directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence (which is referred to in our judgment as the predicate offence). Thus, whosoever is involved as aforesaid, in a process or activity connected with "proceeds of crime" as defined, which would include concealing, possessing, acquiring or using such property, would be guilty of the offence, provided such persons also project or claim such property as untainted property. Section 3, therefore, contains all the aforesaid ingredients, and before somebody can be adjudged as guilty under the said provision, the said person must not only be involved in any process or activity connected with proceeds of crime, but must also project or claim it as being untainted property."

8. In this case, Raveendranatha Reddy, who was the Branch Manager of Andhra Bank, appears to have sanctioned the loans to T.D.Naidu in rank violation of the Rules and therefore, he is facing the prosecution along with T.D.Naidu in C.C.No.48 of 2013 before the XI Additional Special Court for CBI Cases, Chennai, for the offences under Sections 120-B r/w 420, 468 and 471 IPC and Section 13(2) r/w 13(1) (d) of the PC Act.

9. Per contra, the learned Special Public Prosecutor submits that during the investigation they collected sufficient materials as well as the statement given by accused prima facie reveals that he was actively participate in creating fake FD receipt with intention to withdraw amount lying in the account of Chennai Port Trust.

10.The statement recorded by the investigating agency in respect of A28/ Easakki, dated 22.09.2021 under Section 50 of PMLA in the office of Directorate of Enforecement, Chennai-I, Zonal Office, Chennai, speaks about the involvement of the petitioner herein, which reads as follows:

Question 3. How are you connected to Sudalaimuthu and Raghu Bernard who are allegedly involved in the Chennai Port trust fixed Deposit fraud?

Answer 3. I am a distant relative of Sudalaimuthu. Sudalaimuthu is a financer, We come from Marwar community from Kongarayankurichi. One Suresh Kumar (identification -approx, 6 ft. height, thick lower lip, dark skin colour, weighing around 90 kgs, strong built), who is a builder and constructs house is a very good friend of Sudalaimuthu. Through Sudalaimuthu, I came in touch with Suresh Kumar for the first time in the year 2015 at Sudalaimuthu's rented premises at

Vadapalani house (opposite Indian bank) and thereafter we became friends. Suresh Kumar used to supply labours for building repair related work at CPT. There Suresh Kumar became friends with one Mr.Raghu Bernard who used to work in Finance Department of Chennai Port Trust. I met Mr. Raghu Bernand through Suresh Kumar for the first time in 2017-18 at Tuticorin.

Answer 5:......

Mr.Sudalaimuthu with the help of one Suresh Kumar (not the one mentioned above in question no.3) used to prepare fake deposit receipts with the same receipt number.

......

Answer 6: Mr.Suresh Kumar (tall, thin,black, blad), who is in the business of chilli, cashews, water cans etc.,made those fake seals, bonds, Fixed Deposits etc., and gave it to Mr.Sudalaimuthu.

11. The statement of S.Kumaran, dated 05.01.2022 recorded by the investigatin1 agency under Section 50 of PMLA in the office of Directorate of Enforecement, Chennai-I, Zonal Office, Chennai, also speaks about the involvement of the petitioner herein, which reads as follows:

Answer 3: .....

During 2019-2020, Shri. Vaidhyanathan requested me to arrange some loan to his friend Shri. Sureshkumar by pledging the document, subsequently, Shri. Deivasittharasan @ Chitrarasu introduced Shri. Sureshkumar at Adyar Ananda Bhavan Hotel, Chromepet.

I tried to arrange loan for Shri.Sureshkumar but the financier refused for the problem in the property papers. Then, Shri Vaidhyanathan asked us to pledge the Audi Car which is in the name of Shri.Sureshkumar towards the loan but the financier refused to give loan as the Audi car was already under finance. Due to several meetings Shri.Sureshkumar becomes closer to us.

