IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.01.2023

Pronounced on : 12.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P.No.27478 of 2022

Abdul Haleem ... Petitioner/A-8

Vs.

Deputy Director,
Directorate of Enforcement,
Chennai Zonal Office-II,
Government of India,
5th Floor, 3rd Block,
B-Wing, Shastri Bhavan,
Haddows Road,
Chennai – 600 006. ... Respondent

Prayer: Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail 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 & PMLA Cases at Chennai, on the file of the Deputy Director, Directorate of Enforcement, CZO, Chennai, respectively.

For Petitioner : Mr.R.John Sathyan

For Respondent : Mr.N.Ramesh
Special Public Prosecutor for ED cases

ORDER

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(1)(y) 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 / A1 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.I 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.

4. Per contra, the learned Special Public Prosecutor for ED Cases appearing for the respondent filed counter affidavit wherein he submitted that,

on the basis of the statement recorded from the 7th accused, the petitioner was issued with summons to participate in the enquiry and his statement was recorded on 27.01.2022 as contemplated under Section 50 of PML Act. Accordingly, he assisted the accused 1 and 3 in opening Current Account with Indian Overseas Bank, Royapuram, in the name of M/s.Lavensun Solutions Private Limited and thereby involved in the activity connected with the layering of funds to the extent of Rs.82,00,001.00/- into the bank account of M/s.B.K.Electro Tool Products maintained with Indian Bank, Thousand Lights Branch, Chennai. He also assisted the first accused, the proprietor of M/s.I Square Enterprises to one Ameen from Burma Bazaar, Chennai, through which a sum of Rs.1,26,00,000.00/- was layered into the account of M/s.B.K.Electro Tool Products maintained with Indian Bank, Thousand Lights Branch, Chennai. He operated the accounts that received the proceeds of crime at Hong Kong as shown in the material object filed in the complaint. From the account of the A1 and A3, the money has been layered and operated the account where the proceeds of crime parked at Hong Kong. Hence, the petitioner parked a sum of Rs.59.47 crores outside the country with the support of money parked outside the country may go underground and as such it is impossible to make him to participate in the trial. Further, there is possibility of tampering with the evidence and influencing the co-accused.

5. That apart, the twin conditions as mandated under Section 45 of PML Act shall apply in this case and the petitioner failed to adduce anything contrary to establish that he is not involved in the offence. Therefore, there is no change of circumstances to consider the present bail petition.

6. Considering the above facts and circumstances, this Court is not inclined to grant bail to the petitioner. Accordingly, this criminal original petition stands dismissed.

12.01.2023

Index : Yes / No
Speaking / Non Speaking order
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To

1. The XII Additional Special Judge
 for CBI & PMLA Cases,
 Chennai.

2.The Central Prison, Phase-I,
Puzhal, Chennai.

3. The Deputy Director,
Directorate of Enforcement,
Chennai Zonal Office-II,
Government of India,
5th Floor, III Block,
B-Wing, Shastri Bhavan,
Haddows Road,
Chennai – 600 006

4. The Public Prosecutor
Madras High Court,
Chennai.

G.K.ILANTHIRAIYAN, J.
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Pre-delivery order made in
CRL.O.P.No.27478 of 2022

12.01.2023