

IN THE COURT OF SESSIONS AT CHENNAI

Present: **Tmt.S.Alli, M.L.,**

Principal Sessions Judge.

Friday, the 12th day of January, 2024.

Crl.M.P.No.81 / 2024

in

C.C.No.9 / 2023

in

ECIR No.MDSZO/21/2021

V.Senthil Balaji, S/o.Velusamy

.. Petitioner / Accused

- vs -

The Deputy Director,
Directorate of Enforcement,
Ministry of Finance,
Chennai Zonal Office-II,
B-Wing, Shastri Bhavan,
Haddows Road,
Chennai-600006.

.. Respondent / Complainant

This petition coming on 9.1.2024 before this court for hearing in the presence of Mr.C.Aryama Sundaram, Senior Counsel for M/s.N.Bharanikumar, K.S.Arivazhagan and Abinesh Babu, Counsel for the petitioner and of Mr.ARL Sundaresan, Additional Solicitor General and Mr.N.Ramesh, Special Public Prosecutor for respondent and upon hearing them and upon perusing the records, this court delivered the following:

ORDER

1. The petitioner, who was arrested on 14.6.2023 for the offence u/s 3 punishable u/s 4 of the PMLA in C.C.No.9/2023 in ECIR No.MDSZO/21/2021 on the file of the respondent, seeks bail.

2. The brief averments in the petition filed by the petitioner are as follows :

The complaint filed by the respondent is frivolous and devoid of merit. The complaint does not reveal the actual facts. The respondent has registered an ECIR against the petitioner

on 29.07.2021 and the petitioner was asked to appear in person or through his authorized representative with the relevant documents mentioned in the summons on 04.08.2021. The list of documents annexed are duly submitted by the petitioner to the respondent, the petitioner was informed that the impugned proceedings was initiated against the predicate and scheduled offences in connection with C.C. No's.19/2020, 24/2021 and 25/2021 pending on the file of Additional Special Court for Criminal Trial against Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai. The petitioner was asked to depose the details of the said cases and the petitioner has revealed the details of the said cases as to his knowledge. The appointing authorities are categorized based on the posts i.e. Managing Director of the Board or General Manager or the powers delegated person. While this being the case, the predicted crime against the petitioner has no basis for formation of a crime. The entire case was foisted against the petitioner to wreck vengeance. The bye-laws and the memorandum of articles of the recruiting agency would clearly demonstrate that the petitioner has no role to be the authority of appointment or process in the appointment.

3. The respondent has issued summons on various dates commencing from 04.08.2021, 07.10.2021, 17.03.2022, 01.04.2022, 29.04.2022 and the petitioner has appeared for the summons dated 07.10.2021 and submitted all relevant documents annexed to the summons, and further submitted to the respondent that he has no involvement in the alleged crime and proved his innocence and requested to drop the proceedings as the same is arbitrary. To the subsequent summons, the petitioner's authorized representative appeared before the respondent. In the interregnum, the predicate offences were subjected to litigation and attained its finality before the Hon'ble Supreme Court. Consequent to the orders of Hon'ble Supreme Court of India, the respondent filed a petition to the trial court seeking copies of the digital evidence and other documents from the trial court. On 30.05.2023, the trial court was pleaded to furnish the copies to the respondent. It is stated in the complaint that those digital and other evidences were sent to forensic department for genuinity certificate. It is purported in the complaint that the documents sent are assumed to be genuine. On 13.06.2023, the respondent all of a sudden

came to the residence of the petitioner early in the morning and detained him. He was not given any grounds for such interrogation. From 7.00 A.M. in the morning on 13.06.2023, he was detained by the respondent officers at his house. He was not allowed to meet any of his relatives, friends and advocates. Thereafter, the petitioner was said to have arrested at 1.39 A.M. on 14.06.2023 and remanded to Judicial Custody on 14.06.2023. The petitioner was suffering from serious illness during the procedure of arrest, the respondent had admitted the petitioner in Tamil Nadu Government Multi Super Specialty Hospital, Chennai wherein the doctors found that there were three major blocks in his heart and advised for an emergent surgery. In the above said background, as per the directions of the Hon'ble Court in CrI. M.P. No. 19421 of 2023 which was passed based on the Judgment dated 07.08.2023 of the Hon'ble Apex Court in Criminal Appeal Nos. 2284-2285 of 2023 & Batch, the petitioner underwent custody between 07.08.2023 and 12.08.2023 and extended his fullest cooperation to the respondent during the course of the interrogation.

4. The petitioner had suffered incarceration since the date of his arrest / remand i.e. 14.06.2023. He is in custody for 182 days that includes 6 days of custodial interrogation of the respondent. It is pertinent to note that under such judicial custody period he underwent a major by-pass surgery on 21.06.2023 at Kaveri Hospital, Chennai and still under continuous medication. Despite the medications that are being taken under the care of Puzhal Prison Hospital, his recovery is very slow and still suffering from chest discomfort, pain and discomfort on the left leg (surgical side). He was advised by the doctors not to sit or stand for a long time. A numbness is occurring in the legs of the petitioner often, which requires further treatment. The heart illness is well within the knowledge of the respondent as he was admitted at Government Hospital by the respondent only and the opinion regarding health of the petitioner given by the said hospital was verified by the respondent through the doctors of ESI on 14.06.2023. The petitioner was visited by the respondent at Kaveri Hospital and medical opinion was obtained by them.

5. The respondent has annexed as many as 77 documents for concluding the complaint (Referred as Relied upon Documents- RUD's). In the list of documents, the respondent has annexed the documents which were already produced and available with the trial court in connection with the predicative offences and it has been admitted by the respondent that no new documents except the statements of the witnesses are annexed for such conclusion of the reason to believe the guilt against the petitioner. With regard to document No.16 and 17, the respondent has submitted the foil challans of deposit and further stated to have collected Documents and statement of witnesses. With regard to document No's. 40, 41 and 42, the reliance are made of Email trials which are all subject matter of the scheduled offence, with reference to the mail trials, the petitioner has not responded or sent from his account. In support of the complaint, the respondent had annexed the list of 21 witnesses and their statements.

6. The fulcrum of the matter in registration of the ECIR in File No. ECIR/MDSZO/21/2021 when the ECIR was put to challenge, it is the admitted case of the respondent that the ECIR has been registered without there being material/documents with the respondent. It was further case of the respondent that after registration of ECIR, the respondent has applied to the Special Court for copies of the documents in connection to the predicate offence. It is not in dispute that a commission of a scheduled offence resulted in deriving a proceeds of crime is a fundamental pre-condition for any proceedings under the Act as without a scheduled offence being committed, the question of proceeds of crime does not arise. In the present case on hand the respondent has miserably failed to identify the proceeds of crime, instead, the respondent has derived the purported calculation of proceeds of crime out of the financial year 2014-2015 and 2015-2016 during which the commission of scheduled offence was not committed, though the respondent has arrived the purported quantum of Rs.1,34,69,000/- out of the financial year 2013-2014 till 2021-2022 with a different quantum for every financial year. The maximum increased deposit as per the admitted statement in the complaint was shown as Rs. 64,10,000/- during the financial year 2016-2017, the graph at Page No. 58/144 of the final report is the specific case for arriving to a conclusion of the alleged

money laundering against the petitioner.

