

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On 21.02.2024	Delivered on 28.02.2024
---	--

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.1525 of 2024

V.Senthil Balaji

... Petitioner/Accused

Vs.

The Deputy Director
Directorate of Enforcement
Ministry of Finance
Chennai Zonal Office-II
B-Wing, Shastri Bhavan
Haddows Road
Chennai 600 006.

... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 439 of the Code of Criminal Procedure to enlarge the petitioner on Bail in C.C.No.9 of 2023 in ECIR.No.MDSZO/21/2021, on the file of Principal Sessions Court at Chennai.

For Petitioner

: Mr.Aryama Sundaram
Senior Counsel
for Mr.N.Bharanikumar

For Respondent

: Mr.AR.L.Sundaresan
Additional Solicitor General
Asst.by
Mr.N.Ramesh
Special Public Prosecutor (ED)

ORDER

The petitioner who was arrested and remanded to judicial custody on 14-06-2023 for alleged offence under Section 3 of the Prevention of Money Laundering Act, 2002 (for brevity, hereinafter referred to as "the PMLA") punishable under Section 4 of the PMLA in ECIR No. MDSZO/21/2021, presently pending in C.C.No.9 of 2023, before the Principal Sessions Judge, Chennai, seeks for bail in this petition.

2. The brief facts of the case:

2.1.Between 2011 and 2016, the petitioner was holding the position of Transport Minister in the Government of Tamil Nadu. While serving as a Minister, it is alleged that, he, in connivance with his personal assistants and along with his brother, orchestrated collection of money by promising job opportunities in various positions within the Transport Department. This gave rise to several complaints made by candidates, who had paid the money but were not able to secure the employment. The investigation ultimately ended with three final reports filed by the Central Crime Branch, Chennai in C.C.No.19 of 2020, C.C.No.24 of 2021 and C.C.No.25 of 2021 and in all these cases, the petitioner has been arrayed as A.1 and it is pending before the trial of cases relating to MP/MLA Special Court.

2.2.On the basis of the above cases, the Enforcement Directorate entered into the scene and after collecting the required information/documents registered a case in ECIR No. MDSZO/21/2021 on 29/07/2021, against the petitioner and others under the provisions of the PMLA.

2.3.The petitioner was arrested and remanded to judicial custody on 14/06/2023. The petitioner had earlier filed a bail petition before the learned Principal Sessions Judge in CrI.M.P.No.22608 of 2023 and this petition was dismissed by an Order dated 20/09/2023. Thereafter, the petitioner filed CrI.OP.No.23629 of 2023, before this Court seeking for bail and this petition was also dismissed by an Order dated 19/10/2023.

2.4.The petitioner has once again filed a bail application before the Court below in CrI.MP.No.81 of 2024 and the same was dismissed by an Order dated 12/01/2024. Thereafter, the present bail application has been moved before this Court.

3.SUBMISSIONS:

3.1.The learned Senior Counsel appearing on behalf of the petitioner submitted that there are change in circumstances in the present bail application and there have been many developments that had taken place after the dismissal of the earlier bail petitions filed before the Court below as well as this Court. The learned Senior Counsel further submitted that the triple test under Section 439 of Cr.PC., and the twin conditions under Section 45 of PMLA has been satisfied by the petitioner in this bail application.

3.2.The learned Senior Counsel submitted that the petitioner has resigned from his position as a Minister effective from 13/02/2024 onwards. Therefore, the

earlier ground that was put against the petitioner, as if the petitioner will use his position as a Minister and tamper with witnesses/evidence is no longer available. The learned Senior Counsel further submitted that the investigation has been completed by the respondent and a complaint has already been filed before the Court below which is pending in C.C.No.9 of 2023 and therefore, there is no question of tampering with evidence at this stage and the petitioner need not be continued to be kept in incarceration even after the complaint has been filed before the Court below by the respondent. The learned Senior Counsel further submitted that the abscondence of the brother of the petitioner, cannot be put against the petitioner and the abscondence of a co-accused is not a ground to deny the bail. The learned Senior Counsel submitted that the petitioner is willing to comply with any conditions imposed by this Court if he is enlarged on bail.

3.3.Insofar as the twin conditions mandated under Section 45 of the PMLA, it was submitted that the petitioner satisfies both the conditions. The learned Senior Counsel submitted that there are reasonable grounds raised by the petitioner in this petition, questioning the very probative value of the materials that is relied upon by the prosecution, which shows that with the available materials, the petitioner cannot be found guilty for the charge under Section 3 of the PMLA. Considering the fact that the petitioner has already resigned his position as a Minister, there is absolutely no ground to assume that he will commit any offence while he is on bail.

