IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.4.2023

Delivered on : 05.5.2023

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P. Nos.8713, 8639, 8645, 8834 and 8838 of 2023

Crl.O.P.No.8713 of 2023

Hemal Arun Mehta ... Petitioner

vs.

The Directorate of Enforcement,
Government of India,
rep. by its Assistant Director,
2nd & 3rd Floors,
Murugesa Naicker Office Complex,
No.84, Greams Road,
Chennai 600 006. ... Respondent

Criminal Original Petition filed under Section 437 Cr.P.C. to enlarge the Petitioner on bail arrested on 24.3.2023 and remanded in Central Prison, Puzhal, pursuant to the proceedings of the respondent in ECIR No.ECIR/CEZO-1/17/2020 dated 23.3.2020.

Crl.O.P.No.8639 of 2023

Anupam Narain Gupta ... Petitioner

vs.

The Assistant Director,
The Directorate of Enforcement,
Chennai Zonal Office-I,
2nd & 3rd Floors,
Murugesa Naicker Office Complex,
No.84, Greams Road, Thousand Lights,
Chennai 600 006.
In ECIR/CEZO-I/17/2020 Respondent

Criminal Original Petition filed under Section 439 Cr.P.C. read with Section 45 of PMLA Act to enlarge the Petitioner on bail in ECIR/CEZO-1/17/2020 on the file of the respondent.

Crl.O.P.No.8645 of 2023

Rohit Arora Petitioner

vs.

The Assistant Director,
The Directorate of Enforcement,
Chennai Zonal Office-I,
2nd & 3rd Floors,
Murugesa Naicker Office Complex,
No.84, Greams Road, Thousand Lights,
Chennai 600 006
in ECIR/CEZO-I/17/2020 Respondent

Criminal Original Petition filed under Section 439 Cr.P.C. read with Section 45 of PMLA Act to enlarge the Petitioner on bail in ECIR/CEZO-1/17/2020 on the file of the respondent.

Crl.O.P.No.8834 of 2023

Suresh Venkatachari Petitioner

vs.

Assistant Director,
Enforcement Directorate,
Chennai I Zonal Office,
No.2 & 3, Murugesa Naicker Office Complex,
No.84, Greams Road, Thousand Lights,
Chennai 600 006 Respondent

Criminal Original Petition filed under Section 439 Cr.P.C. to enlarge the Petitioner on bail in ECIR/CEZO-1/17/2020 registered under Section 19(1) of Prevention of Money Laundering Act at Assistant Director, Enforcement Directorate, Chennai I Zonal Office.

Crl.O.P.No.8838 of 2023

R.S.Ramani @ Rama Subramani Ramani Petitioner

vs.

State by
Assistant Director,
Directorate of Enforcement,
Chennai Zonal Office I,
Government of India. Respondent

Criminal Original Petition filed under Section 439 Cr.P.C. to enlarge the Petitioner on bail pending investigation in ECIR No.CEZO-1/17/2020 dated 28.3.2020 on the file of the Assistant Director, Enforcement Directorate, Chennai Zonal Office-I, Chennai 600 06, the respondent herein.

For Petitioner in
Crl.O.P.No.8713/2023 : Mr.K.Ravi, Senior Counsel for
Mr.R.Murugan

For Petitioner in
Crl.O.P.No.8639/2023 : Mr.B.Kumar, Senior Counsel for
M/s.Ali Hassan Khan

For Petitioner in
Crl.O.P.No.8645/2023 : Mr.T.Mohan, Senior Counsel for M/s.Ali Hassan Khan

For Petitioner in
Crl.O.P.No.8834/2023 : Mr.V.Karthik, Senior Counsel for M/s.T.Kokilavane

For Petitioner in
Crl.O.P.No.8738/2023 : Mr.S.Ashok Kumar, Senior Counsel for M/s.Ganesh Rajan

For respondent : Mr.AR.L.Sundaresan, Additional Solicitor General assisted by Mr.P.Sidharthan, Special Public Prosecutor for E.D.

