IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.10.2023

Delivered on : 31.10.2023

CORAM

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

Crl.O.P.Nos.10562, 22385 and 22387 of 2023

P.Anand ... Petitioner

Vs.

Assistant Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance,
Department of Revenue,
Chennai Zonal Office-I,
2nd & 3rd Floor,
84, Murugesa Naicker Complex,
Greams Road, Thousand Lights,
Chennai 600 006. ... Respondent

PRAYER: Criminal Original Petitions filed under Section 439 of Cr.P.C. and Section 45 of the Prevention of Money Laundering Act, 2022 to enlarge the Petitioner on bail in Spl.C.C.Nos.9, 10 and 11 of 2022 on the file of the XIV Additional Judge, City Civil Court (Special Court, PMLA Cases).

For Petitioner : Mr.J.Sivanandaraj, Senior Counsel for Mr.C.Kathiravan

For Respondent : Mr.Mohanlal for N.Ramesh,
Special Public Prosecutor (ED)

O R D E R

The petitioner, who has been arrested by the respondent on 12.7.2022 and remanded to judicial custody on 13.7.2022 for the offence punishable under Section 4 of the Prevention of Money Launder Act, 2002, has come up with the present petitions seeking bail in Spl.C.C.Nos.9, 10 and 11 of 2022 on the file of the XIV Additional Judge, City Civil Court (Special Court, PMLA Cases) (arising out of ECIR Nos.CEZO-I/05/2019, CEZO-I/37/2020 and CEZO-I/42/2020 on the file of the Assistant Director, Directorate of Enforcement, Chennai-06).

2. When the above three ECIRs were pending investigation on the file of the respondent, the petitioner had come up with a bail petition in Crl.O.P.No.24776 of 2022 and the same was dismissed by this court by order dated 1.12.2022 and now, the present petitions have been filed after the ECIRs have ripen into Special C.C. and taken on file by the Special Court.

3. The factual background of the case in a nutshell is as under:-

i) Three separate complaints dated 1.11.2019, 8.9.2020 and 8.10.2020, lodged by the Central Bureau of Investigation, Bangalore, against (i) Surana Industries Ltd and Promoters and Directors (ii) Surana Power Ltd and others and (iii) Surana Corporation Ltd. and others at the instance of the Bankers viz., IDBI and State Bank of India on their behalf and on behalf of other consortium lenders, gave rise to the enquiry into the offences viz., misappropriation and criminal breach of trust, manipulation of books of accounts through fictitious accounts and conversion of property, punishable under Sections 120-B read with Sections 420, 467, 468 and 471 IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.

(ii) Having found that despite the credit facilities to the tune of several crores offered by the Banks to resolve the financial issues alleged to have been faced by the Companies, the Companies had defaulted its repayment obligations to the member banks, the Companies were classified as Non Performing Asset (NPA) and the loans were recalled and notices were issued for invoking the personal guarantees of Promoters/Guarantors of the Companies and subsequently, the Companies were also liquidated.

(iii) The Transaction Audit conducted by the Forensic Auditors revealed certain unusual indicators/irregularities like diversion of several crores of rupees as capital advances to potentially related parties, fake and fictitious transactions with parties related amongst themselves which exposed that the Companies were fraud ones. The aggregate amount of fraud comes to Rs.1083,14,35,709/- in respect of Surana Industries Limited, Rs.1495.76 crores in respect of Surana Power Limited and Rs.2930 crores in respect of Surana Corporation Limited.

v) The petitioner, being a relative of the main accused one Shri Dinesh Chand Surana and having been associated with various companies in the capacity of Director/Partner/Proprietor, which had huge transactions with the Surana Group of Companies and ultimately, he, being the Designated Partner of Bell Tower Enterprises LLP, was summoned to appear for enquiry with regard to ECIR Nos.CEZO-I/05/2019, CEZO-I/37/2020 and CEZO-I/42/2020 and later, he was arrested on 12.7.2022 and remanded to judicial custody on 13.7.2022.

vi) Pending investigation of the above ECIRs, the petitioner had filed Crl.O.P.No. 24776 of 2022 and the same was dismissed by this court by order dated 1.12.2022.

vii) On completion of investigation, the petitioner has come up with the present petitions seeking bail in Spl.C.C.Nos.9, 10 and 11 of 2022 on the file of the XIV Additional Judge, City Civil Court (Special Court, PMLA Cases).

