IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 19.06.2024

PRONOUNCED ON : 24.06.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.Nos.1874, 1885, 1882 & 1879 of 2024

V.Janarthanan .. Petitioner in Crl.O.P.No.1874/24 - A4
A.Saravanakumar .. Petitioner in Crl.O.P.No.1882/24 - A1
N.Umashankar
@ N.M.Umasangarr .. Petitioner in Crl.O.P.No.1885/24 - A2
N.Arunkumar @ N.Arun .. Petitioner in Crl.O.P.No.1879/24 - A3

Versus

The Assistant Director,
Directorate of Enforcement,
Govt. of India, Chennai Zone-2,
3rd Floor, 3rd Block,
Shastri Bhawan, Haddows Road,
Chennai – 600 006. .. Respondent / Complainant in all cases

Common Prayer:- Criminal Original Petitions filed under Section 439 of Cr.P.C., to enlarge the petitioners on bail in Spl.C.C.No.6 of 2021 on the file of the learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court at Chennai Court.

For Petitioner : Mr.R.Jayaprakash
in all cases

For Respondent : Mr.Rajinish Pathiyal
in all cases Special Public Prosecutor (ED)

COMMON ORDER

[Order of the Court was made by SUNDER MOHAN, J]

When bail applications were filed earlier by the very same petitioners in Crl.O.P.Nos.10954, 10955 and 10958 of 2022, the Co-ordinate Bench of this Court, to which one of us was a party, passed the following order on 16.08.2022.

> "The Petitioners have filed the above Criminal Original Petitions praying for Bail.
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> 2.The case of the prosecution is that the first Petitioner in Crl.O.P.No. 10954 of 2022 was the Managing Director of the Company by name M/s.Disc Assets Lead India Limited (Company) called as DALIL, in short and the second Petitioner in Crl.O.P.No.10954 of 2022 was the Joint Managing Director of the said Company. The Petitioner in Crl.O.P.No.10955 of 2022 was the Founder Director and Managing Director of the said Company till the year 2009. The Petitioner in Crl.O.P.No.10958 of 2022 was the employee of the said Company and had actively assisted the Directors of the Company. The Company was incorporated in the Year 2006

and was in the business of collection of deposits from customers all over Tamil Nadu. They had floated two schemes called ILPS and CDLPS by inducing delible general public to part with their money on false inducements and promise on profitable returns of immovable properties or cash. However, the Company did not keep up its promise and no lands were allotted to the customers. Some of the customers were compensated monetarily. In the year 2013, the Securities Exchange Board of India (SEBI) initiated inquiries against the Company stating that the Company was doing the business of collecting deposits without SEBI's permissions. To circumvent this legal impediment, the Directors started collecting money from customers through another Company by name M/s. DAL Marketing Solutions Limited (DMS). In the year 2016, SEBI had passed an order directing the Company to stop all business activities and refund the deposits received from the customers. In spite of the orders of SEBI, the Company collected amounts from its customers between 2015 to 2017 through another entity M/s.Aiyan Marketing Solutions Private Limited. The Company thus collected a sum of Rs.1,137,00,00,000/- (Rupees One Thousand One Hundred and Thirty Seven Crores only) and purchased immovable properties to the tune of Rs.200,00,00,000/- (Rupees Two Hundred Crores only). The amounts collected were diverted to various subsidiaries and unconnected entities were the family members / close relatives of the Directors of the Company.

3.The Economic Offences Wing of Tamil Nadu Police registered a case in Crime No.6/2016, dated 02.06.2016, for the offences under Sections 406, 420 and 120 B of Indian Penal Code read with Section 5 of the Tamil Nadu Protection of Interest of Depositors (in Financial Establishment) Act, 1997. Thereafter, based on the FIR an Enforcement case Information Report in [ECIR/MDSZO/04/2018] was recorded on 09.07.2018 against the Company and its Directors for the offences committed under the Prevention of Money Laundering Act, 2002.

4.The Petitioners were originally arrested on 09.12.2020 for the offences under Section 3 r/w 4 of Prevention of Money Laundering Act (PMLA) 2002. They were released on Bail, pursuant to orders of this Court in Crl.O.P.Nos.3381, 3383 and 3385 of 2021 on 10.03.2021. The Respondent challenged the order of this Court granting Bail to the Petitioners in SLP(Crl.)Nos.7563-7565 of 2021 and the Hon'ble Apex Court, by order dated 22.11.2021, set aside the order dated 10.03.2021 passed by this Court and remanded the matters back to this Court for reconsideration of the Bail Applications. The Hon'ble Apex Court in the said order observed that this Court had not dealt with the aspects, which were relevant including the statutory bar for grant of Bail for the offences concerning Prevention of Money Laundering Act (PMLA) 2002.

