

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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Reserved on: 05.09.2023

Pronounced on: 13.09.2023

CORAM :

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRANCrl.O.P. No.19147 of 2023andCrl. M.P. No.12883 of 2023

The Assistant Director,
Directorate of Enforcement,
Government of India,
Chennai Zonal Office-I,
Chennai – 600 006.

.. Petitioner

Vs.

Shri.Ahmed A.R.Buhari

..Respondent

PRAYER : Criminal Revision Petition has been filed under section 482 of Criminal Procedure Code to set aside the order dated 16.08.2023 granting bail to the accused in Crl.M.P. No.6628 of 2023 in Spl.C.C.No.1 of 2022 by the learned XIII CBI Court, (Spl. Court for PMLA Cases), Chennai.

For Petitioner : Mr.N.Ramesh,
Special Public Prosecutor
(Directorate of Enforcement Cases)

For Respondent :Mr.C.Manishankar,
Senior Counsel for
Mr.B.Sathish Sundar

**ORDER**

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Shri.Ahmed A.R.Buhari, the respondent herein was arrested on 04.03.2022, pursuant to registration of the case against him under Sections 3 & 4 of Prevention of Money Laundering Act, 2002 (hereinafter referred to “PMLA Act”) in F.No.ECIR/CEZO/I/01/2018 which was on the file of Directorate of Enforcement, Chennai Zone-I, Chennai. On completion of investigation, the Enforcement Directorate had filed final report and the same was taken on file by the Special Court for CBI cases, Chennai in Spl.C.C.No.01 of 2022 after being transferred from the Principal Sessions Court, Chennai. Before the trial Court, the petitioner sought for grant of bail in Crl.MP. No.6628 of 2023 and same was allowed on 16.08.2023. The docket order uploaded in the Court website read as below:-

“1.The petitioner/Accused (A1) required to surrender/deposit his passport before this court custody until further orders.

2.Petitioner/Accused (A1) enlarged on bail, on his execution of bond for Rs.1 lakh and two such sureties for the like sum each and the sureties shall be his blood relatives and sureties required to produce sufficient solvency certificates.

3.The petitioner/Accused (A1) on his enlargement on bail, shall appear before this Court on all working days and to sign before this Court daily at 10.00 AM until further orders without fail.

4.The petitioner shall not leave the Chennai City limit until further orders.



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5.The petitioner required to make his appearance regularly for future hearings of this case and required to extend his fullest cooperation for the early disposal of this case.

6.The petitioner shall be made available for interrogation by the respondent as and when required, without fail. The petitioner required not to indulge in any activities of tampering of witnesses, records and evidences.”

2. The Special Public Prosecutor appearing for the Enforcement Directorate, on 17.08.2023 moved to this Court to set aside the order granting bail. This Court called for the records through the Vigilance Cell of High Court, after perusing the records and being satisfied that, the learned trial Judge has not made detailed order while granting bail, this Court granted stay of the bail and passed the following order.

“7. On the face of the order which is impugned in this application to set aside the bail granted to the accused, it is obviously seen that there is no discussion in respect of pleadings and the embargo under Section 45 of the PMLA Act, the Act under which the accused now been prosecuted.

8. Furthermore, when the prosecution has filed petition to reopen the case for clarification, ignoring the said petition, the trial Court has hurriedly passed the non-speaking order granting bail. The copy of the order was not made available to the prosecution for reasons best known and the Counsel has made an endorsement in the application for dispensing with the production of the original order



copy, with specific statement that, attempt made on to peruse the bail order did not fructify. The Staff in the Special Court has informed him that the order is under preparation.

9. As stated earlier, case records seized by the Registrar (Vigilance) also does not contain a detailed order except the docket order which is signed by the Presiding Officer which is extracted above for easy reference. In that order, there is no indication that there is a detailed order dictated/pronounced and signed in the Open Court. This clearly indicates that when the docket order signed by the Presiding Officer, there was no detailed order.

10. For the said reason, the order passed in Crl.M.P.No.6628 of 2023 in Spl.C.C.No.1 of 2022 dated 16.08.2023 has to be tested. Therefore, it is hereby stayed.”