COMMON ORDER

All the above five Petitions, filed by the respective petitioners seeking for bail, arise out of one and the same Enforcement Case Information Report in ECIR/CEZO-1/17/2020 and thereby all the petitions have been taken up for hearing together.

2. Though this court has been ladened with voluminous materials, the petitions filed being only for seeking civil liberty pending trial of the main cases, this court feels that it is suffice to go into the factual aspects only in brief to the extent required for disposing the

bail petitions and thereby, the facts behind the filing of the present petitions, as culled out from the materials available and as projected by the prosecution, are as under:-

i) One Suresh Venkatachari, petitioner in Crl.O.P.N.8834 of 2023, Promoter of M/s.8K Miles Software Services Pvt. Ltd. (now renamed as M/s.Securekloud Technologies Ltd., Chennai) lodges a complaint on 2.2.2019 to the Commissioner of Police, CCB, Chennai against

(1) M/s.Quantum Global Securities Ltd. (QGSL)

(2) Shri.Atul Malik (MD & Shareholder of QGSL

(3) Shri .Bhavesh Singh (Director & Shareholder of QGSL

(4) Shri.Rohit Arora (Loan Broker)

for the alleged commission of offences of cheating, criminal breach of trust, forgery, criminal misappropriation, fabrication of documents, etc. and thereby caused loss to the complainant to the tune of Rs.144 Crores. The complaint was registered as FIR No.39 of 2019 dated 2.2.2019 for offences punishable under Sections **120B read with Section 420, 465, 468 and 471 IPC.**

ii) The above complaint revealed that the complainant being the Promoter of M/s.8K Miles, held 92,00,000 shares in the said company.

In order to meet the financial requirements of the business, one R.S.Ramani, petitioner in Crl.O.P.No.8838 of 2023, the whole time Director of M/s.8K Miles introduced the complainant to one Rohit Arora, petitioner in Crl.O.P.No.8645 of 2023, a Loan Broker, who, in turn, assured the complainant to arrange for loans against the shares the complainant holds in the Company on provision of such shares as collateral security.

iii) On the suggestion of Shri Rohit Arora, QGSL assured to lend Rs.37 Crores with a condition that 2.5 times the loan amount would be collaterized with 14,00,000 shares of M/s.8K Miles held by the complainant and such shares would be kept as collateral security in a Demat Accont freshly opened in the name of the complainant with QGSL. An MOU dated 14.3.2018 was entered by the complainant with QGSL in this regard and transfer of 14,00,000 worth Rs.98 crores was made on 14.3.2018 as agreed. A total sum of Rs.35 crores was disbursed by QGSL from 26.3.2018 to 13.5.2018.

iv) Once again, the complainant had to transfer 9,00,000 shares of his holdings worth about Rs.46.12 crores, based on a demand by QGSL in order to maintain the loan ratio as the value of collateral shares has fallen down.

v) Whileso, during the last week of July 2018, the complainant came to understand that his shareholding in the company had dropped as the 23,00,000 shares provided by him to QGSL as collateral security were sold in off-market immediately after he transferred the same and it was done by the accused named in his FIR by forging his signatures on the Delivery Instruction Slip and thereby, they had misappropriated a sum of Rs.144 crores.

vi) The complainant also enlisted some other entities and individuals involved in the fraudulent act as under:

M/s.Astiva Capital Market Pt. Ltd. (Shri.Yadvendra Sharma (owner))

Shri.Radhey Sharma

Shri.Hemanth Kumar Sharma

Shri.Gyan Chand Agarwal

Shri.Yogesh Kumar Sharma

M/s.Pro Fin Capital Services Ltd. (Shri.Anupam Narain Gupta)

Shri.Abhay Narain Gupta

Shri.Narain Kumar Gupta

Sister concerns of M/s.Pro Fin Capital Services Ltd. viz.,

Asian Fin TradeServices Pvt. Ltd.

M/s.Ambe Securities (P) Ltd.

