Crl.OP.No.19149 of 2023

G.K.ILANTHIRAIYAN, J.

The petitioner, who was arrested and remanded to judicial custody on 28.01.2022 for the offences punishable under Sections 3 & 4 of the Prevention of Money Laundering Act, 2002, (herein after referred to as "the PML Act") in Spl.C.C.No.7 of 2021 in ECIR No. ECIR/CEZO-II/05/2017 on the file of the learned XII Additional Special Judge for CBI & PML Act Cases at Chennai, seeks bail.

2.1. As per the report, the respondent registered Enforcement Case Information Report (ECIR) No.ECIR/CEZO-II/05/2017 for the offences punishable under Sections 465, 467, 468, 471 and 420 of IPC on the file of the CCB-I and Office of the Commissioner of Police, Egmore, Chennai. Since the offence under Sections 420, 467 & 471 of IPC are scheduled offences under Sections 2(1)(x) and 2(1Xy) of PML Act, the respondent recorded in CEZO/05/2017 dated 01.04.2017. M/s.BK Electro Tool Products is the sole proprietorship concern owned by one, B.Kannan. The account holder / Al opened a current account in the name and style of M/s.BK Electro Tool Products with Indian Bank, Thousand Light Branch, Chennai on 31.08.2016. It was operated from 31.08.2016 to 05.10.2016. During that period, the account holder who is arrayed as first accused, made foreign outward remittances to the tune of USD 1,205,550.69 equivalent to Indian Rupee i.e. Rs.8,09,17,723 on 13 different occasions towards direct import of goods. He had opened current account impersonating himself as B.Kannan by submitting fabricated documents relating to the business of M/s.Electro Tool Products owned by the said Kannan who is arrayed as second accused. He was arrested and remanded to judicial custody in pursuant to the crime No.63 of 2017. He was examined under Section 50 of PML Act and revealed that the person whose photograph is appearing in the account opening form identified the person S.R.Kavin Sidhaarth @ R.Senthil Kumar. He categorically admitted that he had entered inside the premises of Indian Bank, Thousand Lights Branch for the purpose of opening current account in the name and style of M/s.BK Electro Tool Products. Thereafter, he obtained cheque book. Therefore, the said Kannan affixed photo of one, S.R.Kavin Sidhaarth @ R.Senthil Kumar and opened a current account.

2.2. Further, the third accused who layered a sum of Rs.4,78,39,852/- through his business entity i.e. M/s.Levensun Global Solutions Private Limited into the account of M/s.BK Electro Tool Products. He categorically stated that the funds which are layered by the petitioner herein who is arrayed as A8, using his business entity in the name of M/s.Levensun Global Solutions Private Limited. Likewise, the fourth accused imported documents for and on behalf of M/s.BK Electro Tool Products. A5 also filled the account opening form of M/s.BK Electro Tool Products thereby using one and the same Pan No. in the name of M/s.BK Electro Tool Products A1 and A2 made overseas wire transfer to the tune of Rs.33,79,45,856/- through four banks and the second accused made overseas wire transfer to the tune of Rs.25,67,57,904/- through three banks without making any corresponding imports into the country. A6 issued five certificates in Form 15CB in favour of M/s.BK Electro Tool Products that resulted in making foreign outwards remittances of Rs.3,45.45,182/- through SBT, Mount Road Branch, Chennai. He was identified and as per his statement, the revelation corroborated with disclosure made by the other accused. The petitioner assisted first and third accused in opening current account with the Indian Overseas Bank, Royapuram, in the name of M/s.Levensun Solutions Private Limited and thereby involved in the activity connected with layering of funds to the extent of Rs.82,00,000/- into the bank account of M/s.BK Electro Tool Products. He also assisted the first accused by referring sole proprietor concern of M/s.1 Square Enterprises to the tune of Rs.1,26,00,000/- was layered into the account of M/s.BK Electro Tool Products.

3.1. The learned counsel for the petitioner would submit that even according to the prosecution the allegation as against the petitioner is that he assisted the accused 1 and 3 in opening account with the Indian Overseas Bank, Royapuram, in the name of M/s. Levensun Solutions Private Limited and thereby involved in the activity connected with layering of funds to the tune of Rs.3,96,39,851/- and Rs.82,00,000/- into the bank account maintained at Hong Kong. The first accused, a sole proprietor of M/s.I Square Enterprises to one Ameen of Burma Bazaar and by using the account of M/s.I Square Enterprises layered a sum of Rs.1,26,00,000/- and Rs.1,33,06,487/- was layered into the account of M/s.B.K.Electro Tool Products in account maintained with Indian Bank, Thousand Lights Branch, Chennai. Further, the petitioner transferred funds of $ 2,60,639.14 and $ 2,307,098.54 from M/s. Decent Mount Limited to Flourish Noble Limited accounts held in HSBC, Hong Kong and also transferred funds from M/s.Prestige Key HK Limited and it was the petitioner who operated the above accounts.

