IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.10.2024

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The Hon`ble Mr.Justice P.DHANABAL

CRL O.P.No.25602 of 2024

Ahmed A.R. Buhari ... Petitioner / Accused-1

Vs

State rep. by:-

The Assistant Director,
Directorate of Enforcement,
Government of India,
3rd and 4th Floors, Murugesa Naicker Complex,
Greams Road, Chennai-600 006. ... Respondent
[F. No.ECIR/CEZO/I/01/2018]

PRAYER: - The Criminal Original Petition is filed under Section 483 of B.N.S.S., praying to grant bail to the petitioner / Accused-1 in F. No.ECIR/CEZO/I/01/2018 on the file of the respondent.

For Petitioner : Mr. B. Kumar, Senior Advocate
For Respondent : Mr. N. Ramesh,
Special Public Prosecutor.

ORDER

The petitioner / Accused-1, who was arrested on 03.03.2022 and remanded to judicial custody on 04.03.2024 for the offences punishable under Sections 120-B, 420 of IPC and Section 13(2) read with 13(1)(d) of PC Act in F. No.ECIR/CEZO/I/01/2018 on the file of the respondent, seeks bail.

2. The case of the prosecution is that the accused is the Promoter of the Indian Company M/s. Coastal Energy Private Limited (CEPL) which is engaged in the trading of imported Coal. The accused through his company CEPL has supplied coal to the various Public Sector Undertakings. The National Thermal Power Corporation (NTPC) and Aravalli Power Company Private Limited (APCPL - a JV between NTPC, Haryana and Delhi Governments) are engaged in operation of Coal based thermal power stations and to meet out their requirements of Coal, they import coal by floating global tenders. Reliable information received by CBI, New Delhi that unknown officers of NTPC, Metals and Minerals Trading Corporation (MMTC) APCPL, Promoter & other officials of M/s. Coastal Energy Private Limited (CEPL), Chennai and others entered into a criminal conspiracy amongst themselves with a view to cheat the Government of India in the matter relating to import of Coal of Indonesian origin by fraudulently showing inferior quality of

coal as that of superior quality during the period 2011-12 to 2014-15 and caused a loss to the tune of Rs.564.18 crores in total. Hence the Central Bureau of Investigation (CBI), New Delhi registered a criminal case No.RC221/2018/E0003 dated 22.01.2018 against the petitioner/accused, Promoter of M/s. Coastal Energy Pvt. Ltd., Chennai and others under Sections 120B read with 420 of IPC and Section 13(2) read with 13(1)(d) of PC Act and as the above penal sections, 120-B and 420 IPC and Section 13 of PC Act are scheduled offence under PMLA, on the basis of the above CBI case, an Enforcement Case Information Report No.ECIR/CEZO-I/01/2018 was recorded by the respondent on 31.01.2018 for investigation under the provisions of the Prevention of Money Laundering Act, 2002.

3. The learned Senior Counsel appearing for the petitioner would contend that the petitioner is the Founder President and Chief Executive Officer of Coal and Oil group, an integrated energy and infrastructure company with varied business interests. Coal and Oil group is composed of two entities namely Coastal Energy Private Limited (CEPL) and

Coastal Energen Private Limited. The former was engaged in the business of import and sale of coal, sourced from foreign countries and the latter is engaged in the business of generation of power having State of the Art plant near Tuticorin. The said companies have underwent insolvency process under the Insolvency and Bankruptcy Code since the year 2019 and the petitioner is not in control of the aforementioned companies in any manner with Board of Directors having been superseded in the process. The petitioner has been implicated in this case for the alleged offences under Sections 3 and 70 of the Prevention of Money Laundering Act, punishable under Section 4 of the Act, pursuant to filing of Prosecution complaint by the respondent Investigating Agency in connection with registration of ECIR/CEZO-1/01/2018 dated 31.01.2018. The said criminal complaint has been numbered as Special C.C. No.1 of 2022 and the trial is pending on the file of XIII Additional Court for CBI Cases, Chennai at the stage of service of summons on entities outside India.