M/s.Triyamb Securities (P) Ltd.

vii) The complainant had also given another complaint on 26.9.2019 to the Commissioner of Police, CCB, Chennai against M/s.Desert River Capital Pvt. Ltd. (DRCPL) along with its directors Mr. Ashish Singh and Ms.Kalpana Singh, M/s.Kumar Share Brokers Ltd (KSBL) along with its directors Mr.Ramesh Chand Arora and Mr. Suman Arora, M/s.Altruistic Trading Pvt Ltd, Mr.Rohit Arora (Loan Broker) for alleged commission of offences of cheating, criminal breach of trust, forgery, criminal misappropriation, fabrication of documents etc., thereby caused loss to the complainant to the tune of Rs. 14.5 Crores by forging his signature on Delivery Instruction Slips and transferring his pledged shares to different accounts off market and subsequently selling them off.

viii) The allegation levelled against the accused named in the said FIR registered as FIR No.282 of 2019 for the offences punishable under Sections 120-B read with 409, 420, 465, 468 and 471 IPC is that they, in collusion with each other by entering into a criminal conspiracy and fabricating the documents and forging the signatures, fraudulently transferred and sold 300000 shares of M/s.8K Miles held by the complainant and thereby misappropriated a sum of Rs.20 Crores and given only a loan of Rs. 5.5 Crores to the complainant.

ix) An Enforcement Case Information Report in ECIR No.ECIR/CEZO-I/17/2020 dated 23.3.2020 was recorded on the basis of the complaint lodged by the complainant Suresh Venkatachari.

x) While the complainant alleges commission of offences of cheating, criminal breach of trust, forgery, criminal misappropriation, fabrication of documents, etc. causing a loss to him to the tune of Rs.144 Crores, against the accused named in his FIRs, the investigation conducted by the respondent-Enforcement Directorate raised suspicion on the part of the complainant himself that he had acted in conspiracy with the other accused, to commit the offences and he had tried to get rid of the statutory action to be taken by SEBI and the investors, who invested in his Company believing the rosy picture being shown on the basis of fudged and manipulated financial statements of the company.

xi) As an outcome of the investigation, the petitioner in Crl.O.P.No.8713 of 2023 stands arrested on 23.3.2023 and the petitioners in other petitions viz., Crl.O.P.Nos.8639, 8645, 8834 and 8838 of 2023 stand arrested on 24.3.2023.

xii) After having lost in their attempt to get bail from the Principal Sessions Court, the petitioner have knocked the doors of this court.

3. Heard Mr.K.Ravi, Mr.B.Kumar, Mr.T.Mohan, Mr.V.Karthik and Mr.S.Ashok Kumar, learned Senior Counsels appearing for the petitioners in Crl.O.P.Nos.8713, 8639, 8645, 8834 and 8838 of 2023 respectively and Mr.AR.L.Sundaresan, learned Additional Solicitor General appearing for the respondent-ED and perused the materials available on record including the written arguments submitted by the petitioners and the counter affidavits filed by the respondent.

4. Having heard so for a reasonable time, this court is able to deduce the following aspects:-

i) The petitioner in Crl.O.P.No.8713 of 2023 by name Hemal Arun Mehta is an investor having business transactions with several persons including the de facto complainant by name Suresh Venkatachari, who is the petitioner in Crl.O.P.No.8834 of 2023.

ii) The petitioner in Crl.O.P.No.8639 of 2023 by name Anupam Narain Gupta is the Managing Director of Pro Fin Capital Services Ltd., a non banking finance company. He entered into an agreement with QGSL to provide loan against the shares of M/s.8K Miles.

iii) The petitioner in Crl.O.P.No.8645 of 2023 by name Rohit Arora is a Loan Broker, who was approached by one R.S.Ramani for loan against the shares of M/s.8K Miles belonging to the de facto complainant.

iv) The petitioner in Crl.O.P.No.8834 of 2023 by name Suresh Venkatachari is the de facto complainant. He is the former CEO and Managing Director of Securekloud Technologies Limited formerly known as M/s.8K Miles Software Services Limited.

v) The petitioner in Crl.O.P.No.8838 of 2023 by name R.S.Ramani. He is former CFO and Director of Securekloud Technologies Limited formerly known as M/s.8K Miles Software Services Limited.

