IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.03.2024

PRONOUNCED ON : 28.03.2024

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.No. 26122 of 2023

Dinesh Chand Surana. ... Petitioner/1st Accused

Vs.

The Assistant Director
Directorate of Enforcement
Government of India
Ministry of Finance, Department of Revenue
2nd and 3rd Floor, C Block, Murugesa Naicker Complex
84, Greams Road, Thousand Lights
Chennai – 600 006. .. . Respondent/Complainant

PRAYER: Criminal Original Petitions filed under Section 439 of Cr.P.C., read with Section 45 of the Prevention of Money Laundering Act, 2002 pleased to enlarge the petitioner on bail, who was arrested on 12.07.2022 and remanded to judicial custody on 13.07.2022 in SPL CC 9 of 2023 on the file of the respondent police.

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For Petitioner : Mr V.Raghavachari
Senior Counsel for
Mr. Hitesh Singhvi

For Respondent : Mr. ARL. Sundaresan
Additional Solicitor General
Assisted by
Mr. N.Ramesh,
Special Public Prosecutor (ED)

ORDER

The first accused in Spl C.C.No. 9 of 2022 now pending before the Principal Sessions Court at Chennai (Special Court, PMLA) and remanded to custody on 12.07.2022 in ECIR No. CEZO-I/05/2019 for commission of offences under Section 3 & 4 of Prevention of Money Laundering Act, 2002 seeks bail.

2. It is the case of the prosecution that the petitioner was the Managing Director of Surana Industries Ltd., (SIL). It had been stated that SIL is a public limited company involved in the manufacturing and trading of iron and steel products. It had proposed to construct a mega steel plant at Raichur in Karnataka. It had been stated that towards the project cost, loans had been sanctioned by various banks. But in April, 2013, when the project had just commenced, State Bank of India withdrew from the project. It had been stated that two audit reports had been prepared which certified that SIL had performed to the expected levels. It had also been stated that SIL had assets corresponding to the outstanding dues. It had been contended that the allegations of the respondent that SIL had awarded contracts to other companies which were directly controlled by the petitioner and that shell companies had been created are all false.

3. The learned Senior Counsel for the petitioner pointed out that the value of the assets have drastically false down owing to factors not under the control of the petitioner. He put the blame entirely on the banks. He stated that there was no diversion of the assets and that the entire immovable assets worth 1,038 crores were available. He also pointed out the finding of the National Company Law Tribunal dated 27.06.2022 that there was no siphoning of funds. He further stated that in the ECIR there was no indication about proceeds of crime or of money laundering. It had been contended that the petitioner had placed on record all facts which were material. It had been stated that it was only a commercial failure and there was no criminal activity. It was contended that were two separate audit reports which did not find any misappropriation or diversion of funds. It was therefore contended that the Court should consider grant of bail.

4. A counter affidavit had been filed on behalf of the respondent in which specific details had been given about the amounts due by SIL which 1,301.76 crores. The names of the various companies which were under the direct control of the petitioner had also been given. It had also been stated that the petitioner had created shell companies for routing the finance and finally bringing it back as if they were contributions of the petitioner.

5. In the counter affidavit, it had been very specifically stated that there has been substantial loss caused to the banks and that the two audit reports which had been placed for consideration, have to be rejected.

6. Heard arguments advanced by Mr.V.Raghavachari, learned Senior Counsel for the petitioner and Mr.ARL.Sundaresan, learned Additional Solicitor General for the respondent.

7. Mr.V.Raghavachari, learned Senior Counsel appearing for the petitioner pointed out the facts and stated that the petitioner had been suffering incarceration from July 2022 even though he had co-operated with the investigation. He had produced necessary documents. He had disclosed the statements of accounts. He had not siphoned of any money. It is contended that the allegations are all false and the learned Senior Counsel further stated that the audit reports prepared on two occasions had given a clean chit to the petitioner and the companies but however it was only the third audit wherein various allegations had been raised. The learned Senior Counsel was emphatic that all the allegations are false.