3. Thereafter, on completion of service to the respondent, the matter was heard. In the meantime, the learned trial Judge has also uploaded the detailed order which was made available to the prosecution on 21.08.2023. The prosecution was permitted to file additional affidavit in response to the detailed order passed by the trial Court.

4. The learned counsel for the petitioner/Directorate of Enforcement and the learned counsel for the respondent made their oral and written submission. Upon hearing both the side and on perusal of records this Court pass the following order:-



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The respondent is a NRI, domiciled at Singapore. He is the Director of M/s.Coastal Energyen (P) Limited and Power Plant under the name and style of M/s.Mutiara Thermal Power Plant, Tuticorin with 1200 MW capacity and few other group of Companies. The respondent and his Company came under the scanner of Directorate of Revenue Intelligence (DRI), when the coal imported from Foreign for conversion of coal into thermal energy, the price were inflated and the inflated sale price was transferred to intermediary Form-B in Foreign Country. The supplier Company was paid only the actual price. The difference between the inflated price and the actual price been retained by the intermediary Company. The *modus operandi* suspected by DRI was price for superior quality coal has been collected from Indian buyer, mainly Public Sector coal based Thermal Generating Co., but coal of inferior quality for low cost purchased from the foreign Company. The difference in price been retained by intermediary. DRI issued show cause notice to the respondent under the provisions of Customs Act, 1962 and proceeded against the respondent company and other Companies which imported coal of inferior quality and sold it at inflated price as if it is of high quality.

5. Following DRI, the Economic Wing of CBI, Delhi, registered case in



RC/221/2018/E0003, dated 22.01.2018, for offences under IPC and Prevention of Corruption Act. Relying upon the FIR registered by CBI which is probing offences under Sections 120-B r/w 420 of IPC and Section 13(2) r/w 13(1)(d) of PC Act. Since case involving offence of siphoning of money to Foreign Country, the Enforcement Directorate registered ECIR No.CEZO/1/01/2018 against this respondent and others on 31.01.2018. Around Rs.500 crores of rupees alleged to have been laundered in this case.

6. Section 45(1) of PMLA Act impose twin conditions as restriction for Courts to consider while entertaining bail petition involving crime proceeds of one crore and above.

7. The respondent when earlier moved for bail, this Court had occasion to consider the facts of the case and dismissed the bail petition on being satisfied that the petitioner has failed to co-operate with investigation and he is withholding the trail of proceeds of crime. In paragraph No.42 of the earlier order dismissing the bail petition, this Court has observed as below:-

“42. During the investigation, the respondent/complainant has asked the petitioner to furnish bank account statements of the offshore Companies involved in this transaction, original invoices raised by the Indonesian Coal Miners to his Dubai based entities, Books of Accounts of his foreign entities located in Mauritius and British Virgin



Islands (BVI). The petitioner reluctant to part away those crucial documents and had given evasive reply. Having refused and reluctant to handover these documents which are essential to ascertain whether the money laundered the manner in which the investigation so far reveals, mere physical presence at Respondent Office will not tantamount to cooperation to investigation. Further, having declared to maintain silence, the investigating agency needs time to collect the documents required, by other means as the petitioner himself have put it in his petition, (i.e.,) Letter of Request (LOR) under Section 57 of PMLA, 2002 or Section 166-A of Cr.P.C., may be resorted. It is the discretion and prerogative of the investigating agency, to choose the mode and they need no advice neither from the Court nor from the accused. To collect those documents, the confinement of the petitioner in prison is inevitable, else he may secret away the documents, taking advantage of his liberty.”

8. This order was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court in its order [Special Leave to Appeal (Crl.) No.5476 of 2022], dated 05.12.2022 observed that, they do not find any ground to release the petitioner on bail at this stage as it might hamper the ongoing investigation. The Hon'ble Supreme Court in its order had further observed as below:-

“2. However, once the investigation is complete, the



petitioner shall be at liberty to approach the Trial Court for his release on bail, and such a petition shall be considered as per its own merit without being influenced by the orders passed by the High Court or this Court.