3.1. The learned Senior counsel appearing for the petitioner further submitted that this petitioner has been wrongly arraigned as an accused by the respondent. In fact, during the period between 2011 and 2015, Coastal Energy Pvt. Ltd., the 2nd accused in C.C. No.1 of 2022 had imported multiple consignments of coal of Indonesian origin with the object to supply the same to Public Sector Undertakings. Pursuant thereto, the Directorate of Revenue Intelligence, Mumbai conducted investigations and several materials were resumed which included import documents, certificate of sampling and analysis, bank documents etc., Besides the said agency also recorded statements in terms of Section 108 of the Customs Act from the petitioner and other managerial persons. On completion of such investigation, the office of the Directorate of Revenue Intelligence issued a Show Cause Notice to the CEPL and others proposing rejection of declared value of imported consignments, re-determination of these values, confiscation of goods and the imposition of penalties for alleged act of over invoicing. No complaint was made before the competent Court under Sections 132 and 135 of Customs Act, which alone may be scheduled offences under the provisions of the PML. Subsequently, the Central Bureau of

Investigation, registered a FIR for the alleged offences under Sections 120-B read with Section 420 of IPC and Sections 13(2) r/w 13(1) of the Prevention of Corruption Act alleging that the petitioner in connivance with unknown public servants of three PSUs namely National Thermal Power Corporation Limited, Metals and Minerals Trading Corporation Limited and Aravalli Power Corporation Limited had engaged in supply of coal of inferior quality to such PSUs by passing on such coal as superior and of higher quality with the intent to cheat the Government of India, thereby caused loss to the Government of India and corresponding gains to the accused.

3.2. The learned Senior counsel appearing for the petitioner would further submit that the respondent investigating agency registered the ECIR on the basis of the FIR registered by the CBI on the ground that the alleged offences are the scheduled offences under the Act and the remittances so collected by selling coal of inferior quality by misrepresenting it to be the coal of superior quality is 'proceeds of crime'. The investigating agency also proceeded to conduct search and seizure operations on 12.09.2019 and 13.09.2019 besides taking other actions contemplated under the provisions of PMLA. Thereafter, they also filed the complaint in Special C.C. No.1 of 2022 and the same is pending. The petitioner was arrested and remanded to judicial by the respondent on 04.03.2022. The petitioner is in judicial custody for more that 2 1/2 years and hence he is entitled to the benefit of Section 479(1) of B.N.S.S. since he suffered 1/3rd of the maximum period of punishment. The maximum punishment as per the Section 4 of PMLA is 7 years and 1/3 of the such period is 2 years and 4 months, but the incarceration period of the petitioner is 2 years 7 months, which is more than 1/3rd period of maximum punishment of the offence under Section 4 of PMLA. Therefore, the petitioner is entitled for bail under Section 479(1) of B.N.S.S.. Further he submitted that in the main case, so far summons has not been served and so many persons were cited as witnesses and hence there is no possibility to conduct the trial within a short time. Hence, he prayed to grant bail to the petitioner.

3.3. In support of his contention, the learned counsel appearing for the petitioner has relied on the Hon'ble Supreme Court's judgment in ***Badshah Majid Malik vs. Directorate of Enforcement & ors.***

4. The learned Government Advocate (Criminal Side) would submit that the main complaint has been lodged as against the accused for the offence under Section 4 of the Prevention of Money Laundering Act and the case is at the stage of service of summons to the other accused who are in foreign companies and the petitioner was arrested on 03.03.2022 and remanded to judicial custody on 04.03.2022 and he is under judicial custody. Already the petitioner had filed so many bail applications and the same were dismissed. The accused is the Promoter of the Indian Company M/s. Coastal Energy Private Limited which is engaged in the trading of imported coal. The accused, through his company CEPL, has supplied coal to various public sector undertakings. Reliable information received by the CBI and hence they registered a case for the criminal conspiracy amongst the petitioner and the purchasers, thereby cheated the Government of India by fraudulently showing inferior quality of coal as that of superior quality during the

period 2011-12 to 2014-15 and caused a loss to the tune of Rs.564.48 crores in total. The CBI registered the case against this petitioner, Promoter of M/s. Coastal Energy Private Limited (CEPL) and others for the offences under Sections 120-B r/w 420 of IPC and Sections 13(2) r/w 13(1)(d) of PC Act. As the above said offences are scheduled offences under PMLA, on the basis of the above CBI case, the respondent investigated the matter and investigation reveals that there was an over valuation of consignments of coal supplied to PSUs imported from Indonesia to India by CNO Group entities. The CNO Group entities comprise the Indian Company CEPL, which is engaged in the trade of imported coal, Coastal Energen Private Limited, Chennai which is having a Coal Fired Power Plant in the name of Mutiara Thermal Power Plant, Coal & Oil Group Company DMCC, Dubai (CNO DMCC) and Coal & Oil Group Company LLC, Dubai (CNO LLC).