7. Out of the alleged investigation in the complaint, the respondent has relied the statements recorded during the course of investigation under PMLA, 2002 at Page No. 38/144. It is pertinent to state that the statement from Smt. A. Shanthi on 06.10.2021 recorded under Document No.48, in where the specific statement of the said person was included in the complaint and it has been recorded that Sri Ganesan came back to the personal department as GM in 2016 and asked Smt. Shanthi to change the marks register and get it signed by the interview committee. He also instructed them to hike the marks of the appointment candidates and reduce the marks of non-appointed candidates below 10 out of 25 in personal interview. This was carried out by staff of MTC with the help of entire personnel department under the instructions of Shri Ganesan. She further stated that the entire recruitment process was conducted in a hurried manner due to which the reservation system could not be followed. Therefore it is a categoric and specific case of the relied/examined witness of the respondent that the entire job recruitment process was led by Shri Ganesan and Shri Arul Ravindra Daniel. It was further specific case of the said witness that people from various departments including the interview committee were picked up by Shri Ganesan during various stages of process. The panel for the interview committee was approved by Shri Alfred Dinakaran. She further stated that the orders were sent to the petitioner's office through wireless team in their department after during 2016. For the support of the said analysis in para 6.4 of the complaint, the respondent has made a box of financial investigation at Page No. 54/144 of the Complaint filed by the respondent Financial profile of Shri V. Senthil Balaji, it is pertinent to note that the said statement in para 6.4 at page 13/144 is about 2013 and in Page No. 55 paragraph 13.2 is for the period commencing from 2014 to 2020, therefore the analysis data collected which is said to have arrived a quantum at para 13.6 at page 57/144 to a total quantum of Rs.1,34,69,000/- is alleged to have added only to cross the ceiling limit of Rs. 1.00 Crore for proceeding under the PMLA. The financial year 2013-14, even as per the respondent is not the period of alleged scam of cash for jobs and the period commencing from 2017-18 till 2020-21 are the periods

where the petitioner was not in any government post and the income derived from the said period are of the salary being Member of Legislative Assembly and through some petty sources of agriculture etc. Therefore in order to give upper limit to the ceiling prescribed under the Act, such alleged quantum has been increased and derived by the respondent.

8. It has been stated at paragraph No. 6.6 at Page No. 13/144 that the key suspects are V. Senthil Balaji, R. V. Ashok Kumar and B. Shanmugam were summoned multiple occasion in the year 2022. However, they chose not to appear even once opting repeated adjournment request devoid of any valid explanation, therefore came to a conclusion that suspects being evasive in nature and a tabular column was drawn in support of the contention of the respondent with the details of the date of summon, date of appearance and remarks. As per the statement of the respondent there were 3 dates mentioned in the column for appearance i.e. 28.03.2022, 12.04.2022 and 13.05.2022. The respondent conveniently excluded the order of injunction dated: 06.05.2022, in where the Hon'ble Division Bench of the Madras High Court was pleased to grant an order of ad-interim injunction restraining the respondent from proceeding the investigation of ECIR/MDSZO/21/2021 in connection with the present Calendar Case. The petitioner also filed a writ petition before the Hon'ble High Court of Madras and in the said case similar relief was extended to the petitioner against the respondent. Therefore, it is humbly submitted that the Hon'ble Division Bench of the Madras High Court has seized off the matter to test the validity of the investigation, therefore it is incorrect to state there were multiple occasion the petitioner was evasive in attending the investigation during the year 2022.

9. With regard to Paragraph No. 6.7, Paragraph No.6.8 and Paragraph No. 6.9 at Page No. 13/144 have purported to have stated statements with regard to the alleged scam. If all the statements are conjointly read, there is nothing incriminating against the petitioner nor there is a over-tact against the petitioner, nor they have stated the direct involvement of the petitioner. The statement would certainly prove that the petitioner was not involved in the alleged scam of cash for job or the allegations of money laundering by the respondent. Therefore, the said

summary of findings by the respondent are found to be untrue even as per their collection of evidences and statements. With regard to paragraph No. 9 at Page No. 20/144 it has been stated by the respondent that for the purpose of tracing the Prevention of Corruption and conduct money trial with respect to the illegal gratification through job racket scam the arrest of the petitioner was immediately required, further it has been stated that the transactions revealed that the petitioner has committed the offence of PMLA and accordingly the respondent had reason to believe that the petitioner was guilty of the offence of PMLA and therefore the petitioner was arrested at about 01.39 A.M. on 14.06.2023. The alleged arrest was based on the above said reasons i.e. based on the bank statements of the financial year commencing from 2013-2022 and was also based on the statements recorded as per paragraph Nos.6.7, 6.8 and 6.9, the alleged statements are proved to be false from the explanation of the income derived for the year 2013 to 2022, the explanation is annexed with this bail petition.

10. As it is the bounden duty of the Investigation agency/respondent to identify the proceeds of crime involved in the alleged act of money laundering with the substance of ill-gotten money forms the basis for registration of ECIR and the present complaint in C.C. No. 09/2023. The respondent has alleged and found basis of financial investigation against the petitioner. The financial investigation discloses the bank statements of the petitioner along with the financial returns of the financial year commencing from 2013-2020 and the entire complaint is said to have filed on the basis of the deposits made in the bank account of the petitioner for the said period. The income accrued through the sources was explained in detail in the above paragraphs. The sources of such deposits are part of the financial returns disclosed, the source of source was also disclosed by the petitioner during the said financial year and apart from the income arrived out of legitimate source, there is no other undisclosed income by the petitioner. The respondent was not able to identify and cannot identify the ill-gotten source of income as the same remain unavailable or the petitioner has no other source of income than the disclosed one, therefore the respondent without any valid document could not have proceeded the alleged investigation under PMLA, but for to make out a case under

PMLA, the respondent has observed that he has reason to believe that the said source of income are purported to have acquired out of the appointments scam. Therefore the conclusion arrived in identification of proceeds of crime is incorrect and against law, the other alleged involvement of the petitioner and its contradiction is as follows:

- a) The complaint states that the interview marks were altered and the statements recorded under Sec 50 PMLA narrated in the complaint would clearly state that the officials have their own process in confirming the marks obtained at a later stage in comparison with the documents submitted by the candidates. In these statements also the petitioner's involvement is either revealed nor he has involvement in the said process.
- b) It has been clearly stated from the recorded statement under section 50 PMLA that the marks were altered in the year 2016 and not any time before during the tenure of the petitioner. Therefore, it is crystal clear that the petitioner has no involvement in the said scam or whatsoever.

11. Therefore, the relationship recorded by the respondent under section 50 PMLA is disputed and the petitioner has not given false information on oath as alleged in Page No. 70/144. In the above circumstances, the respondent is relying on the files produced by forensic sciences laboratory particularly a pen-drive alleged to have been seized from the premises of the petitioner by the agency of the predicate offence. In this regard it is pertinent to note that every electronic device including pen-drive has a serial number of its own; in order to prove the admissibility, the serial number in the electronic device including pen-drive has to be mentioned in the search proceedings, panchanama, seizure memo etc., but in the instant case, the same has not mentioned anywhere and the serial number of the HP pen-drive is also not known and as far as the petitioner is concerned he is disowning the pen-drive as it is fabricated and manipulated.