One day when we having taking tea at Adayar Anand Bhavan at Chrompet, Shri.Sureshkumar @ Suresh asked me whether I know any trust account to deposit the fund and who allows us for withdrawing the same in cash later, for which he offered commission.

Then I said that I knew one Shri.Baskar, who is having an office at Anna Nagar and also told him that he is also knew to Shri. Deivasittharasan @ Chitrarasu. Then, myself and Shri. Deivasittharasan @ Chitrarasu went to Shri.Bhaskar's office situated at Anna Nagar and Shri.Sureshkumar, Annachi @ Shri. Sudalaimuthu, Shri.Sudalaimuthu's son Shri.Gurunathan and one more person

Shri.Easakki, who is relative of Shri.Sudalaimuthu Annachi came to office of Shri.Baskar. After reaching Baskar's Office, Suresh Kumar told me that I know Bhaskar and his is my child hood friend.

After interaction each other Shri.Baskar and Shri.Sureshkumar went outside and spoke about the commission. Then, Shri.Baskar gave one account number in the name of M/s.Vasthu Bhavan Shopping Mall maintained at ICICI Bank, Kanchipuram to Shri.Sureshkumar and the same was given to Shri.Sudalaimuthu @ Annachi by Shri.Sureshkumar in our presence.

.... Then I collected cashRs.10,00,000/- from Shri.Vijendrakumar and handed over the same to Shri.Sureshkumar at Shri.Basker's office at Anna Nagar. Then Shri.Sureshkumar handed over the same case of Rs.10,00,000/- to Shri Sudalaimuthu, who was already waiting at Basker's Office.

.... On 13.03.2020 Shri.Sureshkumar told me that an amount of Rs.99.50 lakhs was deposited in to the account of M/s.Azzan Gruppe Impex Pvt. Ltd.....

I asked the source of the fund to Suresh Kumar. Suresh Kumar told me that Sudalaimuthu @ Annachi told me that the fund belongs to one trust. But, I did not know it was coming from Chennai Port Trust. I came to know only later."

12. About non-compliance of 41(A) notice, as per submission of the respondent, statement recorded under Section 50(a) under Act, Judicial Statement, need not be issued 41(A) notice. Therefore on perusal of the materials relied on by the respondent / Police, prima facie established that he was actually involved in the process connected with the crime, and he not only created fake FD receipts, but also intentionally assisted A1 and other accused persons to open the fake Current Account by preparing fake documents,forging the specimen signatures of the officials and Rubber Stamp of Port Trust and "Port of Chennai's logo and also possession and enjoyment of the proceeds of the Crime by concealing its original documents and transferring the amounts to other accounts projecting and claiming the same as untainted.

13. Furthermore, as per the submission made by the learned Special Public Prosecutor, petitioner had not disclosed the two facts pertaining to the end-use of mis-appropriated amount, which is the proceeds of the crime, and as of now Rs.7 crores were recovered and nearly about Rs.35 crores is yet to be recovered by the investigating agency and crores of rupees of Port trust which is a public money, were mis-appropriated by the

petitioner /A22 along with other accused persons. Therefore, the authority relied on by the petitioner's counsel to show that the role of the petitioner is restricted only in respect of creation of the alleged fabricated fake FD receipts, as such is unsustainable one. As per the investigation, he was actively involved, not only creating the fake FD receipts, but also with intention to transferred the amounts to other Accounts along with prime accused /A1. Considering antecedence of the petitioner that he had already involved in Bank fraud case during the year 2009 in FIR.No.RC.14/E/2009-CBI-EOW/Chennai dated 04.09.2009, which was registered by the CBI, EOW, Chennai. In that case, Rs.25 Crores belonging to M/s.Northern Coal fields Limited (M/s.NCL), were fraudulently transfered by one Krishnan Rao to the Current Account No.3014563150 of his Company and subsequently, they transfered the amounts to several Accounts. In that case, the petitioner also opened an Account in ICICI Bank, for nearly about Rs.2 crores, which were credited to his Account, and subsequently, the amount were withdrawn. Thus, petitioner has not complied with the second conditions to avail the benefit of bail i.e. he was already charged for the offences of like nature. Therefore, the authority relied on by the learned Special Public Prosecutor appearing for the respondent in **2022, LiveLaw (SC) 896 in the Supreme**