4.1. The learned Government Advocate (Criminal side) would further submit that all these companies are controlled and run by its Promoter, shareholder / owner / 1st accused / petitioner herein. The petitioner through his Indian Company CEPL used to bid for supply of coal to the various Public Sector Undertakings. On getting the bids successfully allotted to his company, he entered into the agreement for supply of coal to the Public Sector Undertakings which invariably mentioned the specific requirement of coal to be supplied particularly its specifications in terms of Total Moisture Content in percentage terms and Gross Calorific Value of Coal which is measured in Kcal / Kg among other parameters. The petitioner diverted the proceeds of crime to the tune of Rs.557.25 Crores through CEPL and CNO Group entities, UAE through Precious Energy Holdings Ltd., BVI and Mutiara Energy Holdings Ltd., Mauritius to invest in coastal Energen, India. The proceeds of crime to the extent of Rs.557.25 crores in the possession of M/s. Coastal Energen Pvt. Ltd., Huge amount is involved in this case. The petitioner has not complied the condition under Section 45(1) of PMLA, 2002. Hence if the bail is granted to him, he would fly out of India and he may tamper with the evidence and he may also influence the witnesses and hence he strongly opposed to grant bail to the petitioner.

5. Heard both sides and perused the materials available on record.

6. The petitioner has been arrested for the offence under Section 4 of PMLA. It is an admitted fact that the petitioner is in judicial custody for the past more than 2 1/2 years, from 04.03.2024 and it is also an admitted fact that the main case is at the stage of serving of summons and some of the accused are in abroad, thereby it is not possible for completion of trial for near future. As rightly contended by the learned senior counsel appearing for the petitioner that as per the Hon'ble Supreme Court's judgment in Badshah Majid Malik vs. Directorate of Enforcement & ors**.,** Section 479(1) of B.N.S.S. will apply to the prosecution under PMLA.

6.1 Section 479(1) of B.N.S.S. reads as follows:

> *(1) Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on bail"*
>
> *Provided that where such person is a first-time*

> *offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law*:

6.2. The maximum punishment for the offence under Section 4 of PMLA is 7 years. Since the petitioner is a first-time offender, who has never been convicted of any offence in the past, he is entitled to get benefit 1st Proviso of Section 479(1) of B.N.S.S. thereby, he has to be in custody for 1/3 of the punishment of Section 4 of PMLA. The 1/3rd of the punishment for Section 4 of PMLA is 2 years 4 months, but in this case, the petitioner already suffered 2 years and 6 months, which is more than 1/3rd of the maximum punishment for the offence under Section 4 of PMLA. Further, the offences involved in this case are borne out of records, thereby there is no chance for tampering the evidence.

6.3. Therefore, in view of the above discussions, 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.10,000/- (Rupees Ten

Thousand only) with two sureties each for a like sum to the satisfaction of the **XIII Additional Court for CBI Cases, Chennai** and on further conditions that:

[b] the petitioner shall report before the respondent police daily at 10.00 a.m. until further orders.

[c] the petitioner shall not leave India without the previous permission of the Court;

[d] the petitioner shall not commit any offence similar to the offence of which he is accused, or suspected, or of the commission of which he is suspected;

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

[f] the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of

the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence;

[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.

24.10.2024
[2/2]

index: Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To
1.The XIII Additional Court for CBI Cases, Chennai.
2.The Public Prosecutor, Madras High Court, Chennai.
3. The Assistant Director, Directorate of Enforcement, Government of India, 3rd and 4th Floors, Murugesa Naicker Complex, Greams Road,

Chennai-600 006.
4. The Superintendent of Police, Central Prison, Puzhal, Chennai.

P.DHANABAL,J

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CRL.O.P. No.25602 of 2024

24.10.2024
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