BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 16/03/2023

PRONOUNCED ON : 20/03/2023

PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN

CRL OP(MD). No.1365 of 2023

J.Amarnath ... Petitioner/Accused No.5

Vs.

The Assistant Director (PMLA),
Directorate of Enforcement,
No.1A, P&T Nagar Main Road,
Madurai 625 017.
ECIR No.MDSZO/24/2021. ... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 45 of the Prevention of Money Laundering Act, 2002 read with Section 439(1)(a) Cr.P.C. to enlarge the Petitioner on bail in ECIR No.MDSZO/24/2021 on the file of the respondent.

For Petitioner : Mr.B.Kumar, Senior Counsel
for Mr.R.Vigneshkumar

For Respondent : Mr.AR.L.Sundaresan,
Additional Solicitor General
assisted by
Mr. R.Vijaya Rajan
Special Public Prosecutor for
Enforcement Directorate

ORDER

The petitioner, who is arrayed as A5 in Enforcement Case Information Report No.MDSZO/24/2021, on the file of the respondent and arrested on 18.11.2022, seeks bail.

2. The case of the prosecution is that the respondent has registered a complaint in ECIR No.MDSZO/24/2021, dated 15.12.2021 as against the accused persons on the strength of the scheduled offences under Sections 420 and 120B of I.P.C on the basis of the following F.I.Rs':-

S. No.	FIR No./ Crime No.	Amount Involved	Station/ Branch/ Section	Scheduled offence under PMLA
1.	1/2020 dated 27.08.2020	Rs.10,96,425/-	EOW, Tirunelveli	Sections 420 & 120B of IPC, 1860
2.	41/2020 dated 29.08.2020	Rs.3,04,85,000/-	CCB, Tirunelveli	Sections 420 & 120B of IPC, 1860
3.	42/2020	Rs.1,86,19,200/-	CCB	Sections 420 & 120B of IPC, 1860
4.	441/2020 dated 15.06.2020	Rs.9,94,700/-	Perumalpuram, Tirunelveli	Sections 420 & 120B of IPC, 1860
5.	649/2020 dated 12.08.2020	Rs.12,50,000/-	Perumalpuram, Tirunelveli	Sections 420 & 120B of IPC, 1860
6.	650/2020 dated 12.08.2020	Rs.19,00,000/-	Perumalpuram, Tirunelveli	Sections 420 & 120B of IPC, 1860
7.	335/2020 dated 23.09.2020	Rs.1,93,000/-	Devipattinam, Ramanatha--puram	Section 420 of IPC, 1860

3. In pursuant to the said complaints, the petitioner was arrested and remanded to judicial custody on 18.11.2022. The above F.I.Rs' were registered as against one M/s. Bluemax Capital Solutions Private Limited and others. On receipt of the complaints from the general public alleging that they were lured by the accused Company to invest money in trading of forex, commodities, gold etc. through their website, on a promise to return with higher profits. On receipt of the said money, it was not invested in any one of the trading activities as promised by the accused company. The website of the company showed as if real-time trading of forex, commodities, gold etc., was being done regularly in the accounts created in the names of investors in the website/portal of the said company. The money invested by the investors would be shown in their trading accounts and bogus trading account statements with profit and loss details used to be provided to all the investors on investment and on monthly basis. The said website was designed to mislead the investors by showing genuine trading in forex, commodities, gold etc. through trading charts, software etc., which duped the investors into thinking that their money was being indeed invested in real-time trading. The money collected from the investors was through various sources, namely bank accounts of M/s. Bluemax Capital Solutions Private Limited, bank accounts of other entities/persons, cash etc. The company had claimed to have credited the money of the investors in their respective trading

accounts in terms of US Dollars for further investments. While being so, in the month of October 2019, the company informed its investors that its server was hacked, and the money invested in the company by investors was lost. Hence, the investors lodged complaints before various police stations and the said police registered the above F.I.Rs'. The offences in the above F.I.Rs' were covered under the list of scheduled offences of Section 2(1)(x) & (y) of the PMLA, 2002. A Prima facie case was made out as against the accused that they committed an offence of money laundering under Section 3 of PMLA. Therefore, the respondent lodged the complaint under the PMLA Act. Based on the total amount of money defrauded by the accused persons and the estimated proceeds of crime, prima facie, was taken as Rs.5,45,38,325/- at the time of recording the complaint. Subsequently, the following F.I.Rs' were also registered as against the accused persons in 14 cases, which reads as follows:-