3. The respondent is directed to expedite the investigating process and make an endeavour to complete the same within three months.

4. With the aforesaid directions, the Special Leave Petition is disposed of.

5. As a result, pending interlocutory applications also stand disposed of.”

9. Alleging there was no progress in the investigation till 04.03.2023, the respondent had filed bail petition in Crl.M.P.No.1320 of 2023 before the trial Court. After recording the fact,

(i) the case registered by DRI for violation of Customs Act has not culminated in prosecution even after lapse of 5 years.

(ii) The investigation done by CBI for offence under Section 120-B r/w 420 of I.P.C and Section 13(2) r/w 13(1)(d) of P.C Act, 1988 still remains at investigation and final report not yet filed even after lapse of more than 5 years, despite declined to draw parallel from the closure report of CBI and action dropped by DRI in similar cases and dismissed the bail petition on 17.03.2023 holding that,

“10. While considering these aspects, even if it is



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admitted that the cases initiated by D.R.I and CBI against other entities on similar facts and circumstances have ended in closure thereby making out no predicate offence, the action or inaction on part of the prosecution agencies in other cases cannot be a ground to hold that this petitioner/accused has not committed the offence under PMLA. In other words, the contention of the learned counsel that just because the D.R.I and the CBI have dropped the proceedings in other similar cases, the same will be done or expected to be done in this case also by them cannot be presumed. It is true that the personal liberty is the most cherished fundamental right under the Constitution of India, but when it is curtailed by following the procedures established by law, the same cannot be said to have been affected.

11. In the case on hand, the specific case of Enforcement Directorate is that the offshore entities belong to this petitioner/accused and that steps are taken to get relevant documents by issuing letter of request to those countries. Whereas, the specific case of the accused is that he is no longer involved with those offshore entities and he would rely upon the order passed by this Court in Crl.M.P.No.4781 2022 under section 305 Cr.P.C. holding that the entities alone could appoint representatives to face the trial and this petitioner/accused cannot be compelled to represent those entities because the said entities were not served summons properly and that they are said to be under liquidation process. However, it was held in that order that this Petitioner/accused cannot escape the liability under PMLA as he was in-charge of



those entities during the relevant period. Hence, the Petitioner cannot take advantage of the order passed by this court under section 305 Cr.P.C. to gain support that he did not commit any offence either under the schedule or under Section 3 of PMLA.”

10. The respondent/accused, soon thereafter had filed bail petition under Section 167(2) of Cr.P.C before the trial Court in Crl.M.P.No.2784 of 2023 on the premise the complaint filed by Enforcement Directorate and taken on file as Special C.C.No.1 of 2022 is an incomplete report. Referring that before the Hon'ble Supreme Court, the Enforcement Directorate promised to complete the investigation and file final report within 3 months but had not filed any report therefore to be enlarged on statutory bail under Section 167(2) of Cr.P.C.

11. The trial Court taking note of the fact that the complaint of Enforcement Directorate dated 23.04.2022 already taken cognizance and taken on file by the Principal Sessions Judge, Chennai. Subsequently, the case transferred to the Special Court for C.B.I case which is the Court notified to deal cases under PMLA. On transfer, Special C.C.No.1 of 2022 assigned and copies under Section 207 and Section 208 of Cr.P.C was readily available. After receiving summons on behalf of other accused which are shell Companies in Foreign countries, had filed petition under Section 305 of Cr.P.C retracting his stand and claimed that he is not representing those Companies.



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12. As far as the FIR named accused A1 to A7 (including this petitioner) investigation completed, complaint filed. As far as the offshore entities, the investigation is yet to be completed. However, it will be any impediment to proceed the trial against the accused persons. Relying upon the judgment of the Delhi High Court rendered in *Anand Subramanian -vs- C.B.I* reported in **2022 SCC Online Del 3125**, the trial Court dismissed the bail petition holding that the material found in the complaint sufficient to make out *prima facie* case for trial under Section 3 and 70 of PMLA Act. The complaint is sufficient and complete in so far the accused/petitioner is concern, the investigation against Public Servants of Public Sections Undertakings and offshore foreign Companies which alone is incomplete. Whether filing or not filing of supplementary Complaint will not affect the complaint against this accused.