5.The Bail applications were once again heard by this Court and this Court by order dated 03.01.2022, dismissed the Bail applications, after elaborately considering the scope of Section 45 of Prevention of Money Laundering Act, (PMLA) 2002, as amended and the facts of the instant case.

6.Thereafter, the Petitioners once again moved the Honourable Apex Court in SLP (Crl.) Nos.620-622, challenging the order passed by this Court, dismissing the Bail Applications. The Honourable Apex Court dismissed the said SLPs by order dated 25.02.2022. Thereafter, the Petitioners were arrested on 05.03.2022.

7.The Petitioners filed Bail applications before the Principal Special Judge for CBI Cases/ VIII Additional City Civil Court, Chennai in Crl.M.P.Nos.1624, 1625 and 1626 of 2022. The learned Principal Special Judge dismissed the Bail applications since the Petitioners did not make out a case for Bail and there was no change in circumstances for grant of Bail after the orders passed by this Court dismissing the Bail applications which was confirmed by the Honourable Supreme Court.

8. Mr.R.Jayaprakash, the learned counsel for the Petitioners submitted that the Petitioners are innocent and the properties of the Company and its Directors are now vested with the Advocate Commissioner appointed by the Court to take over the assets of the Company, to resolve the issues and settle the Depositors. The learned counsel further submitted that the Petitioners are in the custody for more than 150 days and their continued incarceration would not further the investigation in any manner. In any event, Respondent has already filed the complaint before the trial court.

9.Mr.Rajinish Pathiyil, learned Special Public Prosecutor for the Respondent submitted that the conduct of the Petitioners would establish that they do not deserve any discretionary relief. They had not surrendered voluntarily after the dismissal of their Bail applications by the Honourable Apex Court on 25.02.2022. The learned Special Public Prosecutor further submitted that the Petitioners have not satisfied the 'twin conditions' prescribed under Section 45 of Prevention of Money-Laundering Act, (PMLA) 2002, for grant of Bail. This Court while dismissing the earlier Bail

Applications, had observed that the 'twin conditions' have not been satisfied for grant of Bail. There are no change in circumstances, and the further investigation against the petitioners are still pending. The Hon'ble Apex Court in a recent judgment in ***Vijay Madanlal Chowdary & Others vs. Union of India & Others dated 27.07.2022*** upheld the constitutional validity of Section 45 of Prevention of Money Laundering Act (PMLA), 2002.

10.We find that this Court while dismissing the earlier Bail applications in Crl.O.P.Nos.3381, 3383 and 3385 of 2021 had made the following observations:

> "…
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> *18.It is also brought to the notice of this Court by the Respondent in the counter affidavit that the documents collected would prima facie disclose that all the accused have committed acts of money laundering under Section 3 of the Prevention of Money Laundering Act and punishable under Section 4 of the Said Act and the Petitioners, during police custody also, did not co-operate with them and despite the complaint has been filed, further investigation is also progress. Even before the Hon'ble Supreme Court in S.L.P.(Crl.) Nos.7563-7565 of 2021, the Respondent submitted that the Petitioners are not co-operating during the investigation. Even before this Court, the learned Special Public Prosecutor appearing for the Respondent submitted that the Petitioners never co-operated for the investigation and therefore, the Petitioners should not be enlarged on Bail. It is also brought to the notice of this Court by the learned Special Public Prosecutor that even after the registration of the criminal complaint against the*

Petitioners, they have indirectly started new Companies by using other names.

19.In view of the past document of the Petitioners, this Court does not believe that the Petitioner are not guilty of the alleged offences and in such circumstances, this Court cannot give a finding that the Petitioners are not likely to commit offence while on Bail. It is also alleged that if the Petitioners are enlarged on Bail, there is every likelihood that the Petitioners may flee the jurisdiction of this Court to avoid the process of law. In these circumstances, we are not inclined to grant Bail to the Petitioners..."

11.The Honourable Apex Court passed the following order on 25.02.2022 in the SLP(Crl) Nos.620 – 622 of 2022 filed challenging the order passed by this Court.

"We are not inclined to interfere in these Special Leave Petitions. The Special Leave Petitions are dismissed accordingly.

However, we direct the prosecution/Investigating Agency to ensure that the trial is concluded with utmost expedition..."

12.Subsequent to the order passed by this Court, the constitutional validity of the Amended Section 45 of Prevention of Money Laundering Act (PMLA) was upheld by the Honourable Apex Court. This Court, while considering the earlier Bail Applications, found that the Petitioners have not satisfied the 'twin conditions' for grant of Bail in Paragraphs 18 and 19 extracted above. The Petitioners have not spelt out the change in circumstances since the earlier dismissal of Bail petitions by this Court. That apart, we find that the

Honourable Apex Court in the SLPs, did not merely dismiss the Bail applications, but also directed the trial Court to conclude the trial with utmost expedition. Therefore, Judicial discipline demands that this Court refrains from considering the Bail petitions pending trial in view of the above said observations of the Honourable Apex Court.