3.4.The learned Senior Counsel submitted that while testing the reasonable grounds to believe that the petitioner is not guilty, it is not necessary for the petitioner to prove beyond reasonable doubts that he is not guilty and it will suffice if the petitioner is able to satisfy atleast on the surface analysis about the probative value of the evidence that is relied upon by the prosecution. It was further submitted that the Enforcement Directorate is strongly relying upon CF-29, CF-27 and CF-116. The learned Senior Counsel pointed out to various discrepancies in CF-29 and CF-27 and he also pointed out to the various modifications that had also taken place to the pen drive after the seizure. The learned Senior Counsel further submitted that insofar as CF-116 is concerned, it was a Hard disk relied upon by the respondent. However, what was seized was a HP Hard disk and what has been submitted to analysis is Seagate Hard disk. Therefore, there is a discrepancy with respect to the very Hard disk that has been relied upon and there is nothing on record to show that Seagate Hard disk was seized during the investigation. That apart, there is inherent discrepancy even in the report that has been filed after analysing the Seagate Hard disk. In view of the same, since the probative value of these three electronic records is a suspect, the petitioner has raised more than a reasonable doubt about the probative value of these materials and hence, it was contended that with the available materials, the petitioner cannot be held to be guilty.

3.5.The learned Senior Counsel further submitted that the respondent has relied upon the statements that were recorded under Section 50 of the PMLA from the co-accused in the predicate offence and also the suspect in the ECIR registered

by the respondent. The same cannot be taken to be a strong material at the time of dealing with this bail application. The weightage that has to be given to these statements can be tested only at the end of the trial and not at the stage of bail. The learned Senior Counsel relied upon the judgment of the Delhi High Court to substantiate this argument. The learned Senior Counsel further submitted that the respondent has relied upon certain mail correspondences on RUD 36 to 42. The learned Senior Counsel relied upon paragraph 62 of the bail application and submitted that none of these mail correspondences point out to the involvement of the petitioner in the crime.

3.6.The learned Senior Counsel also submitted that the specific case of the respondent is that the proceeds of crime is to the tune of Rs.1.34 Crores for a period from 2013 to 2022. Even assuming that this amount has been identified, there is absolutely no material to show that there is a nexus between this amount and the alleged crime that was committed. The learned Senior Counsel submitted that the so called nexus is attempted to be established through CF-29, CF-27 and CF-116 and already it has been established that all these electronic records have no probative value since they have been tampered and today, it cannot be relied upon while dealing with this bail petition.

3.7.The learned Senior Counsel submitted that heavy reliance is placed by the Enforcement Directorate upon a cash deposit that was done during the period 2016-2017 to the tune of Rs.64,10,000/-. However, there is *prima facie* evidence to

show that the petitioner had withdrawn a sum of Rs.58,94,000/- and the money has been disbursed from this account through RTGS and the list of beneficiaries are also available. That apart, whatever amounts have been relied upon by the respondent is shown in the Income Tax returns that have been filed. Therefore, there is absolutely no money trail established by the respondent to even *prima facie* prove that those amounts are the proceeds of crime. The learned Senior Counsel also relied upon a separate note that was filed before this Court explaining the cash deposits and payments that is put against the petitioner.

3.8.The learned Senior Counsel further submitted that the prosecution is relying upon certain correspondences which does not even carry the signature of the petitioner or any other person and many of these correspondences pertains to the period prior to the check period starting from 2014 onwards. Those materials in which the petitioner has absolutely no connection, has also been relied upon by the respondent.

3.9.In the light of the above submissions, the learned Senior Counsel concluded his arguments with a plea that the petitioner has spent nearly eight months in the jail and he is entitled for being enlarged on bail subject to any conditions imposed by this Court.

3.10.The learned Senior Counsel in order to substantiate his submissions relied upon the following judgments:

- (i) Avtar Singh Kocchar @ Dolly Vs. Enforcement Directorate (Bail Appln.1814 of 2023) Del High Court.
- (ii) Chandra Prakash Khandelwal Vs. Directorate of Enforcement reported in (2023 SCC Online Del 1094)
- (iii) Bhupinder Singh @ Honey Vs. Enforcement of Directorate (CRM-M-27871-2022) Punjab & Haryana High Court.
- (iv) Pankaj Bansal Vs. Union of India & Others reported in (2023 SCC Online SC 1244).
- (v) P.Chidambaram Vs. Central Bureau Investigation reported in (2020 13 SCC 337).
- (vi) Union of India v. K.A.Najeeb reported in (2021) 3 SCC 713.
- (vii) Mohd.Muslim @ Hussain v. State (NCL of Delhi) reported in 2023 SCC Online SC 352.
- (viii) Vernon Vs. State of Maharastra & Anr. reported in 2023 SCC Online SC 885.
- (ix) Benoy Babu Vs. Directorate of Enforcement (SLP (Crl.) Nos.11644-11645 of 2023).
- (x) Harichanran Kurmi; Joia Hajam Vs. State of Bihar reported in 1964 SCC Online SC 28.
- (xi) Bhuboni Sahu Vs. the Kind reported in 1949 SCC Online PC 12
- (xii) Sebil Elanjimpally Vs. The State of Odisha reported in 2023 SCC Online SC 677.
- (xiii) Munshi Sah Vs. The State of Bihar & Anr. (Criminal Appeal Nos.3198-3199 of 2023).
- (xiv) Shekh Rahim @ Sanvar @ Anvar v. The State of N.C.T.Delhi (Bail Appln.430/2021) Delhi High Court.
- (xv) Kashmira Singh Vs. State of Madhya Pradesh reported in 1952 SCC Online SC 19.
- (xvi) Surinder Kumar Khanna Vs. Intelligence Officer reported in (2018) 8 SCC 271.

3.11.Per contra, the learned Additional Solicitor General (hereinafter referred

to as "ASG") appearing on behalf of the respondent submitted that just because the petitioner resigned from the post of Minister just one day prior to the date of hearing of this bail petition, that does not in any way change the circumstances that were put against the petitioner earlier. The learned ASG submitted that the petitioner even now maintains the same influence which he had wielded earlier inspite of resigning from the post of Minister. The past conduct of the petitioner wherein he was able to compromise the dispute with the complainant which was subsequently interfered by the Hon'ble Supreme Court, is a very strong antecedent that should be kept in mind since the petitioner, if he is let out, will make similar attempts to tamper with the witnesses and thereby, derail the criminal trial. The petitioner is very much capable of winning over witnesses and if that is done, that will be detrimental to the progress in the criminal prosecution. That apart, the brother of the petitioner and yet another important accused, who was an associate of the petitioner *viz.*, Shanmugam are absconding and certain vital materials must be collected only after they are arrested and their statements must also be recorded. If the petitioner is let out on bail, with the influence wielded by the petitioner, it will become even more difficult to apprehend these accused persons. It is also a matter of record that when the IT officials went for a raid to the residence of the petitioner, they were attacked by a mob and their vehicles were damaged and there is a separate prosecution that is going on in that regard. In view of the same, it was contended that the grounds that were put against the petitioner under Section 439 of Cr.PC, continues and there is no change in circumstances.

3.12.The learned ASG submitted that insofar as the twin conditions under

Section 45 of the PMLA, both the conditions have not been satisfied by the petitioner. The learned ASG submitted that the words used under Section 45 of the PMLA are "reasonable grounds for believing" which means the Court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubts at the stage of considering the bail petition.

3.13.The learned ASG further submitted that the so called discrepancies that were pointed out by the learned Senior Counsel with respect to CF-29/20, CF-27/21 and CF-116 are totally misconceived and there is no such discrepancy as has been attempted to be projected by the petitioner. Insofar CF-116 is concerned, it does not pertain to the HP hard disk drive seized from the house of the petitioner. It actually pertains to the Seagate hard disk which was seized from the MTC, Pallavan Salai. This hard disk drive was seized on 07/07/2020 and was sent for testing to the Forensic Science Department on 09/07/2020 and the report was given on 23/09/2020. The relevant documents were also pointed out in this regard. Insofar as HP hard disk is concerned, that has no relevance and CF-29/20 and CF-27/21 are relatable only to CF-116 which is the Seagate hard disk seized from the MTC, Pallavan Salai.

3.14.Even insofar as CF-29/20 and CF-27/21, there is absolutely no discrepancy as pointed out by the learned Senior Counsel for the petitioner. The learned ASG submitted that insofar as CF-29/20, it is a pen drive which was seized from the house of the petitioner which is found as Item No.5 in the list of items that