vi) Two complaints came to be registered by the de facto complainant alleging forgery, criminal misappropriation, fabrication of documents, etc. by the other petitioners and some other individuals in selling the shares held by him in the Company called M/s.8K Miles which, were offered by him as collateral security for availing financial assistance for his business by forging his signatures in Delivery

Instructions Slips and thereby causing loss to him to the tune of Rs.144 crores.

vii) The complaints were registered in FIR No.39 of 2019 and 282 of 2019. FIR No.39 of 2019 dated 2.2.2019, registered for offences punishable under Sections, gave rise to ECIR/CEZO-1/17/2020 dated 23.3.2020 on the file of the respondent-ED.

viii) Upon investigation, the respondent perceives some suspicion about the bona fide of the de facto complainant himself, proceeds for a deep investigation and comes out with a case of conspiracy entered by the de facto complainant himself with the accused named in the FIR and also some other persons whose names do not find place therein.

ix) Thereupon, the arrest of the petitioners has taken place on 23.3.2023 and 24.3.2023.

x) The allegation levelled against the de facto complainant, petitioner in Crl.O.P.No.8834 of 2023 is that he himself had entered into a conspiracy with other accused and staged a show of borrowing money for manipulating the share price. He being the CEO of the Company, it is his duty to inform SEBI about his borrowing against the shares, but, he did not do so. He had manipulated the books of accounts of M/s.8K Miles, shown the bogus revenue as genuine one of the company, wrote off the revenue when the same got busted by the Statutory Auditor, manipulated the share prices which ultimately got sold to the hands of general public, who invested in the company believing the rosy picture shown. He received the proceeds of crime and routed the same to USA and UAE and is in possession of the same. He projected the proceeds of crime as genuine business transaction and and is in possession of proceeds of crime.

xi) The allegations levelled against Hemal Arun Mehta, petitioner in Crl.O.P.No.8713 of 2023 are that, he being a share borker,was hired by the de facto complainant and thereupon, he colluded with Rohit Arora and the de facto complainant and hatched a conspiracy to cheat the general public and innocent investors by buying the shares of M/s.8K Miles off market for a lesser price and selling back the shares at a higher price to the public. He claimed the illegal monetary gain as business income, but, the same is nothing but, proceeds of crime and it is a classic case of money laundering.

xii) The allegations levelled against Shri.Rohit Arora, petitioner in Crl.O.P.No.8645 of 2023 are that he, being a loan broker, facilitated the loan to the de facto complainant through QGSL, Pro Fin Capital Services Ltd and Unity Global Financial Services Pvt. Ltd. by suppressing the identity of the de facto complainant with regard to his nationality viz., knowing fully well that the de facto complainant is a foreign national and not a Resident Indian and thus assisted the co-accused in rigging of share price of M/s.8K Miles. He was paid Rs.1 crore as commission which he showed as normal business income. He is involved in all the limbs of offence of money laundering.

xiii) The allegations levelled against Shri.Anupam Narain Gupta, petitioner in Crl.O.P.No.8639 of 2023 are that he, being the Managing Director of Pro Fin Capital Services Limited, entered into an agreement with QGSL to prove loan against shares of M/s.8K Miles knowing fully well that the shares belong to the de facto complainant and not to QGSL. He indulged in getting transfer of the shares in off market and selling the same in open market and subsequently, he paid Rs.4.5 crore directly to M/s.8K Miles Media Pvt. Ltd. without there being any agreement for the same. He received interest amount from India Abroad Publication Pvt. Ltd. another company of the de facto complainant and made payment to offshore accounts of dummy company of the de facto complainant and R.S.Ramani through illegal channel. He generated proceeds of crime of more than Rs.46 crores by way of selling the shares and after providing the money to the tune of Rs.14 crore to the de facto complainant. He projected the sale proceeds as normal business income and he is in possession of the same projecting it as untainted money.

