



CRL OP(MD). No.22781 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Dated : 22.12.2023

PRESENT

The Hon`ble Mr.Justice V. SIVAGNANAM

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Villayutham

... Petitioner/ Accused No.1

Vs

The Directorate of Enforcement,
Madurai Sub Zonal Office,
No.1A, P & T Nagar
Madurai
(ECIR MDSZO/13/2021).

... Respondent / Complainant

For Petitioner : Mr.M.Ajmalkhan, Senior Counsel
for M/s.Ajmal Associates, Advocate

For Respondent : Mr.K.R.Laxman
Central Government Senior Panel Counsel

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :- To enlarge the petitioner on bail in connection with ECIR MDSZO/13/2021 on the file of the respondent.

ORDER : The Court made the following order :-

The petitioner / Accused No.1, who was arrested and remanded to judicial custody on 13.03.2023 for the offences under Section 3 of the Prevention of Money



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Laundering Act, 2002, punishable under Section 4 of the said Act in ECIR MDSZO/13/2012, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on the strength of the case registered in Crime No.95 of 2021 on the file of the Jetty Police Station, Rameshwaram, Ramanathapuram District for the offences under Sections 9, 39 and 51 of Wild Protection Act, 1972, which are covered under paragraph No.6 of Part A of the Schedule to the Prevention of Money Laundering Act, 2002 under Section 2(1) (x) and (y) of the PML Act, 2002, the petitioner appeared to have committed an offence of money laundering under Section 3 of the PML Act, 2002, which is punishable under Section 4 of the Prevention of Money Laundering Act, 2002 Act, 2002. On the basis of the same, a case has been registered by the respondent in ECIR MDSZO/13/2021, dated 24.05.2021 as against the petitioner and others. The case of the prosecution in Crime No.95 of 2021 on the file of the Jetty Police Station, Rameshwaram, Ramanathapuram District is that the petitioner is said to have processed and smuggled 2800 Kgs of lifeless processed and unprocessed sea cucumbers worth about Rs.2 Crores.

3. The learned Senior Counsel appearing for the petitioner would submit that in pursuance of the case registered in crime No.95 of 2021 offences under Sections 9, 39 and 51 of Wild Protection Act, 1972, which are covered under paragraph No.6 of



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Part A of the Schedule to the Prevention of Money Laundering Act, 2002 under Section 2(1) (x) and (y) of the PML Act, 2002, this case has been registered in ECIR MDSZO/13/2021, on 24.05.2021 for the offence under Section 3 of the Prevention of Money-Laundering Act, 2002, punishable under Section 4 of the said Act. He would further submit that the petitioner herein was arrested and remanded to judicial custody and further, now, the investigation in this case has been completed and final report was filed and hence, the custodial interrogation of the petitioner is not necessary. He further contended that the petitioner is suffering from following diseases:

- Lumbar lordosis maintained.
- Vertebral body height and alignment normal.
- Intervertebral disc space appears normal.
- Disc dessication noted at L2-L3, L3-L4 and L5-S1 level.
- Subtle posterocentral disc bulge causing anterior thecal sac indentation at L2-L3 level.
- L3-L4: Left foraminal disc herniation causing neural foraminal narrowing and impingement of left traversing nerve root.
- L4-L5: Diffuse disc bulge causing anterior thecal sac



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indentation and bilateral neural foraminal narrowing causing mild impingement of bilateral exiting nerve root.

- L5-S1: Diffuse disc causing anterior thecal sac indentation.

4. The learned Senior counsel further contended that in view of the sick of the petitioner the proviso of Section 45(i) of the Prevention of Money Laundering Act, 2002, exception from the rigorous under section 45 for the persons who are sick or infirm. Therefore, he may seeking to release him on bail. In support of his arguments, he relied upon the following Judgments, which reads as follows:

Sl. No.	PARTICULARS
1.	Parmanand Katara Vs. Union of India reported in 1989 (4) SCC 286
2.	Gautam Kundu Vs. Directorate of Enforcement reported in 2015 (16) SCC 1
3.	Re-In Human Conditions In 1382 Prisons reported in 2017 (10 SCC 658)
4.	Pranjil Batra Vs. Directorate of Enforcement reported in 2022 SCC Online P&H 4188
5.	Vijay Agarwal Through Parokar Vs. Directorate of Enforcement reported in 2022 SCC Online Del 4494
6.	Kewal Krishnan Kumar Vs. Enforcement Directorate reported in 2023 SCC Online Del 1547



7.	Sanjay Jain Vs Enforcement Directorate reported in 2023 SCC Online Del 3519
8	Sanjay Chandra Vs. CBI reported in (2012)1SCC 40
9	SLP(Crl.)Nos.11644-11645 of 2023

5.The learned Senior Counsel specifically relied on the following portion of the Judgment in (2012)1SCC 40 (cited supra):

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-



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convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

24. In the instant case, as we have already noticed that the "pointing finger of accusation" against the appellants is 'the seriousness of the charge'. The offences alleged are economic offences which has resulted in loss to the State exchequer. Though, they



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contend that there is possibility of the appellants tampering witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor : The other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather "recalibration of the scales of justice."

25.The provisions of Cr.P.C. confer discretionary jurisdiction on Criminal Courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent



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until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual.”

6.The learned Senior Counsel relied on the following observation of the Judgment of the Honourable Supreme Court in SLP(Crl.)Nos.11644-11645 of 2023:-

“Having regard to the aforesaid facts and circumstances, including the period of incarceration already suffered by the appellant – Benoy Babu, we accept the present appeals and direct that the appellant - Benoy Babu will be released on bail in Complaint Case No.31 of 2022, pending before the learned ASJ/Special Judge (PC Act) (CBI-09), Rouse Avenue District Courts, New Delhi in ECIR/HTU-II/14/2022.”