were sent for analysis. From this pen drive which contained large amount of files, 284 files were selected and their attributes were analysed. This is found from pages 49 to 87 of Volume I of the typed set of papers filed by the petitioner. Insofar as CF-27/21, 472 files which were created on 27/07/2015 was analysed and a separate report was given. Hence, the scope of CF-29/20 and CF-27/21 are completely different and there is no question of trying to compare these two reports and find discrepancies. It is also clear from the analysis report that almost all the files contained therein carries the date which is anterior to the date of seizure. This is apart from the fact that these materials were actually seized by the police in the predicate offence and was available in the Special Court along with the final report and that material in turn was relied upon by the respondent in the present proceedings. Therefore, the respondent cannot be attributed with any tampering or anti-dating or over-writing of the files. The genuineness of the materials collected by the prosecution in the predicate offence has never been questioned by the petitioner and when the very same materials are relied upon by the Directorate of Enforcement, the petitioner is attempting to question its genuineness. The ground that has been taken by the learned Senior Counsel for the petitioner, as if the electronic evidence lacks probative value, is totally misconceived and unsustainable. The learned ASG submitted that *prima facie*, there is no discrepancy in the electronic evidence that is relied upon and if at all there is any discrepancy as alleged by the petitioner, it can only be proved at the time of the trial. At this stage, the Court must only see if the final report in the predicate offence is genuine, the complaint in the PMLA case is genuine and this is not an occasion for conducting a mini-trial.

3.15.The learned ASG further submitted that in the complaint that was filed before the Court below, the materials that are relied upon by the petitioner is explained in detail. That apart, the statements that were recorded during the course of investigation has also been explained in the complaint which clearly shows that the entire predicate offence was committed in a very organized manner and money to the tune of Rs.67.74 Crores has been collected. The manner in which it was collected has also been clearly explained in the complaint filed before the Court below. Out of this amount, the Directorate of Enforcement was able to lay its hands only insofar as Rs.1.34 Crores is concerned and a huge amount in this case has been concealed by the petitioner and other accused persons. The learned ASG submitted that the predicate offence is for the offence under the Prevention of Corruption Act and the bribe that has been received constitutes the proceeds of crime and the very receipt of this illegal gratification must be construed as proceeds of crime. The predicate offence itself identifies all the three components of Section 3 of the PMLA and the submission of the learned Senior Counsel for the petitioner, as if there is no nexus between the amount identified and the crime committed is totally misconceived. The learned ASG submitted that in corruption cases, the very acquisition of money must be construed to be proceeds of crime and that itself will tantamount to money laundering. In the instant case, the petitioner was involved in a criminal activity which is an offence that finds place in the schedule to the Act and the criminal activity had resulted in generation of proceeds of crime. In the instant case, most of the money that was received has been concealed or it has already

been used. Therefore, there is a *prima facie* offence committed by the petitioner under Section 3 of the PMLA.

3.16. The email communications and the other documents that were relied upon *viz.*, the letter communications that were relied upon only to establish that two of the accused persons *viz.*, Shanmugam and Karthikeyan, who were not even the official Personal Assistants, had actively indulged in the entire scheme of the crime and they have been making incriminating communications with the petitioner and also with the officials of the Transport Corporation regarding the recruitment to various posts. Hence, those letters and the email communications clearly establish the conspiracy among the accused persons and the active involvement of the said Shanmugam and Karthikeyan along with the petitioner in committing the crime, which has been branded infamously as "Job racket scam".

3.17. The learned ASG further submitted that the reliance placed by the learned Senior Counsel for the petitioner in the judgment in ***Vernon***, referred supra, will not apply to the present case since the language that is used under Section 43D(5) of the UAPA Act is different from the language used under Section 45 of PMLA. Therefore, the test is different when it comes to the PMLA.

3.18. The learned ASG submitted that the materials that are available and the reliance upon those materials which has been explained in the complaint pending before the Court below in C.C.No.9 of 2023, clearly makes out a case against the

petitioner for offence under Section 3 of PMLA and as on today, there are no reasonable grounds to believe that the petitioner is not guilty of such offence. That apart, the petitioner is repeatedly indulging in criminal activities which is evident from nearly 30 FIRs that have been registered against the petitioner. This *prima facie* establishes that going by the past conduct of the petitioner, he has the proclivity to commit offences. The second limb of Section 45 of PMLA talks about the likelihood of committing any offence and that offence need not necessarily confine itself to the offence under the PMLA and it is relatable to any act that is categorised as an offence in any law for the time being in force. In view of the same, the twin conditions which are mandatory under the PMLA has not been satisfied by the petitioner and hence, he is not entitled to be released on bail.

3.19. The learned ASG submitted that the complaint has been filed before the Court below as early as in August 2023 itself and the petitioner is not willing to go ahead with the case even though the respondent is always ready to get on with the case. Hence, if there is any delay in progressing with the pending complaint, it can be attributed only as against the petitioner and not against the respondent. The learned ASG therefore contended that there are absolutely no merits in this bail petition and the same is liable to be dismissed by this Court. The learned ASG in order to substantiate his submissions, mainly relied upon the judgment in ***Vijay Madanlal Choudhary and Others v. Union of India and Others*** reported in **2022 SCC Online SC 929** and the judgment in ***Y. Balaji v. Karthik Desari and Another*** reported in **2023 SCC Online SC 645**.