3.2. The learned counsel for the petitioner would further submit that the petitioner is neither the proprietor nor the partner of M/s.Levensun Solutions Private Limited or M/s.I Square Enterprises. The entire allegations are baseless and unsubstantial and the petitioner has been falsely implicated in this case. There is no material let in by the prosecution to show that the petitioner assisted the layering such amounts into the account of M/s.B.K.Electro Tool Products. M/s.B.K.Electro Tool Products had imported goods from abroad by filing bill of entry and cleared the customs after payment of appropriate duty. He never operated any account maintained with HSBC Bank, Hong Kong. There is no material to show that the petitioner is a share holder in M/s.Decent Mount Limited or M/s. Flourish Noble Limited which is based in Hong Kong. Therefore, there is no incriminating material to implicate the petitioner in this case. In fact, he has been implicated only in the supplementary complaint as the 8th accused. There is nothing to show that the money that was transacted are proceeds of crime. Hence, Section 45(1) of the PML Act cannot be attracted as against the petitioner, as it is not the case of the prosecution that the money belongs to the petitioner. The petitioner is undergoing incarceration from the date of arrest namely on 28.01.2022. Now, the complaint has been taken cognizance by the Trial Court in Spl.C.C.No.7 of 2021. Hence, he prays for grant of bail to the petitioner.

3.3 He further submitted that the petitioner is not at flight risk and there is absolutely no chances for tampering the evidences and there is also no likelihood that he shall access witnesses. A part of the investigation completed and in fact, he has been implicated only in the supplementary charge sheet. He has been incarcerating imprisonment from the date of arrest i.e. 28.01.2022. Therefore, the conditions as enumerated by the Hon'ble Supreme Court of India are satisfied and as such, the petitioner is entitled for bail.

3.4 He also relied upon the judgment of the Hon'ble High Court of Bombay in the case of ***Rana Kapoor Vs. The Directorate of Enforcement Though the Assistant Director, Zonal Office, Mumbai*** rendered in PMLA Spl.Case No.404 of 2021, in which the Hon'ble High Court of Bombay held that rigours of twin conditions as contemplated under Section 45(1) of PML Act are very stringent. Certainly, ED is under legal obligation to take each and every prompt step to follow the true spirit and mandate of Sec.44(1)(c) scrupulously. The way in which ED has been dealing with this case and even not aware of the said mandate until prevailed upon the Court to give repeated directions. If the same continues, the trial will never begin and the conclusion thereof will be only a dream. On the contrary rather honouring and following the mandate of Sec.44(1)(c) scrupulously, ED appears to have sabotaged the same. Certainly the undertrial applicant who is trial-less since more than 2 years 2 months and 3 days is entitled for claiming benefit thereof.

4 Per contra, the respondent filed counter and the learned Special Public Prosecutor appearing for the respondent submitted that that there are totally 8 accused, in which the petitioner is arrayed as 8th accused. Insofar as the petitioner is concerned, he assisted first and third accused in opening current account with Indian Overseas Bank, Royapuram in the name of M/s.Levensun Global Solutions Private Limited and thereby involved in the activity connected with layering of funds to the extent of Rs.82,00,001/- into the bank account of M/s.BK Electro Tool Products in A/c.No.6462857692 maintained with Indian Bank, Thousand Lights Branch, Chennai. He also assisted the first accused by referring the sole proprietor concern M/s.I Square Enterprises to one, Ameer from Burma Bazaar, Chennai through which a sum of Rs.1,26,00,000/- was layered into the account of B.K.Electro Tool Products in A/c.No.6462857692 maintained with Indian Bank, Thousand

Light Branch, Chennai. He has assisted A1 and A3 in the matter of opening the current account in the name of M/s.Levensun Global Solutions Private Limited with Indian Overseas Bank. He is also in possession of more evidences in this case and deliberately withholding and not divulging the same, thus jeopardizing the investigation. Therefore, there is absolutely no change of circumstances to consider the application for bail for the petitioner.

5. On perusal of the complaint filed under Sections 44 and 45 for offence committed under Section 3 punishable under Section 4 of Prevention of Money Laundering Act, 2002, the petitioner is arrayed as 8th accused. The petitioner had opened the account in the name of M/s.Levensun Global Solutions Private Limited wherein A1 and A3 are Directors. He registered the company in the name of M/s.Levensun Global Solutions Private Limited with the Registrar of Companies, Chennai based on the name and other details given by other accused. As a *quid pro quo*, the other accused paid a sum of Rs.5,000/- as commission for registration of the said company in the name of

M/s.Levensun Global Solution Private Limited.

6. Further, the petitioner is the author / creator of the forged identity documents and import documents that was used taking the help of the other accused persons with seven AD Banks in the matter of sending US dollars equivalent to Rs.59,47,03,760.46/- through overseas wire transfer, hiding illicit origin, using the forged import documents. Therefore, he had committed very serious offence and there is an ample chance for tampering witnesses if he is let out on bail. That apart, the Hon'ble Supreme Court of India in the case of ***Directorate of Enforcement Vs. Aditya Tripathi*** reported in ***2023 Livelaw (SC) 433***, held that merely because, for the predicated offences, the charge sheet might have been filed, it cannot be a ground to release the accused on bail in connection with the scheduled offences under the PML Act, 2002. Investigation for the predicated offences and the investigation by the Enforcement Directorate for the scheduled offences under the PML Act are different and distinct. The combined reading of the statements of the co-accused and the incriminating documents recovered from the business

premises of the petitioner establishes beyond doubt his deep involvement in the offence of money laundering. Further, the twin condition as mandated in Section 45 of PML Act shall apply to the case on hand. The petitioner failed to adduce anything contrary to establish that he has not involved in the offence and as such, he is not entitled for bail. Therefore, this Court finds no change of circumstances and this petition is liable to be dismissed.

7. Accordingly, this criminal original petition is dismissed.

27.09.2023

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