13. The bail petition in Crl.MP. No.6628 of 2023 filed was allowed by the trial Court and that order is impugned by the Directorate of Enforcement in the present petition. The circumstances under which the trial Court granted bail and the grounds of challenge to the bail order has warranted and forced this Court to make this above narrations as a prelude.

14. The sum and substance of the final report filed against this petitioner



who is arrayed as first accused in Spl.C.C. No.1 of 2022 is that he was involved in the business of import and sale of coal from overseas, particularly from Indonesia through his Company by name M/s.Coastal Energy Private Limited. In respect of coal imported during 2011-15, the Director of Revenue Intelligence, Mumbai Zonal Unit investigated about the over-invoice and issued show cause notice in file No.DRI/MZU/F/INT.160/2014/977 dated 14.02.2017 under the relevant provisions of the Customs Act, 1962. The adjudication in the proceedings initiated by DRI is still pending.

15. Followed by the proceedings of DRI, CBI has registered a case against this petitioner, his Company and others. The investigation in the case registered by CBI, Delhi in RC. No.221/2018/E0003 dated 22.01.2018 is still pending and the final report not yet filed.

16. The case registered by CBI is the predicate offence which has led to the complaint by Enforcement Directorate in F.No.ECIR/CEZ/01/2018. The respondent on taking up the investigation had conducted search and seizure operation under the provisions of PMLA Act, in the premises connected to the petitioner. The search operation dated 12.09.2019 and 13.09.2019 had led to recovery of incriminating material. Based on the complaint, the offence under Sections 3 and 4 of PMLA Act, been taken cognizance by the Court designated



to try offences under PMLA Act.

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17. According to the complaint, above 564 crores of rupees alleged to have been laundered. The accused being a successful bidder in the tender floated by public sector undertaking through MMTC Limited for supply of coal had supplied coal of lower quality at the bid price of higher quality of coal. The difference in price siphoned through entities having its base outside the country. Considering the gravity of the crime and the recur of Section 45(2) of PMLA Act, Court had been dismissing the bail petition of this accused on all the earlier occasion as narrated above.

18. The contention of the accused/petitioner is that, DRI which initiated proceedings suspecting the transaction of the petitioner through his company M/s.Coastal Energy Private Limited had not completed the adjudication, inspite of more than five years lapsed. CBI which followed DRI and registered FIR on 22.01.2018 has also not filed its final report and a petition to quash the FIR filed by this accused is pending before the Hon'ble Delhi High Court.

19. Enforcement Directorate which has filed the present complaint alleging that the petitioner involved in the scheduled offence is purely based on the outcome of the predicate offence. Enforcement Directorate also though filed complaint has not shown interest in proceedings with the trial. When this



petitioner earlier sought for bail before the High Court as well as the Supreme Court, the Enforcement Directorate contended that investigation in respect of certain foreign entities yet to be completed. Therefore, the Hon'ble Supreme Court vide its order dated 05.12.2022 disposed the bail petition with liberty to the petitioner to seek for bail after three months and also directed the respondent/ Enforcement Directorate to complete the further investigation and file supplementary complaint within a period of three months.

20. Since Enforcement Directorate not filed the promised supplementary final report, bail petition in Crl.MP. No.6628 of 2023 was filed. The trial Court taking into consideration the incarceration of the accused for more than one and half years and non progress in the trial also the provisional attachment of the petitioner's property worth about Rs.557.25 Crores and the action dropped by DRI in a similar case pending investigation in the predicate crime registered by CBI has prompted the trial Court to grant bail on conditions.