xiv) The allegations levelled against Shri.R.S.Ramani, petitioner in Crl.O.P.No.8838 of 2023 are that he, being the former CFO and Director of Securekloud Technologies, arranged loan to the de facto complainant through Rohit Arora and thereby, he was a part of the conspiracy. The petitioner, alongwith the de facto complainant, hired Rohit Arora to manipulate the share price of M/s.8K Miles. The loan amount of Rs.40 crores were routed from Bank Account of the de facto complainant to that of this petitioner, who, in turn, transferred the same to the companies account and finally to USA. He assisted to keep the loan transaction completely out of books by providing bank account details of foreign companies located in USA and UAE. He received the money in Nationstar IT Services Limited, UAE and bank account of which is provided by him to Shri.Rohit Arora. Though the is the CFO of M/s.8K Miles, he neglected his duty to inform SEBI about borrowing of the de facto complainant. He had manipulated the books of accounts of M/s.8K Miles, shown the bogus revenue as genuine one of the company, wrote off he revenue when the same got busted by the Statutory Auditor, manipulated the share prices which ultimately got sold to the hands of general public, who invested in the company believing the rosy picture shown.

5. On a perusal of the materials in the light of the submissions of the learned Senior Counsel, this court is able to find that the sum and substance of the grounds seeking bail is as under:-

i) The petitioner in Crl.O.P.8713 of 2023 was not named in the FIR nor was there any allegation against him. No mention was made in the Report dated 11.3.2029 filed by the investigating officer. Only in a subsequent interrogation report filed in the month of April 2019, he was arrayed as A10 without any evidence pointing out him.

ii) The de facto complainant has filed an affidavit before this court that he does not want to proceed with the FIR and thereby seeks for quashing of the FIR.

iii) Investigation in Crime No.39 of 2019 has been stayed insofar as the petitioners arrayed as accused in the case. The consequent ECIR has also been stayed by a Division Bench of this court insofar as the petitioner in Crl.O.P.8713 of 2023 is concerned.

iv) The operative portion of the order passed by the Division Bench of this court in W.P.No.10901 of 2023 dated 13.4.2023 is extracted hereunder for ready reference:-

"23. From a reading of Paragraph 325 of the Judgment of the Hon'ble Supreme Court in Vijay Madanlal Choudhary case (referred to supra), we understand the position that mere stating of ingredients or language employed in Section 3 under the Prevention of Money Laundering Act, 2002, may not be sufficient to connect the petitioner with the offence. 24. As pointed out earlier, since the writ petitioner is not one of the accused in the case registered for the offences punishable Sections 120-B, 420 and 471 under the Indian Penal Code, 1860, we are unable to justify prosecution of the writ petitioner as a person involved in the commission of the offence of money laundering under the provisions of the Prevention of Money Laundering Act, 2002.

25. Therefore, we grant interim stay in respect of all further proceedings in ECIR/CEZO-1/17/2020 dated

23.03.2020, until further orders insofar as the writ petitioner is concerned. 26. It is now reported before this Court that the bail petition moved by the writ petitioner before the Principal Sessions Court is dismissed. However, the writ petitioner may move fresh application before this Court as provided under Section 45 of the Prevention of Money Laundering Act, 2002."

v) The proceedings that were pending on the file of SEBI against the firm Securekloud Technologies Ltd., the de facto complainant, Shri.R.S.Ramani and one Gurumurthi Jayaraman, having been initiated on receipt of complaints alleging misreporting/irregularities by promoters and management of the Company also ended in imposing penalty under Sections 15A(a), 15HA and 15HB of the SEBI Act, 1992 and one of the petitioners had also preferred appeal against the said Order. Only when Section 12A r/w Section 24 is invoked under section 26 of SEBI Act, proceedings under PMLA can be initiated, but in the order of SEBI, there is no such invocation of Section 12A read with Section 24 of SEBI Act. Further, the SEBI has also not lodged any complaint against the petitioners enabling the respondent-ED to investigate the predicate offences against the petitioners as stipulated under Section 26 of the SEBI Act and cognizance for the scheduled offences under Section 12A read with Section 24 of SEBI Act can be taken only upon filing of a complaint under Section 26 of the SEBI Act.

vi) In this scenario, it appears that the respondent is now investigating into a totally new offence, as postulated in the grounds of arrest, cannot be sustained since those allegations of scheduled offences, which are under the SEBI Act and/or the Companies Act, cannot be taken cognizance of except under a complaint by the authorities under those special Acts.

