

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CRL) NO. 7523 OF 2019
IN THE MATTER OF :
P CHIDAMBARAM **PETITIONER**
VERSUS
DIRECTORATE OF ENFORCEMENT **RESPONDENT**

SHORT COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT

I, Sandeep Thapliyal, aged about 47 years S/o Late Shri J.P. Thapliyal, working as Assistant Director, Directorate of Enforcement having office at Lok Nayak Bhawan, Khan Market, New Delhi-110001 do hereby solemnly affirm and state as under:

1. I state and submit that I have perused the record pertaining to the offence in question in which the respondent Enforcement Directorate is opposing grant of anticipatory bail in the present proceedings as it has cogent reasons to justify the arrest of the petitioner and his custodial interrogation to unearth a wider and larger case of money laundering. The Respondent is filing the present short affidavit opposing the issuance of notice by this Hon'ble Court.

The Respondent is therefore not filing a detailed para-wise reply to the aforesaid. However, the Respondent has right to file a detailed reply if necessitated at a later stage in the proceedings.

2. At the outset, I state and submit that the investigation conducted so far revealed a strong prima facie case to reach to "reasons to believe" as contemplated under section 19 of the Prevention of Money Laundering Act [hereinafter referred to as "**PMLA**"] to arrest the petitioner and also his custodial investigation which can be pointed out from the below mentioned facts.

3. At the outset it is submitted that the complaint in the present case [which is filed after investigation under the Act and is akin to a charge-sheet under CrPC] is yet to be filed and, therefore, as an investigating agency, it is neither proper, possible nor desirable to place the evidence regarding serious offences of money laundering, which has clearly emerged so far, in public domain by way of the present affidavit and / or to share the same with the accused.

4. It is respectfully submitted that keeping the aforesaid limitation in mind, the deponent is placing the following facts to satisfy this Hon'ble Court that the petitioner requires to be arrested and interrogated thereafter is based upon cogent evidence, both documentary and oral and a serious miscarriage of justice will be caused if investigating agency is not permitted to unearth a well-crafted scheme of money laundering devised by the petitioner accused along with his close confidants and co-conspirators.

5. Keeping the aforesaid limitation in mind, I beg to place the following facts for consideration of this Hon'ble Court.

6. As the first step to execute the scheme of laundering the proceeds of crime generated by the accused by abusing his public office, the petitioner-accused along with his close confidants and co-conspirators [whose names are not mentioned in the present Affidavit considering the present crucial stage of investigation], cleverly created a web of shell companies both in India and in many other countries for routing/layering and laundering proceeds of crime. These shell companies were either incorporated by co-conspirators at the behest of the petitioner accused or the shareholding pattern of the existing companies was changed to use them for execution of scheme of money laundering. The investigating agency has substantial evidence to support the aforesaid fact with the name of the company and the name of the persons who can be shown to be close to the petitioner-accused who created such shell companies which are used for laundering of proceeds of crime by petitioner-accused and his co-conspirators.

7. It is respectfully submitted that the fact of the person/s incorporating shell companies in India and abroad being close to the petitioner-accused and being in touch with the petitioner-accused is also not based on surmises and conjectures and the investigating agency has evidence to substantiate the same.

8. It is respectfully submitted that as a step in the offence of money laundering, two individuals are found to have acted as agents of the petitioner-accused and interacted/liasoned with the parties applying

for FIPB approval including INX-Media as well as collected the proceeds of crime on behalf of / at the behest of the petitioner-accused.

9. It is submitted that the next step found so far during investigation is layering of proceeds of crime by use of web of shell companies most of which are abroad, which companies are only on paper, having no business and used only for laundering of proceeds of crime. There is cogent evidence collected so far that these shell companies are incorporated by persons who can be shown to be close to and connected with the petitioner-accused and his co-conspirators / co-accused all of whom are acting in tandem with each other.

10. It is submitted that the proceeds of crime are thereafter routed through the web of shell companies so incorporated for the purpose of laundering of proceeds of crime and the movement of such proceeds of crime from one company to another company [all of which are not doing any business and exists only on paper] just to make tracing of money trail difficult. The said companies are incorporated and located in different countries so that it become difficult for the law enforcing agency / investigating agencies to follow the trail of laundered money.

11. It is submitted that the petitioner and his co-conspirators / co-accused have created these layers of money laundering web in a manner which is sufficient to make it difficult for law enforcing agencies to track the money trail of proceeds of crime. Though the

Enforcement Directorate has collected substantial material to satisfy this Honble Court about existence of the evidence to show the facts narrated in detail hereinabove, to justify the arrest of the petitioner and his interrogation, it is only after the custodial interrogation of the petitioner that the investigation is capable of being fully complete and the truth being unravelled.