21. The learned Special Public Prosecutor appearing for the Enforcement Directorate submitted that after dismissal of the bail petition by the trial Court in Crl.M.P No.1320 of 2023 on 17.03.2023 and bail petition in Crl.OP. No.2784 of 2023 dated 31.03.2023, there is no change of circumstances for entertaining the bail petition. The trial Court on 16.08.2023, passed a cryptic order without



any reasoning or recording its satisfaction for granting bail inspite of the twin conditions imposed in Section 45(2) of PMLA Act. This was brought to the notice of the High Court, the next day and interim stay of bail order was granted. The copy of the bail order was made ready only on 21.08.2023 and served to the prosecution. The detailed order of the trial Court for granting bail also does not give reason for satisfaction to grant bail.

22.The learned Special Public Prosecutor specifically contended that this is a case investigated by the Enforcement Directorate regarding siphoning of Indian money more than Rs.550 Crores to Foreign country and the proceeds of crime being scattered across the border. Steps are taken by the Enforcement Directorate to trace the trail of the money and bring back the money. In pursuant to this action letter of request been issued through the trial Court to the Republic of Mauritius and United Arab Emirates on 03.10.2022. The response from these two countries are awaited. In spite of actions taken by Enforcement Directorate and same form part of the records in the trial Court, the learned trial Judge in the impugned order dated 16.08.2023 had made a baseless remark against Enforcement Directorate that no piece of paper in respect of further investigation towards the case has been received by this Court, further respondent also not chosen to speak about the present status of



predicated offence.

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23. The learned Special Public Prosecutor submitted that the progress in the investigation of the predicate offence and the trial of PMLA offence are not inter-dependant to each other. Due to the non-cooperation of the petitioner, the commencement of trial is getting delayed which is well within the knowledge of the trial Court. However, the trial Court ignoring the records available on its file and the conduct of the accused had only taken note of the one and half years incarceration of the petitioner but conveniently ignored to take note of the fact that the petitioner who initially claimed as representative of two other Companies later had chosen to file a petition under Section 305 of Cr.PC declaring that he is not representing those two companies. Thereby, now those two companies are to be served notice again. Hence, to expedite the trial, the respondent is contemplating to split up the case against those companies so that, the trial against this petitioner can proceed.

24. The learned counsel appearing for the Enforcement Directorate also assured that if the trial is split up and not interfered unnecessarily by this petitioner, the trial can be completed probably within a period of three months. While there is material to show that the accused is involved in money laundering and proceeds of crime of worth more than 550 Crores siphoned out



of the country, ignoring the conditions mentioned in Section 45 of the PMLA Act, the petitioner cannot be released on bail. Taking into consideration the wide connection all over the world the petitioner have, it will not be difficult if he defy the bail condition and abscond. Hence, the order of bail granted unmindful of the gravity of the offence and overwhelming evidence against the petitioner is to be cancelled.

25. The learned senior counsel appearing for the accused submitted that a detailed order passed by the trial Court considering all the objections and the past history of the case following the adjudication of the Hon'ble Supreme Court rendered in *Mohammed Muslim @ Hussain vs. State (NCT of Delhi)* in *SLP. Crl.No.943 2023 dated 28.03.2023* and the judgement rendered in *Vijai Madanlal Choudary Vs. Union of India* reported in *2022 SCC Online SC 929*. After recording its satisfaction as below, in respect of twin condition laid in Section 45 of the PMLA Act, Court is not expected to go into deep of facts and pros and cons of constitution and express his opinion. On perusal, the petitioner who is aged about 50 years had been repeatedly applying for bail and he suffers back pain owing to his old age from very inception of taking cognizance, the summons to co-accused A2-A7 not yet been served and the case being posted every 15 days for extension of remand. The custodial



interrogation of the petitioner also been completed and his petition seeking default bail also dismissed in view of the complaint filed on 22.04.2022.

Therefore, considering the incarceration of accused for nearly one and half years, the petitioner is entitled for bail on stringent condition.

26. The documents relied by the prosecution and the petitioner/accused perused. After examining the earlier order of this Court, the order of the Hon'ble Supreme Court on appeal and trial Court orders passed subsequently, this Court is constrained to interfere in the bail order for the following reasons:-

(i) The trial Court patently erred in passing a docket order on 16.08.2023 and thereafter, the detailed order which was made ready to the parties only on 21.08.2023.