12. With regard to the annexed documents of EQ letters for booking of train tickets are all disputed by the petitioner and the same are the documents of the years 2011, 2012, 2013, 14.05.2014 and it has no relevance to the alleged crime as the petitioner has not issued any of

the letters and the said annexed letters cannot be a ground for concluding the rigour charges against the petitioner as it doesn't contain the authorized signatory or approval of signatures, there is no approval or signature in the said document. The petitioner with all the above statements would certainly clear the rigour test of twin conditions as he is not involved in any of the offence alleged by the complainant in his complaint dated:12.08.2023 and will not be tampered or hampered any of the witnesses or evidences as all the documents, statements referred in the complaint are part of the complaint filed by the respondent obtained from the investigation of predicative offence and under the safe custody of the Hon'ble Courts and further test of committing similar offences if let on bail does not arise.

13. The petitioner was not connected to the observation of the case registered on the attack on the income tax officials nor his involvement was found, neither he is an accused in the registered crime on that particular incident. The copy of the Panchanama dated 6.2.2020 and search slip dated 10.2.2020 at the residential premises of the petitioner revealed that may incriminating documents and digital evidences, which were subsequently sent to Tamil Nadu Forensic Science Laboratory, the same was analyzed and found to be an incriminating evidence. The respondent believed the digital evidence are incriminating and true and therefore found the petitioner guilty of committing the offences punishable under PMLA. The digital evidence are manipulated, tampered and files were altered and planted. It is evidence from the Annexure 53 mentioned in the Forensic Report at Page 410 of the documents relied in the complaint (RUD-20), the report conclude that the details of examined windows properties of the files are furnished as "name, author, date of content created, date of last saved and modified" and the report further says that the property last saved by whom were found in the name of Shanmugam. The document TNFSL report of CF-27 at page 505 is to be consider, where the content of the entire files were furnished through Annexure-53 and the detail of author, content created, date last saved and date modified were given by the Deputy Director of TNFSL. The consolidated files are planted, manipulated and the same is evident from the content created, date last saved and date modified. The relevant dates are : File Name – March,

2015 VAC.xls – the date of creation of content as mentioned in the TNFSL report was on 31.10.2014 at 14.25 pm. and it has been further revealed in the report that the date has been modified on 27.11.2022 at about 12.46 pm. and it also furnished the detail of the date of last saved on 27.12.2022. Another file, which was created on 27.4.2015, but manipulated and altered on 27.12.2022 at about 12.40 p.m. The altered dates are the files belonged to Annexure-10 and 11 annexed at volume-2 in pages 425 to 427 of the documents annexed with the complaint.

14. The respondent has also relied upon a document – RUD-22, attached to page No.630 along with the complaint, the same has been referred as CF-116/2020, dated 23.9.2020, a report of the TNFSL in B.No.482/2020, where multiple folders, deleted folders from C drive retrieve with their files were shown as Lost Files of the month of March, 2020 and specific date of 22.4.2020-Panel. The lost files of the report in CF-116 are after the production of seized digital evidence to the court vide Panchanama dated 12.2.2020 on the search proceedings dated 6.2.2020. In Annexure-II, list of files attributed for the selected folders at page 639, the said file name has Name, Description, Category, File Created, Last Written and Item Path. In the said file also it is detected that the file was created on 4.6.2020 at about 16.32 hours and last written on 7.7.2020 at Serial No.2, 3, 4, 5 and 6, the yet another file created at Serial No.12 was on 6.8.2018 at 13.15 hours and it was last written on 7.7.2020 at about 12.28 hours. Similarly there is a manipulation, alteration and evidence is planted in Serial Nos.24, 30, 31, 33, 34, 35 and 36. There is a next level of manipulation found in the alleged incriminating evidence relied upon by the respondent vide RUD-22, Annexure-III commencing from Serial No.1 to 13, 24, 28, 30, 48, 50, 51, 47, 49, 60, 61, 64, 65, 66, 87, 89, 91, 92, 93, 94, 95, 101, 102, 103, 104, 116, 117, 118 to 135. The respondent has created documents in order to fix the petition under the guilt of PMLA.

15. RUD-16, the counterfoils alleged to have been issued by the concerned bank after a lapse of almost 10 years. The deposit and the filled denominations differ from every page more particularly at page numbers 357, 359, 363, 365, 369, 373, 379 etc. The volume No.3 and 4

(RUD-29 and 29), is the list of candidates who have applied for the posts like Driver, Conductor, Junior Draftsman, Assistant Engineer, Junior Engineer etc. contained in the manipulated CF-27 of 2021. Hence, the same has to be disbelieved as the files contain belongs to manipulated CF-27 of 2021. There are contradictions in the interse testimony of the witnesses as well as contradictions in their individual testimony qua their police statements. Sec.50 statements recorded from the MTC officials clearly contradict the allegation that the irregularities were committed deliberately on the instructions of the petitioner. The MTC officials while specifically rejecting this allegations have explained each and every irregularity and also given the reason and chain of command. It is categorically stated that the alleged actions were taken independently by MTC officials in the given facts and circumstances.

16. The petitioner even satisfy the triple test laid down by the Hon'ble Supreme Court of India for grant of bail. The petitioner undertakes that he would not abscond. The requirement of the interrogation of the petitioner is not required. Already Final Report was filed. There cannot be an assumption of tampering the evidence which are documentary in nature. There is no need for custodial interrogation as the investigation is completed. The petitioner has not made any attempt to suborn witnesses, tamper with documentary evidences. The respondent alleged that Rs.1.34 crores deposited in the account of the petitioner between 2013-2022 were ill-gotten. If the salary of the petitioner as a Minister and MLA is reduced, the source for the remaining amount has to be explained by the petitioner and as such there is no other source of income which would constitute an offence of PMLA, the present case cannot be construed as a crime of heinous nature. There are likelihood that the petitioner is having good case in the calendar case. There is no allegation that the petitioner or his family members or associates even tried to contact any of the witnesses or threatened them. The petitioner is ready to abide by any condition. Hence, the petitioner may be granted bail.

17. **The brief averments in the counter filed by the respondent are as follows :**

The respondent denies each and every contention raised by the petitioner / accused herein in the instant bail petition as false and devoid of merits and put the accused herein to

strict proof of the same, except those which are specifically admitted hereunder. The Prosecution Complaint in C.C.No.9 of 2023 has been filed against the petitioner before this court on 12.8.2023, wherein it is clearly established that the petitioner played a pivotal and central role, exploiting his official capacity as the then Transport Minister of the State of Tamilnadu for personal gain through corrupt and illegal means. He directly acquired illicit proceeds resulting from criminal activities linked to scheduled offences. He collaborated with co-conspirators, including his brother RV Ashok Kumar, personal assistants, and officials from the Transport Department, to orchestrate a strategy. Despite he denied his connections with his assistants Shanmugam and Karthikeyan in his statement under section 50 of PMLA, investigation findings decisively established his involvement and role. Evidence unquestionably demonstrates that the conspiracy to exchange cash for job selections, which the Minister claimed ignorance of was conceived and executed under his authority. Proceeds of the criminal activities were then laundered, involving layering and integration into the mainstream through cash deposits / associates for subsequent utilization in collusion with other suspects. The grounds raised by the petitioner for bail has been duly decided and settled by the various courts. The various courts have categorically held that the petitioner / accused has played an active role and obtained proceeds of crime by commission of scheduled offence. Only during the course of full-fledged trial by adducing oral and documentary evidence, the trial court weigh the materials and evidences submitted before it. All proceedings challenging the arrest and subsequent remand have been already settled by the Hon'ble High Court of Madras in the matter of **Megala – vs – State, Represented by the Deputy Director in HCP No.1021/2023** in favour of the respondent and the CrI.A.No.2284-2285 of 2023 filed against the said order has been dismissed by the Hon'ble Supreme Court of India and the Hon'ble court granted custody from 7.8.2023 to 12.8.2023. The petitioner was completely non-cooperative even during nascent stage of investigation by disregarding the summons issued by the respondent. During search on 14.6.2023, he has not co-operated and behaved in evasive and threatening manner. He did not respond to the questions. During the ED custody, the

petitioner has not explained any of the incriminating documents confronted and not substantially answering any of the questions posed.