13.Considering the overall facts and circumstances of this case, the earlier order of dismissal of this Court; that there is no change in circumstances since the earlier order dismissing the Bail applications and the fact that the Honourable Supreme Court directed the trial to be completed with utmost expedition, we are not inclined to entertain the Bail applications. It is needless to say that the Respondent and the Petitioners shall co-operate with the trial Court for expeditious disposal of the trial as directed by the Honourable Apex Court.

14.With the above observations, Criminal Original Petitions are dismissed."

2. (i) The learned counsel for the petitioners submitted that since the petitioners have been in custody for about 30 months and are unable to defend themselves effectively in the trial and before the other authorities, they may be released on bail. The learned counsel further submitted that the maximum sentence provided under the Prevention of Money-Laundering Act, (PMLA) 2002, for the offence alleged against the petitioners, is seven

years and they have completed more than 1/3 of the maximum sentence.

(ii) The learned counsel further submitted that the amendment brought in Section 45 of the PMLA 2002, after the judgment of the Hon'ble Supreme Court in ***Nikesh Tarachand Shah v. Union of India and another,*** reported in **(2018) 11 SCC 1**, striking down the earlier provision relating to bail, cannot operate retrospectively and as such, the petitioners' bail applications have to be considered on the basis of the general law relating to bail and the petitioners need not satisfy the twin conditions.

3 (i). The learned Special Public Prosecutor *per contra* submitted that the earlier bail applications filed before this Court were dismissed on the ground that the twin conditions have not been satisfied by the petitioners and that the petitioners have not challenged the said order.

(ii) The learned Special Public Prosecutor further submitted that as per the decision of the Hon'ble Supreme Court in ***Vijay Madanlal Choudhary and others v. Union of India and Others,*** reported in **2022 SCC OnLine SC 929**, Section 45 of the amended Act has to operate retrospectively.

(iii) The learned Special Public Prosecutor further submitted that the petitioners have to be in custody for a period of one half of the maximum period of imprisonment to invoke Section 436A of Cr.P.C.

4. We have considered the rival submissions and perused the materials placed before us.

5. The petitioners have not undergone detention for a period of one half of the maximum period of imprisonment, admittedly. Hence, we cannot invoke Section 436A of the Cr.P.C.

6. As regards the twin conditions, in the earlier order dated 03.01.2022 made in Crl.O.P.Nos.3381, 3383 and 3385 of 2021, filed by the petitioners herein, this Court held that the twin conditions were not satisfied. The petitioners had challenged the said order before the Hon'ble Supreme Court in SLP Nos.620 – 622 of 2022, which came to be dismissed on 25.02.2022. We had referred to the order passed by the Hon'ble Supreme Court in our

above extracted order dated 16.08.2022. The petitioners have not chosen to challenge the order dated 16.08.2022 before the Hon'ble Supreme Court.

7. The contention of the learned counsel for the petitioners that Section 45 of the PMLA 2022, post-judgment of the Hon'ble Supreme Court in ***Nikesh Tarachand Shah's case*** [cited supra] cannot operate retrospectively, is also without any basis.

8. The Hon'ble Supreme Court in ***Vijay Madanlal Choudhary's case*** [cited supra] dealt with this question and observed in paragraph No.377 as follows:

> "377.... In this case, as has been stated above, the anomalies noted in *Nikesh Tarachand Shah* have been removed by way of Act No.13 of 2018. Further, it has been clarified by way of Finance (No.2) Act, 2019 that amendment shall operate retrospectively. Thus, it cannot be said that twin conditions under Section 45 of the 2002 Act does not get revived."

9. In such a view of the matter, we are not inclined to grant bail to the petitioners at this stage, as the earlier finding of this Court that the twin

conditions have not been satisfied still holds good. Hence, the Criminal Original Petitions are dismissed.

[MSRJ] [SMJ]
24.06.2024

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Index: Yes/No.
Speaking/Non-Speaking order
Neutral Citation: Yes/No

To

1. The Assistant Director,
Directorate of Enforcement,
Govt. of India, Chennai Zone-2,
3rd Floor, 3rd Block,
Shastri Bhawan, Haddows Road,
Chennai – 600 006.

2. The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

M.S.RAMESH, J

and

SUNDER MOHAN, J

ars

Pre-delivery common order in
Crl.O.P.Nos.1874, 1885, 1882
& 1879 of 2024

24.06.2024