S.No.	FIR No./ Crime No.	Date	Station/Branch/ Section
1.	1/2020	27.08.2020	EOW, Tirunelveli
2.	41/2020	29.08.2020	CCB, Tirunelveli
3.	42/2020	31.08.2020	CCB, Tirunelveli
4.	50/2020	26.09.2020	CCB, Tirunelveli
5.	51/2020	26.09.2020	CCB, Tirunelveli
6.	52/2020	26.09.2020	CCB, Tirunelveli
7.	53/2020	26.09.2020	CCB, Tirunelveli
8.	249/2019	20.10.2019	Perumalpuram, Tirunelveli
9.	441/2020	15.06.2020	Perumalpuram, Tirunelveli
10.	649/2020	12.08.2020	Perumalpuram, Tirunelveli
11.	650/2020	12.08.2020	Perumalpuram, Tirunelveli
12.	335/2020	23.09.2020	Perumalpuram, Tirunelveli
13.	651/2020	12.08.2020	Perumalpuram, Tirunelveli
14.	665/2021	09.08.2021	Kattoor, Coimbatore

4. The learned Senior Counsel appearing for the petitioner would submit that the functioning of the company called M/s. Bluemax Capital Solutions Private Limited is in no way connected with the petitioner. In fact, no F.I.R has been registered as against the petitioner so far. At no point of time, the petitioner was responsible for collection of amounts from the general public. The petitioner never acted as an agent or Director of the said company. As per the complaint, the said M/s. Bluemax Capital Solutions Private Limited had collected a sum of Rs.108 crores. In fact, the said company had refunded a sum of Rs.90 crores through Bank transfers and a sum of Rs.10.6 crores settled by way of cash to the depositors. The balance to be paid is only at Rs.2,52,72,181/- for 61 investors. In so far as the petitioner is concerned, he is a

businessman and his wife is a Proprietor of M/s.Deepthi Exports and Imports in Tuticorin and managed by the petitioner.

5. While being so, the petitioner availed loan from the said company to the tune of Rs.14,17,99,000/- during the period from 05.02.2018 to 01.03.2018. The entire amount had been returned to the company from 08.11.2019 to 20.02.2020, that too, through Bank. It is significant to note that before six months from the date of registration of the first F.I.R, the petitioner returned the money to the company. The first complainant viz., one Ilayaraja lodged the complaint only on 27.08.2020. The only connection between the petitioner and the second accused is that they are relatives. He used to avail loan from the second accused in order to develop their business. M/s.Bluemax Captial Solutions Private Limited as a financial assistance for Domestic and Exports business and the same was used for business and agri stocks. Therefore, whatever the amount borrowed by the petitioner, the same had already been repaid by the said company. During the investigation, the said repayment has been deliberately suppressed by the respondent and implicated the petitioner also as an accused.

6. The learned Senior Counsel appearing for the petitioner would further submit that certain cryptocurrency owned by the said M/s.Bluemax Captial Solutions Private Limited was transferred to a crypto account in the firm, namely Kairos Commodities Technology, which is a proprietorship concern in the name of one of the petitioner's employee. The said cryptocurrency encashed and paid to the M/s.Bluemax Captial Solutions Private Limited through his directions and the same was utilized for the purpose of settling the depositors. In fact, the said crypto currency is not a prohibited currency. Therefore, the petitioner never committed any offence under Section 3 of Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PML Act, 2002') Under Section 19 of PML Act, 2002, higher threshold of satisfaction is necessary and not mere suspicion to implicate the petitioner as an accused. It is also violative of Section 41A of Cr.P.C. That apart, the maximum punishment under Section 3 is only for 7 years. Now, the petitioner was incarcerated in imprisonment from the date of the arrest, namely on 18.11.2022.