4. The core submissions of Mr.J.Sivanandaraj, learned Senior Counsel appearing for the petitioner are as under:-

i) The petitioner has not committed an offence under Section 3 and 4 of PML Act.

ii) Even according to the prosecution, the petitioner has got a very poor IQ and an illiterate dummy acting on the whims of the main accused and thus, no offence could ever be made out under Section 3 of the PML Act.

iii) The object of the PML Act ultimately being to confiscate the properties that are tainted through the commission of offence of money laundering, even assuming that the petitioner has unknowingly laid his hands of proceeds of crime allegedly generated the loans received by Bell Tower

Enterprises LLP, the same have been closed as of today and the loans have been repaid to the lender entities and hence, the alleged tainted monies are not in the hands of the petitioner and thus, custodial investigation or further custody of the petitioner is unnecessary.

iv) Though investigation has been done by the respondent in respect of money trail and the financial transactions of the petitioner they were unable to unearth any material as if the the petitioner had gained anything out of such transactions, other than the salary paid to him by the main accused.

v) Though the petitioner is a relative of the main accused, he is an illiterate without any acumen to run a business and his name has been used by the main accused.

vi) One Prabakaran, a B.Com graduate and an employee of the group of Companies, who also faced similar ordeal at the instance of the main accused, has been granted bail by this court, having been found that he is a also a dummy Director and there is no financial, family background and he has no business acumen to run companies in the capacity of the Director dealing in crores of rupees in business.

vii) The aged father of the petitioner had already been undergoing treatment for Chronic Kidney Disease and the mother of the petitioner had already undergone a bypass surgery. Whileso, the petitioner, who is duty bound to take care of his aged parents during their unhealthy condition, is unable to do anything for them merely because of long incarceration as under trial prisoner on being trapped into the web of money laundering due to his illiteracy.

viii) The petitioner has been in custody for more than a year and now, the respondent has filed the charge sheet and the Special Court has taken the same on file in Special C.C.Nos.9 to 11 of 2023 and therefore, his further custody may not be required.

ix) The petitioner, being a law abiding person having deep roots in Chennai, would not flee away from the clutches of law in the event of grant of bail and he is ready to abide by any stringent conditions that may be imposed by this court for grant of bail and he undertakes to appear before the Special Court on all the hearing dates, without fail and extend his fullest cooperation for conduct of trial.

5. Per contra, learned Special Public Prosecutor would submit that credit facilities were availed by Surana Group Companies and funds were later misappropriated and siphoned off for the personal gains of its Directors causing loss to the tune of Rs.3986 crores to the consortium of the banks and the petitioner, being a relative of the main accused, acted as a dummy Director/Partner/Proprietor of various companies of the group during various periods from 2014 to 2018, had huge transactions in such capacity with Surana Group of Companies and abetted the main accused in routing and siphoning of the funds, especially, in the transactions of purchase of windmills from Surana Corporation Limited and thereby, the petitioner, who had actively assisted for money laundering of the main accused, is not entitled to any indulgence of this court. He would also submit that the considering the nature of the offence with which the petitioner is charged, he has to satisfy with the twin conditions stipulated under Section 45 of the PML Act for grant of bail and thus, he prays for dismissal of the bail petition.

6. Having heard the learned counsel appearing for the parties and perused the materials available on record, this court finds that this is the

second bail petition, the earlier one having been filed by the petitioner during the pendency of the investigation by the respondent. Now, it is brought to the notice of the court that the investigation has been completed, charge sheet has been filed by the respondent before the Special Court and the cases have been assigned Special C.C.Numbers by the Special Court.

7. The main allegation against the petitioner is that he, being a relative of the main accused Shri.Dinesh Chand Surana and his associates, aided and abetted them in siphoning of funds and acted as a very active conduit in the exercise of money laundering and he had involved in the process of concealment, possession, acquisition or use and projecting or claiming the proceeds of crime as untainted money. If at all the cases against the petitioner ends in conviction, the maximum sentence that could be imposed is imprisonment for seven years. As on date, the petitioner has been in custody for more than a year. In a similar case, in ***Sanjay Agarwal vs. Directorate of Enforcement*** (2022 SCC OnLine SC 1748), where the allegation is that the accused, who was permitted to import primary gold under an obligation to convert the same as gold jewellery and earn valuable

foreign exchange for the country by exporting them, had involved in diversion of 54 Kgs of primary gold imported by him into domestic market, the Apex Court had granted bail to the petitioner.

8. It is no doubt, even according to the prosecution, the petitioner has got a very poor IQ and he, being an illiterate, acted as a puppet at the hands of the man accused. Despite the fact that he is an illiterate person and acted as a dummy Director at the behest of the main accused, a strong suspicion about the active role of the petitioner and his connivance in the offence of money laundering by the main accused was raised by the prosecution on the earlier occasion, especially when the cases were under investigation. Now, even after completion of investigation, it is seen that the prosecution could not unearth any new material against the petitioner and except the fact that the petitioner is a relative of the main accused, no strong piece of evidence is brought against the petitioner to prove his connivance with the main accused knowing the consequences of his acts. Though the petitioner, being a relative of the main accused, is portrayed as an active participant in money laundering, It is the case of the petitioner that he was

misused by the main accused by taking advantage of his illiteracy by merely paying some salary and incentives. In this regard, it is relevant to note that the prosecution has not come out with a case of any more gain enjoyed by the petitioner by his active co-operation to the main accused in money laundering, other than the salary received from the main accused which probabilises the case of the petitioner that he was misused by the main accused for the sake of salary.