18. The petitioner cannot claim the benefit of cash withdrawals, gifts from family, cash in hand disclosure in election affidavit etc. as source of cash deposits as they are proved to be either false or non-genuine. The petitioner's claim of receiving gifts (cash) from family members is totally false claim on three grounds (i) there is no claim of any gift received in the imputation of income documents submitted by the accused, (ii) there is no claim of exempt income in the form of gift received in the income tax returns or election affidavits filed by the accused and (iii) there is no substantiation of the source of the claimed gift received from family members and accused is proved to involve his family members in the process of money laundering generated from 'cash for jobs' scam. The above plea was already rejected by this court in the earlier bail application.

19. The allegation of the petitioner that the respondent has manipulated the digital evidence is vehemently denied. The seized digital evidences are in the custody of the MP/MLA Court, Chennai. The respondent has obtained the copy of the digital evidences in print out form taken from the printer of the court and in the presence of the court officer. The TNFSL gave report dated 31.3.2023 stating that the report may be used as evidence in any enquiry, trial or other proceedings as per section 293 Cr.P.C. Hence, the petitioner attacking the genuinity of the Digital Evidences and the TNFSL report is untenable and deserves to be rejected. The search was conducted by the CCB, Chennai. So far, the petitioner never adduced any piece of evidence either before the CCB, Chennai or before the respondent Directorate that the documents and digital evidences seized from his residential premises are not owned and possessed by him. Thus, the onus of proving that the documents and digital evidences seized from the residential premise of the accused are not owned by him is on the accused. Unless the contrary is proved, it is presumed that the seized evidences / documents are owned by the accused herein. The accused herein had at any point of time neither confronted nor disowned the seized materials / documents either before the predicate offence agency or before the

respondent Directorate.

20. With regard to 182 days of custody, the petitioner was arrested on 14.6.2023 and he was in the hospital from 15.6.2023. He was staying in the Kauvery Hospital for 34 days and shifted to prison hospital from 17.7.2023 and underwent checkup at Stanley Hospital (78 days). Hence, the contention that he is suffering incarceration for a period of 182 days since the date of arrest is totally contrary to the fact. As per the Election Affidavit filed by the petitioner during 2021, there are around 30 FIRs pending against him on the file of various police stations across the State of Tamil Nadu. Four charge sheets are pending against him before the MP/MLA Court, Chennai for the alleged cash for job scam. Mere completion of investigation and there is no need of custodial interrogation, does not mean that there are changes in circumstances. Filing of prosecution complaint does not in any manner lessen the allegations made by the complainant, rather it established that after due investigation, agency has found material and placed the prosecution complaint for trial of the accused. Even otherwise, the court at the stage of determining the grant of bail is not to examine the correctness of the charge sheet or FIR in the schedule offence, but only has to prima facie see whether a schedule offence is committed, which has generated proceeds of crime. In **Vijay Madanlal Choudhary** case, the Hon'ble Supreme Court of India confirmed that only on satisfaction of the twin conditions enumerated u/s 45 of PMLA, the courts can enlarge the accused on bail. Thus, when there is no change in circumstances, the petitioner is not entitled bail for the reason stated under the bail petition. As a matter of fact, the subsequent events only go against the petitioner as all the contentions taken by him in the earlier bail petition and HCP have been considered in detail and rejected by the various superior courts. Hence, the said contentions which are again repeated in the present bail petition deserve to be rejected in limini as they have been considered elaborately upto the Hon'ble Supreme Court and rejected.

21. The accused / petitioner continues to be a sitting Minister in the Government of Tamil Nadu without portfolio and enjoying the privileges of a Minister as on date of filing of this bail petition. He is a very influential and powerful person and if he is granted bail, there is a

high probability that accused will misuse his liberty to influence, derail or hamper the investigation and threaten the witnesses. The court has to taken into consideration the guiding principles u/s 439 Cr.P.C., inter alia, the gravity of the crime, the character of the evidence, the position and status of the accused with reference, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds. The petitioner has not made out a case for grant of bail under Sec.45 of PMLA. Classic example is the assault on officials of the Income tax Department by the associates / supporters of the accused and his brother Ashok Kumar during the Income tax searches conducted at the premises of Ashok Kumar and his associates in the month of May 2023 to prevent them from discharging their duty. Consequently, few FIRs were registered and the accused have got bail within 3 days. The Income tax Officials filed petition for cancellation of bail and the Hon'ble High Court of Madras, Madurai Bench cancelled all the bails. The brother of the petitioner Ashok Kumar, who is one of the other prime suspects in the offence is absconding since long time. Hence, the petition may be dismissed.

22. Now, the point for consideration is :

“Whether the petitioner is entitled for bail or not ?”

POINT :

23. Heard both sides. Records perused.

24. The Senior Counsel, who was appearing for the petitioner would submit that the petitioner / accused has been charged for the offence u/s 3 of PMLA, punishable u/s 4 of the PMLA and he was arrested on 14.6.2023 and in judicial custody till date. In between, he has been handed over to the custody of the Enforcement Directorate for five days. The petitioner / accused was a Minister in the year 2014 and he was seized to be a Minister in July 2015. So, the alleged amount of Rs.1,34,69,000/- must be related to that period. From 2013 to 2022, the petitioner has filed his Income-tax Returns and the explanation given in the said Returns have been accepted by the Statutory Authority, i.e., the Income-tax Department. The learned Senior

Counsel for the petitioner / accused further submits that there are three predicate offences, which are pending before the Special Court for Trial of Cases related to Members of Parliament and Members of Legislative Assembly of Tamil Nadu. The alleged incident was said to have occurred between December 2014 and July 2015. On 27.7.2015, the petitioner was not a Minister, the seizure took place on 6.2.2020, but, the documents have been produced before the court only on 12.2.2020, after a delay of 6 days. The proceeds of crime identified by the respondent is Rs.1.34 crores and the entire case of the respondent rests on two computer files, namely, CF 27 and CF 116. Even as per the records produced by the respondent, the amount said to have been deposited with the account of the petitioner and his wife are less than a crore. The petitioner was earning his salary and allowances as a Member of Legislative Assembly and also as a Minister of Government of Tamil Nadu for the period 2013 to 2022 is Rs.64 lakhs and the source for the rest of the deposited amount has been explained by the petitioner in his Income Tax Returns and Election Affidavit. The learned Senior Counsel would also submit that the respondent has produced the documents, which were already available with the trial court in connection with the predicate offences and no new document has been produced by them, except the statement of the witnesses to come to a conclusion, of reason to believe the guilt of the petitioner. He would further submit that the respondent has submitted FIRs, Final Reports, Election Affidavit of the petitioner, copy of the ECIR, Bank Statements of the petitioner and his wife and also challans and counterfoils for the deposit of cash and also recorded the statements of witnesses. The respondent has also relied upon the E-mails, but those E-mails were not sent by the account of the petitioner and he has not responded for the same. The learned Senior Counsel for the petitioner would also submit that the respondent has failed to identify the proceeds of crime and in turn, calculated the proceeds of crime, out of the financial year 2014-15 and 2015-16 during which, the scheduled offence was not committed. The learned Senior Counsel would also submit that the respondent mainly relied on the electronic evidence, i.e., CF 27, CF 116, RUD-22, RUD-16 and File Name : March 2015 VAC.Xls, but, even as per the complaint and the documents produced by the