Court of India, Criminal Appeal No.1864 of 2022 (arising out of SLP (Crl.) No.2668 of 2022), [Directorate of Enforcement vs. Padmanabhan Kishore], is squarly applicable to the facts of the case on hand. The relevant paragraph Nos.15 & 16 of the said judgment of the Apex Court are extracted hereunder:

> *15. Said Section 3 stated, intera alia, that whoever knowingly assists or knowingly is a party or is actually involved in any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use shall be guilty of offence of money-laundering (emphasis added by us).*
>
> *16.It is true that so long as the amount is in the hands of a bribe giver, and till it does not get impressed with the requisite intent and is actually handed over as a bribe, it would definitely be untainted money. If the money is handed over without such intent, it would be a mere entrustment. If it is therefore appropriated by the public bribe and normally such intent must necessarily be antecedent or prior to the moment the amount is handed over. Thus, the requisite intent would always be at the core before the amount is handed over. Such intent having been entertained well before the amount is actually handed over, the person concerned would certainly be involved in the process or activity connected with "proceeds of*

Crime" including inter alia, the aspects of possession or acquisition thereof. By handing over money with the intent of giving bribe, such person will be assisting or will knowingly be a party to an activity connected with the proceeds of crime. Without such active participation on part of the person concerned, the money would not assume the character of being proceeds of crime. The relevant expressions from Section 3 of the PML Act are thus wide enough to cover the role played by such person."

14. The complaint filed under Sections 44 & 45 of Prevention of Money Laundering Act, 2002 for Commission of Offence of Money Laundering as defined under Section 3 read with Section 70 and punishable under Section 4 of the Prevention of Money Laundering Act, 2002. The Special Public Prosecutor said that, in the instant case, as discussed above, the proceedings of the Directorate of Enforcement had clearly reflected that the respondent / Police have collected sufficient materials against the petitioner to proceed under Section 3 of the Prevention of Money laundering Act .

15. Statement recorded by Assistant Director under Section 50 PMLA for this petitioner also enclosed in counter statement by the respondent. The active participation on the part of this accused also prima-facie reveals that he, knowing well the purpose of creation of the fake documents he has involved in the present offence, as stated by the learned Special Public Prosecutor. The petitioner/A22 is one of the main person and he played active role with the prime accused person, so the authorities relied on **Hon'ble Division Bench of this Court, in Crl.O.P.No.29533 of 2015 and M.P.Nos.1 & 2 of 2015, dated 27.01.2022, N.Raveendranatha Reddy vs. The Deputy Director,** by the petitioner, is not applicable to the facts of the present case.

16. Therefore, considering the antecedence of the petitioner / A22 as well as huge amount of public exchequer is involved, this Court is not inclined to grant bail to the petitioner at this stage, that too when further investigation is yet to be done by the respondent / Police. Furthermore on considering the nature of the offences committed by the petitioner and also the previous antecedents, possibility of indulge in similar offence, and that there is a possibility of tampering with witnesses and hampering the evidence

and investigation, and as there is no change of circumstances, this Court is not inclined to grant bail to the petitioner.

17. For the reasons stated above, this Criminal Original Petition is dismissed.

27.04.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

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To

1. The IX Additional Special Judge for CBI cases, Chennai.

2. The Assistant Director,
Directorate of Enforcement,
Government of India, Ministry of Finance,
Department of Revenue, 84, Greams Road,
Thousand Lights, Nungambakkam,
Chennai-600 006.

3. The Public Prosecutor,
High Court of Madras.

T.V.THAMILSELVI, J.

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