This exercise is not only the duty of the Enforcement Directorate towards the nation but considering the menace of black money and its laundering by / on behalf of persons in public life, it is in national interest to do so.

12. It is submitted that the next step was to park / invest/ hide the laundered money in movable and immovable properties in India and most of them outside the country that is to say in various other countries of the world.

13. It is submitted that it has come on record of the investigation conducted so far that the proceeds of crime, as deposited in the web of shell companies referred hereinabove, were used for making deposits in various benami bank accounts and making benami investments in movable and immovable properties both in India and mainly outside India either in the name of such shell companies or in the name of close confidants of the petitioner-accused and his co-conspirators whose relationship can be pointed out to this Hon'ble Court from the investigation papers.

14. It is submitted that during the investigation conducted so far and subject to the custodial interrogation of the petitioner-accused to be conducted hereinafter, the investigating agency has found out several such shell companies, 17 benami foreign bank accounts [directly referable to the petitioner and his co-conspirators] through which money is laundered and are invested in several properties out of which 10 expensive properties situated outside India have been identified so far. Several other shell companies, many more bank accounts and properties abroad have been identified on the basis of intelligence inputs which are received by the investigators working abroad under the PMLA and the investigation is still continuing which can be complete only after the arrest and interrogation of the petitioner-accused and others.

15. It is respectfully submitted that having received such material and having found the accused to be completely evasive and non-cooperative during the dates on which he came for being questioned viz. on 19.12.2018, 7.1.2019 and 21.1.2019, the investigating agency has formed an opinion that the arrest and custodial interrogation of the petitioner-accused is absolutely essential as the investigating agencies has strong reasons based upon cogent evidence in its possession, to believe that the accused has directly as well as indirectly indulged in and / or knowingly assisted and became a party in the process / activity connected with the proceeds of crime and is guilty of a very serious offence of money laundering.

16. It is submitted that money laundering being a serious menace internationally as well as within India and as international community is united in its fight against money laundering, every country has legislated money laundering laws. As a part of its international obligation, India also has a robust statutory mechanism for detection, investigation, prosecution and prevention of money laundering and connected offences. Such mechanism also provides creation of Financial Intelligence Unit [FIU] in other countries by the Indian investigation agencies from which help / information / assistance / inputs is regularly received by the investigating agency in cases under its investigation.

17. It is respectfully submitted that when the international community is taking the offence of money laundering seriously and India is a Member of international Forum viz. "Financial Action Task" Force and has committed itself to the global resolve of being firm with money laundering offence, irrespective whether petitioner-accused is the former Finance Minister and former Home Minister or an ordinary citizen of India, it will be travesty of justice if this Hon'ble Court considers the prayer made by the petitioner-accused and grant him protection of pre-arrest bail, without examining the case records, investigation material maintained in regular course of the present statutory investigation conducted and which contains the evidence which is incapable of being fabricated as loosely alleged on behalf of the accused.

18. It is submitted that the Hon'ble High Court was pleased to peruse the said official records of investigation as mentioned in para 21 of the order impugned. It is submitted that even after the Hon'ble High Court perused the official record of investigation, some more evidence has come to light within the investigating agencies which adds further justification to the findings recorded by the High Court and, in any case, to refuse prayer for anticipatory bail irrespective of the findings of the High Court in the impugned judgment.

19. I state and submit that apart from a strong case being in existence for arresting the petitioner-accused, there are further more reasons to pray for rejection of the present anticipatory bail. It is found that the accused and his co-conspirators are not only trying to tamper / destruct the evidence but are influencing the witnesses. It is respectfully submitted that the investigation has reached a very crucial stage where the evidence requires to be protected and preserved and the witnesses are required to be insulated from the influence of the accused who are high and mighty.

The petitioner-accused, apart from being a former Finance Minister and former Home Minister, also wields substantial and pervasive influence over the witnesses. It is found that the petitioner-accused and / or his co-conspirators at his behest, have changed the share holding pattern of shell companies as well as have made changes in the Directors of such shell companies during investigation

so as to distance himself and his family from the money already laundered and invested. It is also found that one bank account of one of the shell companies is closed and another bank account is opened by a co-conspirator. The investigating agency has also received information about sale of properties purchased out of laundered money by one shell company to another shell company.

The investigating agency has also received information about the petitioner-accused and his co-conspirators having influenced the witnesses and attempts are made falsification and / or tampering of the documents. These are not the bald assertions of investigating agency but can be shown to the Hon'ble Court from the case record statutorily maintained by the statutory investigation agencies.

20. At this juncture, it is respectfully pointed out that the above referred facts are pointed out for satisfying the conscience of this Hon'ble Court about the bona fide need for arrest and of custodial interrogation of the petitioner-accused. Secondly, when the statute namely PMLA permits arrest of an accused on satisfaction of conditions under section 19 of the said Act, the Court would only examine whether the germane material exists to arrive at "reason to believe" as stipulated under section 19 of the Act and the Court would not go into either adequacy or sufficiency of such material at the time of deciding a prayer for anticipatory bail.