respondent, it would reveal that those electronic evidences have been manipulated, tampered, altered and planted. It is evident from the Annexure-53 in the Forensic Report of the complaint and the said report shows that those files were manipulated, tampered and altered. In all the above electronic evidence, those files were originally created on a particular date and it was last written on a subsequent date after its seizure, modified through which the court could infer that those files were manipulated, created, tampered and altered by the Predicted Agency after its seizure. The learned Senior Counsel has also pointed out the pages, where the alleged manipulated documents are found. The learned Senior Counsel would also submit that it has been held in **2023 SCC OnLine SC 885 (Vernon – vs – Maharashtra and another**, in which, the Hon'ble Supreme Court of India has referred the judgment in **Zahoor Ahamed Shah Watali case**, and held that *“it would not satisfy the prima facie test, unless there is at least surface analysis of probative value of the evidence at the stage of examining the question of granting bail and the quality or probative value satisfied the court of its worth.”* As such, on surface analysis of the probative value of the evidence by the court, it would reveal that the respondent has manipulated, altered and tampered the electronic documents to bring the accused into the offence of Money Laundering. The petitioner has established his case by defeating the alleged complaint against him and in compliance of the twin conditions as the petitioner would not be held guilty for the offence as claimed by the respondent. The petitioner has disproved the case of the respondent and also established a case for grant of bail by raising serious doubts in the case of the respondent / complainant through the manipulated, created and altered documents etc. The learned Senior Counsel would also submit that the complaint itself had various narratives, which are contradictory to each other. The learned Senior Counsel would also submit that the respondent has completed their investigation and filed complaint and therefore, there is no need for further incarceration of the petitioner for the purpose of investigation. Also, bail cannot be denied for the reason of that the offences are serious in nature and the court has to see whether the offences under the Prevention of Money Laundering Act has been committed or not? Sufficient doubt has been created, whereby the court could

reasonably believe that the petitioner would not be an accused for the offence u/s 3 r/w 4 of the Money Laundering Act. Though the respondent has relied upon the Emergency Quota Letters, but, no signature was found on it and it cannot be taken for consideration. The petitioner is in custody for the past 207 days and continued incarceration will amount to a pre-trial punishment. The learned senior counsel would further submit that the petitioner has satisfied the twin conditions of Sec.45 of PMLA by giving notice to the Special Public Prosecutor and also created a strong suspicion over the case of the respondent / complainant by raising serious doubts in the electronic evidence, relied upon by the respondent. Therefore, the petitioner may be ordered to be released on bail.

25. The learned Additional Solicitor General, who was appearing for the respondent / complainant would submit that this is the third bail application filed by the petitioner before this court. After filing of the complaint by the respondent, second bail petition was filed and dismissed on 20.9.2023, in which, the points raised now has been raised and answered. Again, drawing the attention of the court to go into the documents, deserves no consideration. For the grant of bail, in an offence under PMLA, not only the requirements in Sec.45 of PMLA are to be satisfied, but also, the requirements u/s 439 Cr.P.C. also have to be satisfied, in addition to Sec.45 of PMLA. As such, the court has to consider the status and conduct of the petitioner, the manner in which the petitioner has attempted to derail the procedures etc. The petitioner is a Minister without Portfolio. The petitioner has not satisfied the twin conditions of the PMLA and also the requirements u/s 439 of Cr.P.C. to grant bail. The learned Additional Solicitor General would further contend that a sum of Rs.1,34,69,000/- has been identified as proceeds of crime, which is available in the bank account of the petitioner and his wife, but, the total amount of proceeds of crime identified in this case is Rs.67.74 crores and it has been established by CF-27. The proceeds of crime in the case is not Rs.1.34 crores, but it is Rs.67.74 crores and the available proceeds of crime in the account of the petitioner and his wife is Rs.1.34 crore. He would further submit that the present ECIR has been registered based on three predicate offences in C.C.No.24/2021, C.C.No.19/2020 and C.C.No.25/2021. Cash for

job scam was at the highest level, collected a huge amount and it is not necessary that all those amounts were to be deposited in the bank account. The respondent has explained the role of the petitioner in his complaint in detail with reference to CF-27. Once it is established that there was a cash for jobs scam in the predicate offence, then automatically it could be inferred that proceeds of crime out of the scheduled offences has been generated. Charges for the scheduled offences are pending and therefore, prima facie there is a strong case for the offence under PMLA. As such, the petitioner does not have any reasonable chance for acquittal. The Additional Solicitor General would also submit that the petitioner has attacked the Electronic Evidence in CF 27, CF 116, RUD-22, RUD-16 and File Name : March 2015 VAC.Xls, but certified copies of those documents were obtained by the respondent from the court concerned and those records were part of court records and it is not the documents with the custody of the Enforcement Directorate. Originally, the court has denied to supply those documents, against which, a criminal revision petition has been filed and thereafter, as per the order of the Hon'ble High Court of Madras and the Hon'ble Supreme Court of India, the respondent got the copies of the documents from the court. The Investigating Agency in the scheduled offences seized the documents on 6.2.2020, sent to the court on 12.2.2020 and thereafter, to the Tamil Nadu Forensic Science Laboratory. The present case is based on predicate offences for collecting cash for jobs, selling the jobs for money and thereby cheating the public. It is not necessary to find out, who has collected the money and whether they have used it or not, or they concealed it not etc. The available materials shows that there was a job scam and it has been referred in the Pendrives, in which it has been referred the names of the job and its rates. He would further submit that a sum of Rs.1,34,69,000/- was found as deposits with the bank account of the petitioner and a sum of Rs.29.55 lakhs in the account of his wife and thereby, the petitioner comes within the four corners of Sec.3 of PMLA. He would further submit that the petitioner has claimed in the deposited amount, that a sum of Rs.64 lakhs is the salary of the petitioner, but the said amount was not credited from the salary account and he would have been spent for his daily livelihood. The cash deposit in the account of the petitioner and his wife are the ill-

gotten money. The learned Additional Solicitor General would also submit that the petitioner has attacked the counterfoils and claimed that those counterfoils cannot be relied upon stating that those documents were also manipulated. But, the respondent has not only relied upon those counterfoils, but they are also relied upon the entire bank statements of the petitioner and his wife and it shows the deposit of amounts in the bank account, which cannot be denied. It is also submitted by the learned Additional Solicitor General that the amount found in the bank accounts of the petitioner and his wife has been deposited in a lump sum manner. He would further submit that there is no modification or alteration or manipulation in the Electronic Evidence as claimed by the petitioner and the respondent, for the purpose of investigation, would have retrieved the same. In order to prove the same, the author of the documents have cited as L.Ws.4 and 5 and it would be established during trial. Any Electronic File could be recreated if it is deleted or lost and if any of the file has been retrieved, then the retrieved date would be shown as last written date. The arguments in respect of CF 27 and other computer files are explainable in the course of evidence and those records were available with the court. It is also submitted by the learned Additional Solicitor General that the petitioner has relied upon the statement of witness Shanthi, but it is not necessary for a Minister for collecting money, even a non-minister could commit the offence by collecting money. It is also submitted by the learned Additional Solicitor General that the it is settled law that disclosing of assessable income would not legitimize it, if it is otherwise illegitimate. The petitioner has not explained the source of income in a proper manner and the explanation given by the petitioner and the source is not correct. In respect of the Emergency Quota letter, the learned Additional Solicitor General would submit that those letters have been issued by the authorised person and it shows the relationship between the petitioner and Shanmugam and Karthikeyan and to prove the same, Electronic Evidence is available. The petitioner has attempted to create a doubt in the documents submitted by the respondent, but, it would be proved during trial and the doubt raised are not sufficient to held that the accused does not have any reasonable chance for acquittal. The respondent / complaint has submitted the Email communications with MTC and