(ii) On 17.08.2023, the learned Special Public Prosecutor moved this Court for stay of the bail order and reported certain irregularities. This submission prompted the Court to issue oral direction to the Registrar (Vigilance) of the High Court to bring records from the trial Court (which is hardly two km away from the High Court Campus). The case bundle secured and produced to the shock of this Court did not contain the detail order, neither the docket order indicated that



a detailed order passed separately. The enquiry made in the trial Court by the Registrar (Vigilance) revealed that the learned Judge had not made ready the detailed order. While so, the grant of bail in haste without making the detail order throw suspicion over the conduct of the trial Court.

*(iii) However, this Court is not dwelling upon that aspect since this matter is for the High Court administrative side to take note and proceed. Except to reinforce the view of the Hon'ble Supreme Court in **Registrar General, High Court of Karnataka and others vs. Narasimma Prasad reported in 2023 SCC Online SC 376**, which had observed that a judicial officer cannot pronounce the concluding portion of its judgement in open Court without the entire text of the judgement being prepared which dictated. In this case, the material collected immediately on the next day of pronouncing the order of granting bail, there was no prepared text of detailed order.*

(iv) The detail order made available on 21.08.2023 though runs to several pages, it does not contain the reasons for satisfaction of the twin condition imposed under Section 45 of PMLA Act. The allegation against this accused is that out of 169 consignments of coal, the accused has supplied totally 77 consignments through MMTC, 5 consignments directly by its



offshore entities DNO, DMCC, Dubai and remaining 87 consignments were supplied by his Company M/s.Coastal Energyen Private Limited to the public sector undertaking in India and the over all inflation of price that is the difference between the inferior quality coal and the superior quality coal is arrived at Rs.564.58 Crores. Out of which 557.28 Crores had been diverted through his company M/s.Coastal Energyen Private limited and CNO groups of entities. The materials placed indicates at this juncture the accused cannot be presumed to be not guilty.

(v) The gravity of offence, the length and breath of crime committed has forced the Enforcement Directorate to request the trial Court to issue letter of rogatory and the trial Court had issued letter of request on 03.10.2022 to two countries. The responses from those countries are awaited. While so, it is incorrect to say that the Enforcement Directorate has not taken any steps to proceed with its investigation in respect of offshore entities.

(vi) The delay in completing the investigation by the CBI, Delhi cannot be a ground to presume that accused is not guilty of money laundering offence. Closure of investigation in a similar case also cannot be a reason to presume that the present case will also end in closure report. Ifs and buts



cannot be an adequate reason to hold this petitioner, not prima facie guilty of the alleged offence. No doubt personal liberty is a fundamental right of a person, yet, subject to reasonable restriction. Prolonged trial or incarceration pending trial is antithesis to fundamental right. However, the reasonable restriction and the interest of nation cannot be ignored while taking note of the fundamental right of individual.

(vii) This Court is conscious of the dictum that, it is not the expectation of law that Court must arrive at a positive finding that applicant for bail has not committed an offence under PMLA Act and if such is the expectation, it will be impossible for an applicant to establish that he has not committed the offence. However, in this case, records reveal that about 169 consignments with inflated price being encashed fraudulently by this petitioner through his Company and the money has gone out of the country. The provisional attachment of the property by efflux of time had lost its enforceability and therefore if the petitioner is enlarged on bail, apart from repeating similar crime by floating new Company, the danger of he fleeing from the hands of justice also cannot be ruled out.



27. For the reasons stated above, this Criminal Original Petition filed by the Enforcement Directorate is allowed. The order of the trial Court dated 16.08.2023 in Crl.M.P.No.6628 of 2023 granting bail to the respondent is hereby set aside. Consequently, connected Miscellaneous Petition is also closed.

13.09.2023

Internet : Yes

Index : Yes/No

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To

1. The XIII CBI Court, (Spl. Court for PMLA Cases),
Chennai.
2. The Public Prosecutor,
High Court of Madras, Chennai.



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Crl.O.P No.19147 of 2



Dr.G.JAYACHANDRAN, J.

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and

Crl. M.P. No.12883 of 2023

13.09.2023