9. At this stage, it is relevant to note that one Prabhakaran, a paid employee of the main accused and successor of the petitioner was made as a dummy Director of the group of Companies by the main accused. He was also implicated as an accused in the above cases and this court, considering the financial and family/educational background of such employee and finding that the said employee was misused by the main accused as a tool in the offence of money laundering, granted bail to him by order dated 30.8.2023 in Crl.O.P.Nos.14163, 17316 and 17287 of 2023.

10. Further, a perusal of the materials reveals that the aged parents of the petitioner has already been suffering with chronic diseases and this

court had granted interim bail by order dated 11.5.2023 in Crl.O.P.No.10562 of 2023, to take care of his ailing father, who was suffering with kidney disease. Now, it is brought to the notice of this court that his ailment is at an advanced stage. Further, the petitioner has been in custody for more than a year and now, on completion of investigation by the respondent, cases have been taken on file by the Special Court, which reveals the conduct of the petitioner and the co-operation extended by him during the investigation.

11. Coming to the question of twin conditions stipulated under Section 45 of PML Act is concerned, the learned Special Public Prosecutor was heard at length and despite his objections for grant of bail to the petitioner, this court is able to find that the developments in the investigation of the case reveals that the petitioner appears to have been misused by the main accused by involving him in money laundering on payment of mere salary by taking advantage of his illiteracy. Further, no bad antecedent has been shown against the petitioner by the prosecution.

12. In ***Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra,*** (2005) 5 SCC 294, an Appeal against the order of the Bombay High Court refusing to grant bail to the accused in respect of an offence of printing counterfeit stamps and forgery, the Hon'ble Apex Court, while granting bail, has opined about the conditions stipulated in Section 21(4) of the Maharashtra Control of Organised Crime Act, 1999 for grant of bail, which are identical to the twin conditions imposed under the Prevention of Money Laundering Act, 2002, as under:-

> *"**44.** The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is*

able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence."

13. It is also relevant to note that in a recent decision in ***Mohd. Muslim alias Hussain vs. State (NCT of Delhi)*** (2023 SCC OnLine SC 352), the Hon'ble Supreme Court, while allowing an Appeal against denial of bail in respect of an offence committed punishable under the Narcotic Drugs and Psychotropic Substances Act, 1985, has analysed the satisfaction of two twin conditions which are identical to the ones stipulated under the

Prevention of Money Laundering Act, 2002 and observed as under:-

*"**19.** The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is "not guilty of such offence" and that he is not likely to commit any offence while on bail. **What is meant by "not guilty" when all the evidence is not before the court? It can only be a prima facie determination. That places the court's discretion within a very narrow margin.** Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the*

accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice : even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws - be balanced against the public interest."

14. Keeping in mind the above observations and in the peculiar facts and circumstances of the case on hand, this court is able to arrive at a conclusion that there exists reasonable grounds for believing that the

petitioner may not be guilty of the offence alleged in the complaints and he would not likely to commit similar offence while he is on bail. Considering the above aspects, this court is of the view that the petitioner can be released on bail with certain conditions.

15. Accordingly, the petitioner is ordered to be released on bail on he executing a bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) with two common sureties (out of which, one should be a blood relative), each for a sum of Rs.50,000/- (Rupees Fifty Thousand only) to the satisfaction of the learned Special Court constituted for Trial of PMLA Cases, Chennai 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] the petitioner shall report before the Special Court for PMLA Cases, Chennai at 10.00 am, on all working days, until further orders.

[c] the petitioner shall not abscond either during the trial.

[d] the petitioner shall not tamper with evidence or witness during

trial.

[e] On breach of any of the aforesaid conditions, the learned Special Judge is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner was released on bail by the learned Special Judge 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 absconds, a fresh FIR can be registered under Section 229A IPC.

16. Accordingly, these Criminal Original Petitions are allowed. Before parting with, it is made clear that the observations made in the present petitions shall have no bearing on the merits of the cases pending against the petitioner.

31.10.2023
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Index: Yes/No.

To

1. XIV Additional Judge,
   City Civil Court
   (Special Court, PMLA Cases).

2. Assistant Director,
   Directorate of Enforcement,
   Government of India,
   Ministry of Finance,
   Department of Revenue,
   Chennai Zonal Office-I,
   2nd & 3rd Floor,
   84, Murugesa Naicker Complex,
   Greams Road, Thousand Lights,
   Chennai 600 006.

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

4. The Special Public Prosecutor (ED cases),
   High Court of Madras.

A.D.JAGADISH CHANDIRA., J.

ssk.

P.D. ORDER IN
Crl.O.P.Nos.10562, 22385
and 22387 of 2023

Delivered on
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