TNSTC officials and its copies were marked to Shanmugam, Saravanan Karthikeyan, Vetri and Rajadevar. He would further submit that while dealing with the bail application, the court has to consider the past conduct of the petitioner. The petitioner is continuing as a Minister without portfolio. Co-accused Ashok Kumar, brother of the petitioner is still absconding and not co-operated for the investigation. The court has to take into account of the fact that the petitioner has not satisfied the twin conditions. The learned Additional Solicitor General would submit that it has been held by the Hon'ble Supreme Court of India in **2022 - SCC - Online SC 929 (Vijay Madhanlal Choudary - vs- Union of India and others)** held that *“Section 45 of 2002 Act does not suffer from the vice of arbitrariness and unreasonableness and for grant of bail, irrespective of nature of proceedings, including those u/s 438 of the 1973 Code or even upon invoking the jurisdiction upon the constitutional courts the underline principles and rigours or sec.45 may apply.”* And therefore, the petitioner is not entitled for bail and the petition may be dismissed. The respondent is ready to proceed with the trial at any date fixed by the court.

26. The complaint filed by the respondent against the petitioner revolves around three registered First Information Reports in Cr.No.441/2015, dated 29.10.2015 u/s 406, 420 r/w 34 of IPC, Cr.No.298/2017, dated 9.9.2017 u/s 406, 420, 506(i) IPC and Cr.No.344/2018, dated 13.8.2018, u/s 406, 420 and 506(i) of IPC, registered by the Central Crime Branch, Chennai. In the said three cases, the CCB, Chennai, while filing Final Report has invoked the offences u/s 120-B, 419, 420, 467, 471 of IPC and Sec.7, 12, 13 (2) r/w 13(1)(d) of Prevention of Corruption Act. Since the above offences are scheduled offences in Prevention of Money Laundering Act, the respondent has registered the present ECIR No.MDSZO/21/2021 on 29.7.2021 against the petitioner Sh.V.Senthil Balaji and others under the provisions of Prevention of Money Laundering Act, 2002.

27. The case of the complainant is that between 2011 and 2016, the petitioner was holding the position of Transport Minister in the Government of Tamil Nadu. While serving as a Minister, in connivance with his Personal Assistants Shri.Shanmugam and Shri.Karthikeyan

along with his brother Shri.Ashok Kumar, the petitioner / accused orchestrated the collection of funds through the above said persons, promising job opportunities across various roles within the Transport Department, including, Junior Engineer, Assistant Engineer, Junior Tradesman, Junior Assistant, Drivers and Conductors. As per the complaints from the candidates, who had paid money, but failed to secure the promised employment, the Central Crime Branch, Chennai registered cases against the petitioner and others and after investigation, three Final Reports were filed in C.C.No.24/2021, C.C.No.19/2020 and C.C.No.25/2021, which are now pending for trial before the Special Court for Trial of Cases related to Members of Parliament and Members of Legislative Assembly of Tamil Nadu. There are series of irregularities done by MTC officials, working in collusion with the petitioner and his personal assistants, like, Interview marks in pencil, Principle of merits and reservation was not followed, Issuance of appointment letters by unauthorised officers, Increase of vacancy position without approval, Involvement of Personal Assistants of Minister, in recruitment and Payment of money for jobs through associates to Personal Assistants of Minister. During search, the State Investigating Agency / CCB, Chennai had seized digital 5 devices from the residential premises of the petitioner / accused and sent to Tamil Nadu Forensic Science Laboratory and report has been obtained. In the bank account of the petitioner / accused, cash deposits totaling Rs.1.34 crores have been identified during the period of F.Y.2013-14 to 2021-22. Additionally, his wife, Smt.S.Meghala, has received cash deposits amounting to Rs.29.55 lakhs during the period of F.Y.2014-15 to F.Y.2019-20. Substantial cash deposits of Rs.13.13 crores in the bank account of Sh.Ashok Kumar (the brother of V.Senthil Balaji) and Rs.53.89 lakhs in the account of his wife, Smt.A.Nirmala. Moreover, the bank accounts of Sh.B.Shanmugam (Personal Assistant to Sh.V.Senthil Balaji) have seen cash deposits totaling Rs.2.19 crores. Substantial part of above cash deposits has taken place during/after the Job Racket Scam in MTC/TNSTCs.

28. The petitioner Sh.V.Senthil Balaji was arrested by the respondent on 14.6.2023 for an offence u/s 3, punishable u/s 4 of PMLA, 2002, remanded to judicial custody on the same day and he is in incarceration till date. This is the third bail application filed before this court

by the petitioner and the earlier two applications were dismissed, including the 2nd bail application, which was filed after filing of the complaint by the respondent.

29. The first and foremost contention raised by the learned Senior Counsel appearing for the petitioner would be that the seizure of Electronic Evidence took place on 6.2.2020, but, the documents have been produced before the court and sent to Tamil Nadu Forensic Laboratory on 12.2.2020, after a delay of 6 days. The proceeds of crime identified by the respondent is Rs.1,34,69,000/- and the entire case of the respondent rests upon two computer files, namely, CF 27 and CF 116. In the entire complaint, the respondent believe the digital evidences, namely, CF 27 and CF 116, which are incriminating and true and therefore, found the petitioner, guilt of committing the offences punishable under PMLA. But, those digital evidences were manipulated, tampered, the files were altered and planted and it is evident from the Annexure -53. The learned Senior Counsel, during his argument has pointed out the documents produced by the respondent found in pages from 355 to 380 and also pleaded that there is a difference in the amount mentioned in the cash deposit slips and counterfoils, through which, the court could infer that those documents are tampered with and therefore, it cannot be relied upon to found the accused guilty and there is every possibility for acquittal of the accused from the charge.

30. Admittedly, the documents in pages 355 to 380 are the cash deposit slips and counterfoils and there are differences in the amounts mentioned in both the documents. The learned Additional Solicitor General would submit that the Investigating Agency had collected the cash deposit slips and counterfoils, which were available with the bank and accused. However, the respondent is relied upon not only the cash deposit slips and counterfoils for establishing the cash deposit into the accounts of the petitioner and his wife, but also relied upon the bank statements of the petitioner and his wife, vide documents No.9 to 13 in respect of the petitioner and document No.14 and 15 in respect of the wife of the petitioner. On perusal of the statements, there were corresponding credits in line with the cash deposit slips and the learned Additional Solicitor General has also referred some deposits by way of cash

into the accounts of the petitioner and his wife to make out a prima facie case. At this juncture, it is to be noted that the bank statements of the petitioner and his wife, vide document Nos.9 to 15 are not disowned by the petitioner. Therefore, merely because there are contradictions in some of the cash deposit slips and counterfoils, the court cannot come to a conclusion at this stage, that those documents were tampered with and it is to be decided after a full-fledged trial.