7. The learned Central Government Senior Panel Counsel appearing for the respondent objected to grant bail to the petitioner. He has submitted that it is a third bail petition and the earlier petition filed by the petitioner was dismissed by this Court on merits on 22.06.2023 in Crl.O.P(MD).No.10348 of 2023. The second bail application was dismissed on 20.10.2023. All the contentions raised by the petitioner before this Court was considered while dismissing that application. In view of the above, without change of circumstances, the third application would not be maintainable which is also not permissible under the criminal law as it would



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be deem to be seeking review of earlier order to support his arguments. He has also relied upon the Judgment of the Hon'ble Supreme Court reported in 2001(1) SCC 169 in the case of Hari Singh Mann Vs. Harbhajan Singh Bajwa and another. The learned Special Public Prosecutor further submitted that the sick or infirm of detention of person has to be inferred from the materials available in each individual case. The Medical condition was considered by the Dean Government Rajaji Hospital, Madurai. In his replay he submitted that "on investigation hemoglobin 12.08. gms, RBS-113 / dcl, RFT - Urea; 25 mg/dcl, Creatinine - 14 mg/dcl, LFT-Normal, Echo-Grade I diastolic dysfunction, USG-Grade I, fatty liver. At present patient doesn't have bleeding per rectum and his cardiac status is stable as per Cardiologist opinion". In these circumstances, there is no serious that it is life threatening and the treatment is so specialised that it cannot be provided in the jail hospital. Therefore, prayed to dismiss the bail application.

8. Heard the learned Senior counsel appearing for the petitioner and the learned Central Government Senior Panel Counsel appearing for the respondent police and perused the materials available on record.

9. On perusal of the records it is noticed that earlier, the Inspector of Police, the Jetty Police station, Rameshwaram, Ramanathapuram District, registered a case in crime No.95 of 2021 on 11.04.2021 as against the petitioner and others for



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the offences under Sections 9,39 and 51 of Wild Protection Act, 1972, which are covered under paragraph No.6 of Part A of the Schedule to the Prevention of Money Laundering Act, 2002 under Section 2(1) (x) and (y) of the PML Act, 2002, on the allegation that they were in possession and smuggled 2800 Kgs of lifeless processed and unprocessed Sea Cucumbers worth about Rs.2 Crores. In pursuance of this schedule offence, the present case has been registered in ECIR MDSZO/13/2021, on 24.05.2021 for the offence under Section 3 of the Prevention of Money-Laundering Act, 2002, punishable under Section 4 of the said Act by the Directorate of Enforcement, Madurai Sub Zonal Office and the petitioner herein was arrested and remanded to judicial custody on 13.03.2023. It is the third bail application reiterating all medical grounds and investigation has been completed and the final report has also been filed and the petitioner is in custody for more than 275 days. It is not in dispute that the petitioner is suffering from the following diseases:

- Subtle posterocentral disc bulge causing anterior thecal sac indentation at L2-L3 level.
- L3-L4: Left foraminal disc herniation causing neural foraminal narrowing and impingement of left traversing nerve root.
- L4-L5: Diffuse disc bulge causing anterior thecal sac indentation and bilateral neural foraminal narrowing causing



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mild impingement of bilateral exiting nerve root.

- L5-S1: Diffuse disc causing anterior thecal sac indentation.

10. Further, it is not in dispute that in this case, investigation has been completed and the final report has also been filed. Further, it is also brought to the notice of this Court that in the jurisdictional Court, Judge post is vacant and there is a remote chance of commencing the trial immediately. Further, the Honourable Supreme Court in the case of P.Chidambaram Vs. Directorate of Enforcement (2020) 13 SCC 791 stated triple test for consideration before acting on the bail application and the same was stated as under:-

- “a) That the accused is not at “flight risk.”
- b) That there are no chances of tampering with evidences.
- c) That there is no likelihood that the accused shall influence the witnesses.”

11. In this case, admittedly, the passport of the petitioner was seized by the respondent Enforcement Wing and it is in their custody. The investigation has been completed and the final has been filed. Hence, there is no chance of tampering the witnesses and there is no likelihood that the accused shall influence the witness.

12. Therefore, considering the facts and circumstances of the case and also considering the health conditions of the petitioner/accused and his age and period



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of incarceration already suffered by him and taking into consideration of the principle stated by the Honourable Supreme Court in Sanjay Chandra and others vs. CBI reported in (2012)1 SCC 40, this Court is entertained this third bail petition and inclined to grant bail to the petitioner, subject to the following conditions:

(i) 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 sureties each for a like sum to the satisfaction of the learned II Additional District Judge (CBI Cases) Madurai and on further conditions that:

(ii) the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate/concerned Court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity;

(iii) the petitioner shall stay at Madurai and appear before the said Court every Monday at 10.00 a.m until further orders.

(iv) the petitioner shall not tamper with evidence or witness;

(v) the petitioner shall not abscond during trial.

(vi) On breach of any of the aforesaid conditions, the learned Judge/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 Judge/Trial Court himself as laid down by the Hon'ble Supreme Court in



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P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

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vii)If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-
22/12/2023

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22/12/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

SKN

To

1.The II Additional District Judge (CBI Cases),
Madurai.

2.The Directorate of Enforcement,
Madurai Sub Zonal Office,
No.1A, P&T Nagar,
Madurai.

3.The Superintendent,
Central Prison,
Madurai.

4.The Special Public Prosecutor for Directorate of Enforcement,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M/S.AJMAL ASSOCIATES, Advocate (SR-18285[I] dated
22/12/2023)



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ORDER

IN

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Date :22/12/2023

ED/ /SAR- (22/12/2023) 14P / 6C

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