7. The learned Senior Counsel appearing for the petitioner further submitted that there are no reasonable grounds that the petitioner is guilty of the offence under PML Act, 2002. Both the Protection of Interest of Depositors (in Financial Establishment) Act, 1997 and Banning of Unregulated Deposits Scheme Ordinance Act, 2019 are not scheduled offence under PML Act, 2002. Therefore, no offence is made out as against the petitioner and sought for bail.

8. The respondent filed a counter-affidavit.

9. The learned Assistant Solicitor General appearing for the respondent would submit that during investigation revealed that M/s.Bluemax Capital Solutions Private Limited was incorporated on

23.07.2014 under the Indian Companies Act, 1956, in which, other accused persons are the Directors, and they are in-charge of the business affairs. However, it was not authorized to provide a trading platform of forex, commodities, gold etc. in India. Since it is neither registered under SEBI nor obtained any permission from the RBI for the purpose of the said trading activities. Even then, the company had collected money from the general public for trading in forex, commodities, gold etc, but they had never invested the said money for the said trading activities for their investors. The entire money from the general public was collected by the company in the Bank accounts maintained with Axis Bank and ICICI Bank. Further, it revealed that the accused collected a sum of Rs.108 crores from the general public. The company had utilized another bank account with Tamil Nadu Mercantile Bank, Tuticorin, in the name of M/s.Dheepti Exports and Imports, proprietorship managed fully by the petitioner herein and the same was registered in the name of his wife. This account was used for collection of money from various investors in India.

10. The learned Assistant Solicitor General appearing for the respondent would further submit that the petitioner categorically admitted that he received a sum to the tune of Rs.15 crores from the company and the said money was used as capital for his business through M/s.Dheepti Exports and Imports. Therefore, he had dealt with the proceeds of crime derived by the company. Though the petitioner repaid the entire amount, it would not absolve the proceedings initiated as against the petitioner. The petitioner well aware of the business of the company and assisted them in collection of money from the investors. They all connived together and incorporated the company, which was used to collect money from the investors and also used in a bogus transaction with other entities to camouflage the origin of the proceeds of the crime. The petitioner had received a sum of Rs.15 crores and utilized the same as capital investment for gold export business. Therefore, the petitioner has knowingly dealt with the proceeds of the crime generated by the company in the style of forex, trading etc., thereby projecting the crime proceeds as untainted money. Therefore, he had committed the offence of money laundering under Section 3 of PML Act, 2002. The petitioner and one of the company Director, namely the second accused, conspired together and had started another business in the name of 'Zoxo Markets' to do similar business on the lines of M/s.Bluemax Capital Solutions Private Limited. Therefore, there is every likelihood that the petitioner may indulge or commit the same kind of offence once again, if he is released on bail.

11. The learned Assistant Solicitor General appearing for the respondent would further submit that the twin conditions as contemplated under Section 45 of PML Act, 2002, is a bar for granting bail to the petitioner. In support of his contention, he relied upon the Judgment of the Honourable Supreme Court of India in the case of ***Vijay Madanlal Choudhary Vs. Union of India***, reported in

2022 ***Live Law (SC) 633*** and the Honourable Supreme Court of India upholds the constitutional validity of Section 45 of PML Act, 2002. Therefore, the petitioner failed to fulfil the twin conditions as contemplated under Section 45 of the PML Act, 2002 and prayed for dismissal of the bail petition.