31. The learned Senior Counsel would further contend that the electronic evidence in CF.27 and CF.116 were also manipulated, tampered, altered and planted and it would reveal from the documents produced by the respondent from pages 401 to 657 in Annexure-53. The learned Senior Counsel would also request the court that Volume 4 has to be disbelieved by the court as the files contain belong to manipulated CF 27 / 2021 and therefore, the respondent has investigated in a most improper manner by violating the procedures of PMLA, without collecting evidences for proceeds of crime or discovery of truth, but implicated the petitioner by relying the manipulated evidences, which is part of alleged predicate offences. The learned Senior Counsel would also pointed out the Forensic Lab Reports in support of his contention. It is admitted that in page No.505, in Volume 2 of the document of the respondent, it is mentioned that in the "file name : march 2015 VAC.xls - Date modified on 27.12.2022 at 12.46, content created on 31.10.2014 at 14.25 and it was last saved on 27.12.2022 at 12.45. Also, in page 506, the file name : aaa.docx-dated modified on 27.12.2022 at 12.40, last sages on 27.12.2022 at 12.40, content created 27.4.2015. Likewise, as per the reports of the TNFSL, several files were said to have been modified after its seizure.

32. Originally, on 6.2.2020, the Central Crime Branch, Chennai has conducted search on the premises of the petitioner / accused in the presence of the Authorised Representatives of the petitioner and it was said to have been admitted by the petitioner in his statement dated 8.8.2023. During the search, the Central Crime Branch, Chennai was said to have seized 38 documents and 5 digital devices, cash and some valuables relevant to the Job-Racket case and the petitioner did not disown it. The said seized documents were produced before the Special Court for Trial of Cases related to Members of Parliament and Members of Legislative

Assembly of Tamil Nadu on 12.2.2020 and sent to Tamil Nadu Forensic Science Laboratory for analysis. The respondent was said to have got the certified copies of those documents on the directions of the Hon'ble High Court of Madras and by the Hon'ble Supreme Court of India in Print out form, taken from the printer of the court and in the presence of the Presiding Officer. From 12.2.2020, the documents were in the custody of the court concerned and in between, sent for Forensic Science Laboratory for analysis and the respondent was furnished with the certified copies of those documents by the court. It is the contention of the petitioner / accused that the electronic evidences, which are believed by the respondent are fabricated by the Predicate Agency and which is evident from the dates mentioned in Annexure-53. On perusal of the TNSFL Reports, it reveals that the Forensic Science Laboratory has given its report mentioning the Name, Author, Date of content created, Dated of modified and Date of last saved / last written. The entries in the TNSFL Reports shows that several files were said to have been modified and last written after its seizure. It is claimed by the learned Additional Solicitor General that those documents would have been retrieved by the Investigation Agency in the predicate offences for the purpose of investigation. During search by the predicate agency, the digital devices have been seized from the premises of the petitioner / accused in the presence of the authorised representatives of the petitioner and it is not disowned by the petitioner till date. It is for him to explain the fact that what was the earlier data found in the digital devices and what has been modified by the Predicate Agency and how it caused prejudice to the petitioner etc. since it has been seized from the premises of the petitioner and those factors are to be dealt with during trial and only after a full-fledged trial, the court could come to a conclusion that the disputed documents were tampered with or not, after its seizure. Further, the respondent has cited the authors of TNFSL reports as L.Ws.4 and 5 in the list of witnesses and on examination of the said witnesses only, the court could arrive at a conclusion in respect of manipulation or tampering of the documents. Since the court cannot go in depth by analyzing the digital documents at this stage, it is not possible to arrive at a conclusion that the digital evidences have been tampered by the predicate agency in the Scheduled Offences.

The doubts raised by the petitioner are not sufficient to hold that the petitioner cannot be presumed to be not guilty, since the respondent has submitted sufficient materials to make out a prima facie case for the offence u/s 3 of PMLA. Therefore, the contentions of the petitioner that CF-27 and CF-116, Vouchers, Counterfoils have been meddled with, those documents are seized to be exist, sufficient doubt has been caused, whereby the court has reasonable grounds to believe that the accused could be acquitted from the offence, has no force.

33. It is also pleaded by the learned Senior Counsel appearing for the petitioner that the respondent has failed to identify the proceeds of crime, the amount of Rs.1,34,69,000/- has been deposited over a period of 9 years, payments made by others were also included to arrive at an amount more than Rs.1 crore, for which, the respondent has relied on the documents CF-27 and CF-116, which were manipulated, tampered and modified and the petitioner has explained the proper sources for the deposit in his bank account and therefore, he may not be found guilty for the alleged offence and in these circumstances, he may be released on bail by this court. But, it is the case of the respondent that they have identified Rs.67.74 crores as the actual generated proceeds of crime and a sum of Rs.1,34,69,000/- cash deposits in the account of the petitioner and a sum of Rs.29.55 laksh cash deposit in the account of the wife of the petitioner are available proceeds of crime and it is only a pittance out of Rs.67.74 crores. To establish the same, CF-27 has been produced along with the statement of witnesses / candidates, alleged to have paid money for a job in transport department have been recorded under Sec.50 of PMLA and they have cited as L.Ws.6 to 10 and therefore, there would also be oral evidences in respect of the above said allegation.

34. It is further submitted by the learned Senior Counsel that the respondent has identified a sum of Rs.1,34,69,000/- as proceeds of crime found in the bank account of the petitioner, but, a sum of Rs.64 lakhs has been received by the petitioner as salary for the period from 2014 to 2020 and it has been declared in the Income-tax returns and also affidavit filed before the Election Commission by the petitioner and the source of income has been explained to the respondent also and therefore, it cannot be held that the entire amount of

Rs.1,34,69,000/- as proceeds of crime. On the other hand, the learned Additional Solicitor General would submit that the salary of the petitioner / accused, being a Member of Legislative Assembly of Government of Tamil Nadu, received his salary income directly into his bank account, which also forms part of his income, salary comes in the form of bank transfer and not by cash. Apart from that, there have been huge deposits of Rs.1,34,69,000/- in his bank accounts, inspite of having meager source of income and those cash deposits have been made during and after the job-racket scam in MTC/TNSTC. Those cash deposits were made into the account of the petitioner through cash deposits slips and some of the cash deposits slips have been filed before this court vide Doc.No.16 and 17 along with the bank statements of the petitioner / accused and his wife vide document Nos.9 to 15. Further, it is claimed by the petitioner that he has declared a sum of Rs.64 lakhs in his income tax returns as his salary for the relevant period and the petitioner has successfully explained the source of income and it is accepted by the statutory authorities and therefore, the offence under Money Laundering Act would not attract. But, the respondent has taken into account of the amount found in the account of the petitioner, which were deposited by way of cash and it is to be noted that the salary has been credited directly to the account of the petitioner. For example, documents have been submitted to show that on 28.10.2016, a sum of Rs.25 lakhs has been deposited by cash through three cash deposit slips, each for Rs.7 lakhs and one cash deposit slip for Rs.4 lakhs. Further, on 23.11.2016, a sum of Rs.5,00,000/- has been deposited by cash. It is settled law that disclosing of assessable income before the Income-tax authorities and its acceptance would not legitimize it, if it is otherwise illegitimate. Therefore, the court is of the considered view that the contention of the learned senior counsel for the petitioner in respect of receipt of salary, filing of Income tax Returns and also declaration in the affidavit filed before the Election Commission, is not acceptable.