3.20. As a re-joinder to the above submissions, the learned Senior Counsel appearing for the petitioner submitted that CF-116 that is relied upon by the respondent does not have any relevance in this case since there is nothing incriminating found against the petitioner in this electronic record. The learned Senior Counsel further submitted that CF-29/20 contains 60 items and there is no reference to Seagate Hard disk drive in the list of items that were seized during search proceedings. However, such Hard disk which was not seized from the premise of the petitioner, has been introduced as Item No.2 of CF-29 by the investigating agency in the predicate offence. The main reliance is placed upon Item No.5, which is a pen drive. The allegations are that it contained details of the cash collected, the names of the job aspirants and other letters and also the proceeds of crime. Insofar as proceeds of crime is concerned, it is projected as if the total proceeds of crime is Rs.67.74 crores. In order to substantiate the same, the respondent is relying upon a file named CSAC found in CF-27/21 and particular reference is made to sub-sheet named sheet no.7. A careful perusal of CF-27/21 does not reveal the existence of such a file and the nearest file that is available is a file named CSAC.XLSX which is dealt with in annexure-43. This annexure-43 also covers sheet no.7. However, the document that is referred to at paragraph no.14.5.8 of the complaint is not available. This document has been brought forth as a subsequent addition by the investigating agency in the predicate offence and it forms part of the files that were prepared for questioning. It does not form part of the original file in CF-27/21. Hence, if the very existence of the so called file is under question, the very basis on

which the respondent is trying to project the case as if, the proceeds of crime is to the tune of Rs.67.74 crores, is totally unbelievable.

3.21.The learned Senior Counsel further submitted that he is not alleging that the additions/modifications/interpolations were done by the respondent. It is also not relevant as to who had committed these acts at this point of time and what is relevant is that, it affects the very probative value of the electronic record that is sought to be relied upon by the respondent.

3.22.The learned Senior Counsel further submitted that there is a lot of doubt insofar as CF-29/20 and CF-27/21 and if these two materials are disregarded, there is no evidence available against the petitioner. Insofar the statements recorded by the respondent under Section 50 of PMLA, except for six witnesses, all the other statements that were recorded pertains to the co-accused/accomplice. In the absence of any other evidence available against the petitioner, the mere statements of the co-accused/accomplice/suspects cannot be put against the petitioner. Even insofar as the so called statements that were given by six other witnesses, there is nothing to show that those statements anywhere incriminated the petitioner in committing the offence.

3.23.The learned Senior Counsel further submitted that the respondent has taken a stand as if, there are 30 previous cases against the petitioner. However, it

was not brought to the notice of this Court that out of 30 cases, only 9 cases are pending and out of those 9 cases, 6 cases pertain to the offences committed during the election period and the balance 3 cases pertain to the predicate offences. Therefore, going by the list of cases that have been furnished by the respondent, the petitioner has never involved/indulged in any serious offences and those offences pertained to protest made by the petitioner or the election disputes and it is not uncommon for a politician to get roped in for such offences.

3.24.The learned Senior Counsel concluded his arguments by submitting that the petitioner has already suffered incarceration for more than eight months and he is no more holding the position of a Minister and since the complaint has already been filed along with all the relevant materials, there is no scope for the petitioner to tamper with the evidence or influence the witnesses and the petitioner having fulfilled the requirements of the twin conditions under Section 45 of PMLA is entitled to be considered for enlargement on bail subject to the conditions imposed by this Court.

4.DISCUSSION:

4.1.This Court has carefully considered the submissions made on either side and the materials available on record.

4.2.It is not necessary for this Court to discuss about the predicate offence for

which the petitioner was charged and the subsequent events that took place and all those facts have been dealt with in detail in the previous orders passed by the Hon'ble Apex Court and this Court during earlier hearings on various occasions. Therefore, it will suffice to straight away go into the grounds that have been raised in this petition and render findings.

4.3. While considering this petition, this Court has to primarily satisfy itself that the petitioner has fulfilled the requirements under Section 439 Cr.PC and also the twin conditions prescribed under Section 45 of PMLA.