12. Heard the learned counsel appearing on either side and perused the materials available on record.

13. As per the complaint lodged by the respondent, the petitioner is arraigned as Accused No.5. The crux of the complaint is that the first accused and its Directors/Accused Nos.2 to 4 had collected a sum of Rs.108 crores from the investors by making false promise of higher returns for their investment in the guise of bogus trading in forex, commodities, gold etc. In this regard, the Tamil Nadu State Police had registered 14 F.I.Rs in various crime numbers for the offences under Sections 420 and 120B of I.P.C. No F.IR was registered for the offence under TANPID Act. Therefore, the offence under Section 420 of I.P.C is coming under the list of scheduled offence under PML Act, 2002. Hence, the respondent made a *prima facie* case to lodge a complaint under PML Act, 2002.

14. As far as the petitioner is concerned, he is arraigned as Accused No.5. The allegation as against the petitioner is that he conspired with A.1 to A.4 and utilized crypto wallets to collect money from the investors. He received a sum of Rs.15 crores from the proceeds of crime under PML Act, 2002 from the company and utilized the capital for the business purposes including export of gold jewels through the company called M/s.Dheepti Exports and Imports, which is a proprietorship in the name of his wife. The said transactions were happened between 05.12.2018 and 01.03.2018. The Bank details revealed that a sum of Rs.14,17,99,000/- had been received by the petitioner from the first accused company. However, the entire amount had been returned to the said company from 08.11.2019 to 20.02.2020. The entire amount had been returned through Bank transfers. It was also duly reflected in the bank statement of the petitioner. That apart, the petitioner also produced documents to show that the accused company had refunded to the tune of Rs.90 crores through bank transfers and to the tune of Rs.10.6 crores by way of cash to the investors, namely, the complainants. The balance to be paid is only to the tune of Rs.2,52,72,181/- in respect of 61 investors. However, it was repaid by the accused company and not by the petitioner herein. The objection raised by the respondent is that whatever the amount received by the petitioner is proceeds of crime. Therefore, the offence under Section 3 of PML Act, 2002 attracted against the petitioner. Hence, there is a bar under Section 45 of PML Act, 2002. Whereas as stated above, as far as the petitioner is concerned, he received money from the first accused company and returned back the same through bank transactions. That apart, Accused Nos.1 to 4 also settled the amount to the tune of Rs.106 crores to the investors through bank transfers and by way of cash. Therefore, the petitioner

made out a *prima facie* case in order to satisfy the twin conditions as contemplated under Section 45 of PMLA.

15. Considering the above facts and circumstances of the case and also the period of incarceration undergone by the petitioner from the date of his arrest, namely on 18.02.2022, this court is inclined to grant bail to the petitioner, subject to the following conditions:

[a] Accordingly, the petitioner is ordered to be released on bail on condition to execute a bond for a sum of **Rs.1,00,000/- (Rupees One Lakh only) with two solvency sureties each** for a like sum to the satisfaction of the learned II Additional District Judge, (CBI Cases), Madurai, and on further conditions that:

[b] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity.

[c] the petitioner shall report before the respondent police daily at 10.30 A.M., until further orders.

[d] the petitioner shall not commit any offences of similar nature.

[e] the petitioner shall not abscond either during investigation or trial.

[f] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[g] On breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].***

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

sd/-
20/03/2023

/ TRUE COPY /

/03/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE II ADDITIONAL DISTRICT JUDGE(CBI CASES),
MADURAI.

2 THE ASSISTANT DIRECTOR(PMLA)
DIRECTORATE OF ENFORCEMENT,
NO.1A, P AND T NAGAR MAIN ROAD,
MADURAI 625 017

3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

4 THE SPECIAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. CC to M/S.VIGNESHKUMAR.R Advocate SR.No.4532

+ 1 CC TO Mr.R.Vijaya Rajan , ADVOCATE IN SR No. 4620

ORDER
IN
CRL OP(MD) No.1365 of 2023
Date :20/03/2023

SS/SBN/SAR /20/03/2023/8P/7C