8. Mr.ARL.Sundaresan, learned Additional Solicitor General pointed out the facts of the case and stated that the petitioner was not entitled for bail particularly as no grounds as required under Section 45 of PML Act were made out. It was contended that the petitioner had diverted amounts through shell companies and had routed them back to the account of the petitioner. It had been stated that the trial is pending but the petitioner is not co-operating in trial process. It was therefore urged that this Court should dismiss the application.

9. I have carefully considered the arguments advanced.

10. This Court had examined the application of the bail in Crl.O.P.No. 26111 of 2023 filed by this petitioner in his capacity as Managing Director of Surana Power Limited. The petitioner had taken an affinity to approach banks with mega projects seeking loan. In both the instances loan more than 1,300 crores each had been sanctioned. The petitioner thereafter began an intricate operation of misappropriating the said amounts. He granted contracts to companies which were controlled by him. He then also incorporated several shell companies. These companies were used for paper transactions. There was no actual movement of goods from anywhere to anywhere. The projects never started. All the amounts were systematically diverted from one shell company to another shell company. The total amount now outstanding in this case is Rs.1301.76 crores.

11. A perusal of the counter affidavit shows the intricate web created by the petitioner. He should never have complicated the issue to his disadvantage.

12. In ***2023 SCC OnLine SC 645 [Y.Balaji Vs. Karthik Desari & Anr. Etc.,]*** the Hon'ble Supreme Court while examining the scope of Section 3 of PML Act, had held as follows:-

> *"95. Section 3 of the Act which defines the offence of money- laundering reads as follows:*
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> *"**3. Offence of money-laundering**.—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.*
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> *Explanation.—For the removal of doubts, it is hereby clarified that,—*

(i) a person shall be guilty of offence of money- laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property, in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever."

***96**. If the main part of Section 3 is dissected with forensic precision, it will be clear* *that Section 3 addresses itself to three things (we may call them 3 'P's) namely, (i) person; (ii) process or activity; and (iii) product. Insofar as persons covered by Section 3 are concerned, they are, (i) those who directly or indirectly attempt to indulge; or (ii) those who knowingly assists; or (iii) those who are knowingly a party; or (iv) those who are actually involved. Insofar as process is concerned, the Section identifies six different activities, namely (i) concealment; (ii) possession; (iii) acquisition; (iv) use; (v) projecting; or (vi) claiming as untainted property, any one of which is sufficient to constitute the offence. Insofar as product is concerned, Section 3 identifies "proceeds of crime" or the property representing the proceeds of crime as the product of the process or activity."*

13. In ***AIR 2016 SC 106 [Gautam Kundu V. Manoh Kumar],*** the Hon'ble Supreme Court had observed as follows:-

"33....... We have noted that Section 45 of the PMLA will have overriding effect on the general provisions

of the Code of Criminal Procedure in case of conflict between them. As mentioned earlier, Section 45 of the PMLA imposes two conditions for grant of bail, specified under the said Act. We have not missed the proviso to Section 45 of the said Act which indicates that the legislature has carved out an exception for grant of bail by a Special Court when any person is under the age of 16 years or is a woman or is a sick or infirm. Therefore, there is no doubt that the conditions laid down under Section 45A of the PMLA, would bind the High Court as the provisions of special law having overriding effect on the provisions of Section 439 of the Code of Criminal Procedure for grant of bail to any person accused of committing offence punishable under Section 4 of the PMLA, even when the application for bail is considered under Section 439 of the Code of Criminal Procedure. "

14. It is clear that the petitioner had indulged in direct misappropriation of public funds which had been sanctioned by the banks in trust.

15. Taking all the factors into consideration, particularly that the offence involved is extremely serious and there is every possibility of the petitioner influencing the witnesses. I am not inclined to grant any relief to the petitioner. This Petition stands dismissed.

28.03.2024

vsg (2/2)

Index:Yes/No
Neutral Citation:Yes/No
Speaking order : Yes/No

C.V.KARTHIKEYAN, J.

vsg

Pre Delivery Order made in

Crl.O.P.No. 26122 of 2023

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28.03.2024

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