4.4. To start with, this Court will deal with the twin requirements prescribed under Section 45 of PMLA. The Hon'ble Apex Court in ***Vijay Madanlal Choudhary*** case referred supra has upheld the validity of Section 45(1) of PMLA. Section 45 of the PMLA turns the principle of bail is the rule and jail is the exception on its head. Under the PMLA regime jail is the rule and bail is the exception. The power of the Court to grant bail is further conditioned upon the satisfaction of the twin conditions prescribed under Section 45(1) (i) and (ii) PMLA. While undertaking this exercise, the Court is required to take a prima facie view on the basis of materials collected during investigation. The expression used in Section 45 of PMLA are "reasonable grounds for believing" which means that the Court has to find, from a prima facie view of the materials collected during investigation that there are reasonable grounds to believe that the accused has not committed the offence and that there is no likelihood of him committing an offence while on bail. Recently, in *Tarun*

Kumar v Assistant Directorate of Enforcement, 2023 SCC Online SC 1486, the Supreme Court has held as under:

“As well settled by now, the conditions specified under Section 45 are mandatory. They need to be complied with. The Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail. It is needless to say that as per the statutory presumption permitted under Section 24 of the Act, the Court or the Authority is entitled to presume unless the contrary is proved, that in any proceedings relating to proceeds of crime under the Act, in the case of a person charged with the offence of money laundering under Section 3, such proceeds of crime are involved in money laundering. Such conditions enumerated in Section 45 of PML Act will have to be complied with even in respect of an application for bail made under Section 439 Cr. P.C. in view of the overriding effect given to the PML Act over the other law for the time being in force, under Section 71 of the PML Act.”

4.5.In the instant case, the materials upon which strong reliance has been placed are CF-116, CF-29/20 and CF-27/21. That apart, reliance has also been placed upon the statements recorded under Section 50 of PMLA from nearly 21 persons and certain e-mail communications that had taken place in RUD [Relied Upon Document] 36 to 42.

4.6.The specific case of the respondent is that the petitioner in his official capacity as a Transport Minister of State of Tamil Nadu, conspired with his brother Ashok Kumar, Assistants - Shanmugam and Karthikeyan and officials/personal assistants of Transport Department and orchestrated a strategy to exchange cash for job selections under various categories in the Transport Department. Thereby, the

petitioner has received proceeds of crime to the tune of Rs.67.74 crores. The predicate offence has resulted in filing of final reports and the case is pending in C.C.No.19 of 2020, CC.No.24 of 2021 and C.C.No.25 of 2021, before the Special Court dealing with MP/MLA cases.

4.7.The respondent came into the scene since the predicate offence under the Prevention of Corruption Act Act falls within the schedule under PMLA. An ECIR [Enforcement Case Information Report] was registered and the available materials revealed that the petitioner has committed an offence under Section 3 of PMLA. Based on the details collected, the petitioner was arrested under Section 19 of PMLA on 14.6.2023.

4.8.On completion of investigation, a complaint has also been filed before the Special Court constituted under Section 43(1) of PMLA and the same has been taken on file in C.C.No.9 of 2023 and the same is pending from August 2023 onwards.

4.9.The first material upon which arguments were made on either side pertains to CF-116. It came to light that this electronic record is a Seagate Hard disk that was seized from Metropolitan Transport Corporation Office at Pallavan Salai. Even though substantial submissions were made on this electronic record by pointing out to certain contradictions etc, it was made clear by the learned ASG that this electronic record will have no relevance in this case and it has not been relied upon

by the respondent to substantiate their case against the petitioner for offence under Section 3 of PMLA. In view of this categorical stand taken by the respondent, it is not necessary for this Court to discuss anything further regarding CF-116.

4.10.The next important submission that was made pertains to the pen drive which are identified as CF-29/20 and CF-27/21. The learned Senior Counsel appearing for the petitioner submitted that item no.5 which was the pen drive is heavily relied upon as an incriminating evidence against the petitioner. The seized items were subjected to analysis atleast on four different occasions and finally, what has been relied upon are CF-29/20 and CF-27/21. CF-29/20 and CF-27/21 were analysed at two different points of time. CF-29/20 was sent for analysis to TNFSL on 13.2.2020. While undertaking this analysis, 284 files were identified in the pen drive. A mirror copy was also taken in a DVD which was subjected to analysis. Once again, the same pen drive was sent for analysis on 22.01.2021 and whereas, during this occasion, 472 files were found. Hence, the sudden increase of files in the same pen drive shows that there has been some addition made. That apart, while comparing these two reports, various discrepancies are able to be seen and that apart, some inclusions/additions/interpolations were made even after the date of seizure. Therefore, the very probative value of these electronic records have been questioned.

4.11.On carefully going through the analysis report for CF-29/20, it is seen

that 284 files have been selected and the same was analysed. The learned Senior Counsel for the petitioner submitted that the entire files should have been analysed and there is no question of selecting certain files and analysing the same. This Court is not able to agree with this submission. It is always left open to the prosecution agency to select the relevant files and seek for the analysis report. Hence, the investigation agency in the predicate offence thought it fit to select the relevant files numbering 284 and the same was analysed and a report was given by TNFSL.