vii) The respondent has no right to suo motu investigate the scheduled offences under a different Act/SEBI Act without a complaint being filed and cognizance taken while conducting investigation on predicate offence based on the FIR. Sec.66 (2) of PMLA provides that when ED gets to know of some offence other than those in the predicate crime it may inform the same to jurisdiction authorities for necessary action, as held by a Division Bench of this court in ***R.K.M.Powergen Private Ltd. vs. The Assistant Director/Officer on Special Duty, Directorate of Enforcement*** *(MANU/TN/6294/2022).*

viii) In view of the law declared in ***Vijay Madanlal Choudhary and others vs. Union of India and others*** (2022) SCC OnLine SC 929 the authorities under the PMLA Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum.

ix) Sofar as the allegation of manipulation by fudging the books of accounts and balance sheet, it will fall under Section 447 of the Companies Act and the SFIO alone shall investigate such an offence. The FIR in the case on hand cannot be stretched by Enforcement Directory to have jurisdiction to investigate and the FIR has no basis at all.

x) The continuation of investigation by the respondent under PMLA is in blatant violation when the FIR which gave rise to the recording of ECIR has been stayed by this court. Further, when the ECIR has been stayed, it becomes an eclipse and thereby, personal liberty of the petitioners cannot be curtailed on the basis of pendency of ECIR, in the light of the decision rendered by a Division Bench of this court in ***B.Shanmugam vs. Karthik Dasari, Deputy Director, Directorate of Enforcement*** (2023) 1 MLJ (Crl.) 208.

xi) Investigation under PMLA is conducted by the respondent for collecting evidence for detection of crime of money laundering as a short circuit method, without going into the question of any corresponding proceeds of crime against the principle laid down by the Apex Court in ***Vijay Madanlal Choudhary*** case.

xii) As observed by the Apex Court in ***Vijay Madanlal Choudhary*** case the officers of Enforcement Directorate are not police officials and they can only investigate the offences under section 3 of PMLA, i.e. only the offences relating to concealment, possession, acquisition or use and projecting or claiming proceeds of crime as untainted property and cannot step into the shoes of police and investigate whether there is a criminal conspiracy or cheating or other IPC offences which is still being investigated by the State Police.

6. At this juncture, it would be relevant to note that the present petitions are filed only for seeking bail and thereby, this court is of the view that it would not be appropriate to delve upon the factual aspects by traversing deep into the same like a full-blown trial and it is suffice

to decide the prima facie case as to whether the petitioners are entitled to grant of bail or not.

7. On one side, the fact remains that the root cause of the ECIR is shattered on the submission of the de facto complainant himself, that he had entered into a compromise with the parties, against whom he had lodged the complaint for offences which are compoundable in nature. On the other side, the proceedings that were pending before the SEBI has ended in imposing of punishment under Sections 15A(a), 15HA and 15HB of the SEBI Act, 1992 and there is no invocation of complaint under Section 26 of SEBI Act for scheduled offence punishable Section 12A read with 24 of SEBI Act. Further, one of the petitioners had also preferred appealed against the said Order. The SEBI has also not lodged any complaint against the petitioner under Section 26 of the SEBI Act for the scheduled offences giving right to the respondent ED to investigate into the matter.

8. In this regard, the law is well settled in the decision in ***Vijay Madanlal Choudhary and others vs. Union of India and others*** (2022) SCC OnLine SC 929, wherein it has been held as under:-

"The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him."

9. Further, peculiarly in this case, the FIR, which gave rise to the proceedings before the respondent in the subject ECIR has been stayed by a Division Bench of this court and as such the proceedings against the petitioners has come to a standstill. The parallel proceedings before the SEBI also ended only in penalty under Sections 15A(a), 15HA and 15HB of the SEBI Act, 1992 without there being

any invocation of Section 12A read with 24 of SEBI Act and a fresh complaint by the SEBI enabling the respondent to proceed further against the petitioners.