35. The learned counsel for the petitioner would further submit that the respondent has relied upon the Emergency Quota Request Letters and E-mail communications vide document Nos.23 to 27 and Document Nos.36, 37, 40, 41 and 42. But, there was no signature in the

Emergency Quota Request Letter and also Emails were not sent from the account of the petitioner and therefore, those documents cannot be relied upon for prima facie case. However, the Emails were sent to the petitioner by marking copies to the Personal Assistants and P.R.O. of the petitioner, namely, Shanmugam, Saravanan, Karthikeyan, Vetri and Rajadevar to show the acquaintance of the petitioner with those persons.

36. Incriminating materials have been produced by the respondent to show the relationship of the petitioner with his Personal Assistants, documents related to recruitment of Drivers, Conductors, Junior Tradesman, Junior Engineers, Assistant Engineers, incriminating documents related to money collected for each post of Drivers, Conductors, Junior Tradesman, Junior Engineers, Assistant Engineers along with total number posts in MTC/TNSTC and also worksheets for proceeds of crime and also incriminating Email communication between the petitioner and his Personal Assistants with the officials of MTC/TNSTC regarding the recruitment of jobs etc. It is also stated that in those documents, it is indicated about the status of the candidates, recruitments in terms of list received or not, order issued or not, order dispatched or not etc. for the purpose of tracking allotment of orders after receiving illicit gains from the job aspirants. It is also stated that in the Pendrives seized from the petitioner, it has been referred the names of the job and its rates. From those documents, it is claimed by the respondent that there was cash for jobs scam, pen-drive said to have contained the names of the job aspirants and rates etc.

37. In sum and substance all the contentions of the learned Senior Counsel appearing for the petitioner are aimed to convince the court that the petitioner has created a strong suspicion over the case of the respondent and thereby disproved the case of the respondent based on probabilities. However, the doubts raised by the petitioner now are not sufficient to hold that the petitioner cannot be presumed to be not guilty, since the respondent has made out a prima facie for the alleged offence u/s 3 of PMLA.

38. In an application for grant of bail for an offence under Sec.3, punishable u/s 4 of the Prevention of Money Laundering Act, the twin conditions in Sec.45 of PMLA will have to be

complied with. The conditions specified in Sec.45 of PMLA, 2002 are mandatory and needs to be complied with. For proper adjudication, it is appropriate to reproduce Sec.45(1) of PMLA, which reads as under :

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, ³[or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees] may be released on bail, if the Special Court so directs:

39. Admittedly, the Special Public Prosecutor has been given an opportunity to oppose the bail application and he has filed his objections by way of counter. However, as per Sec.45(1) of PMLA, 2002, while considering the bail application itself, the court has to satisfy the twin conditions that the petitioner is not guilty of such offence and he is not likely to commit any offence while on bail. Of course, such discharge of burden could be based on probabilities, however, in the case on hand, there are sufficient materials on record submitted by the respondent showing the active involvement of the petitioner / accused or activities connected with the proceeds of crime and attempt to project the proceeds of crime as untainted money, how he was benefited from the proceeds of crime and acquired through the criminal action relating to scheduled offence etc. Proceeds of crime was said to have derived or obtained by the petitioner is a result of criminal activities relating to schedule offences. As per Sec.2(1)(u) of PMLA, any amount generated out of criminal activity out of a scheduled offences is to be considered as proceeds of crime. Three charges are pending against the petitioner for the scheduled offences. The Constitutional validity of certain provisions of PML Act and the procedure followed by the Enforcement Directorate during investigation under the said Act have been challenged before the Hon'ble Supreme Court of India in the case of **Vijay**

Madhanlal Choudhary and others - vs - Union of India and others, in which it has been held that *“As a result, we have no hesitation in observing that in whatever form the relief is couched, including the nature of proceeding, be it, under Sec.438 of the 1973 Code or for that matter, by invoking the jurisdiction of the Constitutional Court, the underlying principles and rigors of Sec.45 of the 2002 Act must come into play and without exception ought to be reckoned to uphold the objectives of the 2002 Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money- laundering.”*

40. As such, the petitioner has not been able to satisfy the stipulations contemplated in Sec.45 of PMLA, namely, failed to prove prima facie that he is not guilty of the alleged offence and he is not likely to commit any offence while on bail. Though doubt has been raised by the petitioner over the digital devices C.F.27 and C.F.116 on the ground of manipulation, tampering and alteration, but it is not sufficient enough for the court to come to a conclusion that there is reasons believe that the petitioner could not be found guilty for the alleged offence. Further, the respondent has made out prima facie case against the petitioner through the statement of witnesses recorded u/s 50(2) of PMLA and also the documents 1 to 77 running to 2853 pages, collected during investigation.

41. Apart from satisfying the twin conditions enumerated in Sec.45 of PMLA, 2002, the petitioner has to satisfy the triple - test as required under the provision Under Sec.439 of Cr.P.C. As such, among the other circumstances, the factors to be borne in mind while considering an application for bail are that (i) whether the accused is at flight risk; (ii) possibility of tampering with the evidence and (iii) influencing of witnesses. As stated by the learned Additional Solicitor General, the petitioner is still continuing as a Minister without Portfolio, Government Tamil Nadu and therefore, there is every possibility for influencing the witnesses. Also, while dealing with the bail application, the court has to take into consideration of gravity of the crime, character of the evidence, status of the accused, likelihood of the accused fleeing from justice and repeating the offence, possibility of tampering of witnesses etc. At this juncture, it is to be mentioned that one of the accused in the case, Shri.Ashok

Kumar, brother of the petitioner is still absconding and not co-operating for investigation. In these circumstances, the court cannot come to a conclusion that the petitioner has satisfied either the twin conditions as per Sec.45 of PML Act, or the triple test as required u/s 439 of Cr.P.C.

42. It is true that the accused is in custody from 14.6.2023 to till date. Investigation has been completed, complaint has been filed before this court, cognizance has been taken and the case is now pending for framing of charges. Long period of incarceration is not a criteria for granting of bail in as much as the accused faces a case under the provisions of PML Act. The petitioner / accused in his earlier bail application has raised the same contentions like, tampering of the digital devices, i.e., pen-drive and hard-disk (CF-27 and CF-116), declaration of source of income in the Income-Tax Returns, affidavit filed before the Election Commission and also of the fact that the Investigation was over and the case is based on documents and there is no possibility of tampering or influencing the witnesses and those contentions were negated by this court stating that the respondent has submitted not only the statements of witnesses and accused, recorded u/s 50 of PMLA, which is admissible in evidence, but also other materials, such as, Electronic Evidences, E-Mails, E.Q. Letters, Bank Statements, Counterfoils for cash deposits, documents relating to recruitment and also the reports of TNFSL etc., which are incriminating evidence to show the involvement of the petitioner in the offence of Money Laundering. The court do not find any change of circumstances between the date of dismissal of the earlier application and filing of this application for reconsideration.

43. Keeping in view of the aforesaid legal position, production of sufficient materials by the respondent to establish prima faice case against the petitioner for the offence u/s 3 of PMLA, the doubts raised by the petitioner are not sufficient to reasonably believe that the accused could be acquitted from the offence, non-compliance of the twin conditions u/s 45 of PMLA and also the triple-test envisaged in Sec.439 of Cr.P.C., possibility of influencing the witnesses and absconding of co-accused, the court is of the considered opinion that the accused may not be released on bail at this stage.

44. In the result, the petition is dismissed.

Delivered by me in open court today.

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Principal Sessions Judge.