21. It is respectfully submitted that considering the very object, intent and purpose of a salutary legislation like PMLA, the judicial intervention at the stage of anticipatory bail in particular and investigation in general would be very very restrictive as the offence under the Act is an offence against the nation and if cumulative effect is considered, it has serious adverse impact on the economy of the country and financial integrity of the nation.

22. It is respectfully submitted that one of the arguments being raised by the accused is that the offence in question is of the year 2007-08. It is respectfully submitted that the present investigation, the agency viz. Enforcement Directorate is concerned with the offence of laundering of money and it has no relevance with the period during which the scheduled offence is committed. It has come on record after the registration of ECIR dated 18.5.2017 by the Enforcement Directorate that money laundering has taken place and is taking place and the accused and his co-conspirators/ beneficiaries are still using / enjoying / laundering the proceeds of crime. This argument is, therefore, an argument without any legal substance or merit.

23. It is respectfully submitted that the petitioner-accused has relied upon the proceedings of SLP [CrI.] 9630 of 2018 filed by the investigating agency in case of his son and one of the co-conspirators i.e. Karti Chidambaram. It is respectfully submitted that the son of the petitioner-accused and one of his co-conspirators Karti Chidambaram, instead of praying for anticipatory bail, filed a writ

petition in the High Court challenging constitutional validity of some of the provisions of PMLA and sought an interim protection. Though it is a settled position that merely because an accused of a serious offence challenges the validity of some provisions, he would not be granted an interim protection of pre-arrest bail, the Division Bench of the High Court proceeded to afford such protection. The investigation agencies have challenged the said order before this Hon'ble Court. Considering the nature of the challenge, the nature of the proceedings filed by Karti Chidambaram and the chronology of events pointed out in the said SLP, this Hon'ble Court, in its judicial wisdom, straightaway withdrew the matter from the High Court for being heard by this Hon'ble Court.

24. I crave leave to refer to and rely upon the said chronology of events which is part of the pleadings in the captioned SLP filed by the investigating agency.

25. It is respectfully submitted that after having been received cogent evidence reflected hereinabove, the investigating agency is filing an application in the SLP [CrI.] 9630 of 2018 praying for stay of the order of the High Court inasmuch as an interim protection from arrest is granted in a writ petition challenging validity of some of the provisions against the settled and binding law declared by this Hon'ble Court.

26. It is respectfully submitted that apart from the fact that the protection granted to the key co-conspirators of petitioner-accused namely Karti Chidambaram by the High Court, was without even looking at the evidence collected by the investigating agency, the petitioner-accused cannot claim any parity as in the present proceedings which are emanating from the prayer made under section 438 CrPC, not only High Court has examined the record of the case which includes evidence but this Hon'ble Court will also examine the cogent evidence collected so far on record and will examine the justification for arrest and interrogation of the present petitioner-accused.

27. I state and submit that the reliance placed upon an order of regular bail passed by the trial court in case of a co-accused namely Bhaskar Raman is also misplaced and untenable. It is submitted that Bhaskar Raman got regular bail after many days of being arrested.

Secondly, as this Hon'ble Court will found on perusal of the record, the role of the present petitioner-accused and the said Bhaskar Raman are completely different and no parity can be claimed even on facts.

In any view of the matter when, in the present case, the High Court has rejected an anticipatory bail after perusing the case record and the matter is being examined by the highest court of the country reliance placed upon the regular bail order passed by the trial court itself is unsustainable.

28. It is respectfully submitted that the Financial Intelligence Unit [FIU] has given specific inputs of the petitioner-accused and his co-conspirators had accounts / valuable properties in Argentina, Austria, British Virginia Island, France, Greece, Malaysia, Monaco, Philippines, Singapore, South Africa, Spain and Sri Lanka. The details of transactions pertaining to the investment made through shell companies / co-conspirators / associates of the petitioner-accused are received from FIU which is part of the officially maintained case record [which this Hon'ble Court may peruse before passing / continuing any further order/s] for which the investigation is on-going and the petitioner-accused needs to be arrested and confronted with the said transactions.

29. I state and submit that the aforesaid affidavit is made bonafide and is necessitated in the present circumstances.

VERIFICATION

Verified at New Delhi on this 25th day of August, 2019 that the contents of the above affidavit are true and correct to my knowledge and as per official records maintained in the routine course of business. No part of the above affidavit is false and nothing material has been concealed there from.



DEPONENT

सन्दीप थपलियाल/SANDEEP THAPLIYAL
सहायक निदेशक/Assistant Director
प्रवर्तन निदेशालय/Directorate of Enforcement
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