10. Therefore, as rightly pointed out by the learned Senior Counsels for the petitioners, when the FIR and the consequent ECIR has been stayed, it becomes an eclipse and thereby, personal liberty of the petitioners cannot be curtailed on the basis of pendency of ECIR, as laid down in the decision rendered by a Division Bench of this court in ***B.Shanmugam vs. Karthik Dasari, Deputy Director, Directorate of Enforcement*** (2023) 1 MLJ (Crl.) 208.

11. Further, if the ED is of the view that it has got any material against the petitioners, it can only share the information or material with the statutory authority, who is entitled to initiate action or file complaint as held by a Division Bench of this court in ***R.K.M.Powergen Private Ltd. vs. The Assistant Director/Officer on Special Duty, Directorate of Enforcement*** *(MANU/TN/6294/2022).* In this case, no such complaint has been

lodged, however, the ED has proceeded to retain the petitioners in jail under the guise of further investigation.

12. It is submitted by the learned Senior Counsels for the petitioners that the petitioners are innocent and law abiding persons and they concentrate only on share marketing and with their proficiency in the domain, they tend to achieve a better capital appreciation, which is misconstrued as money laundering. They would further submit that consequent to the present proceedings initiated against them, most of their properties are already attached, in a way, preventing them from indulging into their regular business activities also. They would further submit that the petitioners are also ready to surrender their passports and abide by any stringent conditions to be imposed by this court in the event of grant of bail and they crave indulgence of this court to grant bail.

13. In view of the above discussion and the peculiar circumstances of the case, this court is of the firm view that on mere suspicion of serious offences and surmises alone, the personal liberty, guaranteed by the statute as time and again reiterated by the Apex

Court and other High Courts, cannot be denied to the petitioners and thereby this court feels that the continuation of incarceration of the petitioners does not only amount to **putting the cart in front of the horse**, but, also, **keeping a cart ready for an unborn, rather, stillborn foal**.

14. In view of the above discussion, this court is satisfied that the petitioners are entitled for bail in terms of Section 45 of Prevention of Money Laundering Act, 2002.

15. Therefore, this court is inclined to grant bail to the petitioners on certain conditions. Accordingly, the petitioners are ordered to be released on bail on each of them executing a bond for a sum of **Rs.50,000/- (Rupees fifty thousand only)** with **two sureties**, for a like sum to the satisfaction of the **learned District and Sessions Judge, Special Court for PMLA Cases, Chennai / Principal Judge, City Civil Court, Chennai,** out of the two sureties, **one shall be a blood relative** and on further conditions that:

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

[b] each petitioner shall produce

document in respect of immovable property worth Rs.2 crores; (either belonging to himself, friends or relatives).

[b] the petitioners shall report before the respondent, everyday at 10.30 a.m., until further orders;

[c] the petitioners shall deposit the Passport/travel document before the court; In the event of any petitioner not possessing passport, he shall file necessary affidavit to that effect.

[d] the petitioners shall not abscond either during investigation or trial;

[e] the petitioners shall not tamper with evidence or witness either during investigation or trial;

[f] On breach of any of the aforesaid conditions, the learned Special Judge/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Special Judge/Trial Court himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji vs. State***

of Kerala [(2005)AIR SCW 5560];

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

16. The Criminal Original Petitions are ordered accordingly.

05.5.2023.

Index: Yes/No.
Internet: Yes/No.
ssk.

To

1. District and Sessions Judge,
   Special Court for PMLA Cases, Chennai.

2. Principal and Sessions Judge,
   City Civil Court, Chennai.

3. The Assistant Director,
   The Directorate of Enforcement,
   Chennai Zonal Office-I,
   2nd & 3rd Floors,
   Murugesa Naicker Office Complex,
   No.84, Greams Road, Thousand Lights,
   Chennai 600 006.

4. The Superintendent,
   Central Prison, Puzhal, Chennai.

5. The Special Public Prosecutor for ED
   High Court, Madras.

A.D.JAGADISH CHANDIRA, J.

ssk.

P.D. ORDER IN
Crl.O.P. Nos.8713, 8639,
8645, 8834 and 8838 of 2023

Delivered on
05.5.2023