4.12. Insofar as CF-27/21 is concerned, it pertained to selecting 472 files that was created on a particular date on 27.07.2015. In view of the same, no useful purpose will be served in comparing the analysis report given for CF-29/20 and CF-27/21 since these two analysis reports relates to different purposes. In the first case, it pertained to the selected 284 files and in the second case, it pertained to 472 files created on a particular day on 27.07.2015. Hence, there is no necessity to analyse the so called differences pointed out by the learned Senior Counsel for the petitioner. In any case, this Court cannot come to a conclusion that the differences pointed out is as a result of manipulation. That would tantamount to an extreme presumption which is not warranted at this stage. It must be borne in mind that these materials and reports were collected by the investigation agency, who investigated the predicate offences and the respondent is merely relying upon the same in order to prosecute the petitioner for offence under Section 3 of PMLA. It is not necessary for the respondent to rely upon all the materials collected in the

predicate offence and it is always left open to the respondent to select the relevant materials to make out a case under Section 3 of PMLA. The seized digital evidence is in the custody of the Special Court dealing with MP/MLA cases and what the respondent has done is that they have obtained a copy of the digital evidence in printout form which has been certified by the Court. This material forms part of the complaint filed in C.C.No.9 of 2023.

4.13.The respondent in order to ensure that the relevant materials are specifically identified and relied upon, took the efforts of applying for the certified copies of the documents that were the subject matter of these files. As has been held by the Apex Court in **Vijay Madanal Choudhary**, what must be seen by the Court is as to whether a genuine case has been instituted against the accused by relying upon materials which are *prima facie* genuine

4.14.On carefully going through the reports – CF-29/20 and CF-27/21, this Court is not able to see any tampering/antedating/overwriting etc. Insofar as CF-29/20 is concerned, all the files barring Sl.No.275 carries dates anterior to the date of seizure. Insofar as Sl.No.275 is concerned, there is no reason for this Court to come to a conclusion that it is manipulated and as a result, all the other files are also manipulated. As rightly observed by the Court below, it is a matter involving appreciation of evidence at the time of trial. Hence, this Court holds that CF-29/20 report is *prima facie* genuine and it is a reliable material that can be taken into consideration at this stage.

4.15The final report has been filed in the predicate offences by relying upon the very same documents and the petitioner has never questioned the genuineness of those documents till date. The respondent has merely collected those documents in the predicate offence and in order to add authenticity, it has also been certified by the Special Court dealing with the predicate offence. Therefore, this Court is not convinced that the respondent has indulged in tampering with the electronic records or that such tampering had even taken place or that such tampering had been done by the investigation agency in the predicate offences.

4.16.It must be borne in mind that this Court cannot conduct a roving enquiry or a mini trial to test the probative value of the electronic record relied upon by the respondent. What is required is to see as to whether there is *prima facie* genuineness in the materials that are sought to be relied upon by the respondent. If on going through the materials, this Court is convinced that there is no doubt on the genuineness of the materials relied upon by the respondent, there is no question of doubting the probative value of those documents at the stage of dealing with the bail petition. The submission made by the learned Senior Counsel for the petitioner as if, 284 files had increased to 472 files and therefore, there is manipulation of pen drive, is totally unsustainable and as has already been held by this Court, such comparison between CF-29/20 and CF-27/21 is uncalled for in this case. This is in view of the fact that both these reports deals with two different sets of files.

4.17.The next important submission that was made was that the respondent

did not make out a case for substantiating that Rs.67.74 crores is involved and identified as proceeds of crime. The respondent has explained at paragraph no.14.5.8 of the complaint in C.C.No.9 of 2023, regarding the material on which the proceeds of crime was fixed at Rs.67.74 crores and for proper appreciation, the same is extracted hereunder:

14.5.8. A file named 'CS AC' found in the CF 27 of 2021 DVD report with path name CF 27-21\FROM ITEM 5\FILES FOR QUESTIONS' includes a sub sheet named 'Sheet 7' - it contains number of posts of Driver, Conductor, Junior Tradesman, Junior Assistant, Junior Engineer, Assistant Engineer etc., in various TNSTCs/MTC. It shows that the driver post is priced and sold at Rs.1.50 Lakhs, Conductor post at Rs.2.0 Lakhs, Junior Assistant post at Rs.5 Lakhs, Junior Tradesman at Rs.4 Lakhs, Junior Engineer at Rs.7 Lakhs, Assistant Engineer at Rs.8 Lakhs respectively. The first page of above excel sheet is pasted as below [BRUD No.771]:

Sum-Counta	CAT							
DIV	AE	CR	DCC	DR	JA	JE	JTM	Total Result
(blank)		2					2	4
CBE	6	78		63	15	7	76	245
KUM	8	126		279	45		105	563
MDU	5	55		35	3		21	119
MTC	22	161		181		6	51	421
SETC	1		98					99
SLM		175		182	46		30	433
TNV	3	48		28	5	1	12	97
VPM		429		365			141	935
Total Result	45	1074	98	1133	114	14	438	2916
Grand Total	1133	98	1074	438	114	14	45	2916
	1.5	1.5	2	4	5	7	8	
	1699.5	147	2148	1752	570	98	360	6774.5

4.18.The learned Senior Counsel for the petitioner contended that CF-27/21 does not make any reference to a file named 'CSAC' and therefore the excel sheet

that is relied upon as RUD No.77 is totally unreliable. The learned Senior Counsel further relied upon the report wherein there is a reference to various files and there is only a file named 'CSAC.XLSX'. This file does not contain any such excel sheet in sheet no.7.

4.19.On carefully going through the report, it can be seen that the file path has been explained at paragraph no.14.5.8 of the complaint and when this is read along with relied upon documents 28 to 33 filed along with the complaint, it becomes clear that the excel sheet is very much a part of CF-27/21. To add strength to the same, it is also seen that the relevant document has been certified by the Special Court and this document is a print out of what is contained in the file. These documents, *prima facie* establishes that the entire recruitment process in the Transport Corporation was manipulated by fixing specific rates for various posts and based on the payment of money, the marks were manipulated and the recruitment had taken place. It is seen that there was a large scale manipulation resorted to which has been explained at paragraph no.11 of the complaint and which shows that payments have been made by many job aspirants for jobs either directly or through the associates to B.Shanmugam and M.Karthikeyan, who were the unofficial personal assistants of the petitioner during the relevant point of time.

4.20.If there is a *prima facie* material to show that the amount has been received by misusing the position of the petitioner who was the then Transport

Minister, that by itself will be construed as proceeds of crime and it is not necessary for the respondent to further establish that such proceeds of crime was projected as untainted money subsequently. This is in view of the amendment that was made to Section 3 of PMLA through Act 23 of 2019. This position was also made clear by the Hon'ble Apex Court in **Directorate of Enforcement .V. Padmanabhan Kishore** reported in **2022 SCC Online SC 1490**.

4.21.The next submission that was made was that most of the statements that were recorded under Section 50 of PMLA are that of the co-accused or the suspects. There are only six independent witnesses available and none of them implicate the petitioner.

4.22.The above submission made by the learned Senior Counsel for the petitioner does not hold water. As on date, the petitioner alone has been made as an accused and the complaint has been filed only as against the petitioner. None of the other persons from whom statements have been recorded under Section 50 of PMLA are shown as accused or suspects. The Hon'ble Apex Court in **Vijay Madanlal Choudhary case** referred supra has made it very clear at paragraph No.431 as follows:

In the context of the 2002 Act, it must be remembered that the summon is issued by the Authority under Section 50 in connection with the inquiry regarding proceeds of crime which may have been attached and pending adjudication before the Adjudicating Authority. In respect of such action, the designated

officials have been empowered to summon any person for collection of information and evidence to be presented before the Adjudicating Authority. It is not necessarily for initiating a prosecution against the noticee as such. The power entrusted to the designated officials under this Act, though couched as investigation in real sense, is to undertake inquiry to ascertain relevant facts to facilitate initiation of or pursuing with an action regarding proceeds of crime, if the situation so warrants and for being presented before the Adjudicating Authority. It is a different matter that the information and evidence so collated during the inquiry made, may disclose commission of offence of money-laundering and the involvement of the person, who has been summoned for making disclosures pursuant to the summons issued by the Authority. At this stage, there would be no formal document indicative of likelihood of involvement of such person as an accused of offence of money-laundering. If the statement made by him reveals the offence of money-laundering or the existence of proceeds of crime, that becomes actionable under the Act itself. To put it differently, at the stage of recording of statement for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime is, in that sense, not an investigation for prosecution as such; and in any case, there would be no formal accusation against the noticee. Such summons can be issued even to witnesses in the inquiry so conducted by the authorised officials. However, after further inquiry on the basis of other material and evidence, the involvement of such person (noticee) is revealed, the authorised officials can certainly proceed against him for his acts of commission or omission. In such a situation, at the stage of issue of summons, the person cannot claim protection under Article 20(3) of the Constitution. However, if

his/her statement is recorded after a formal arrest by the ED official, the consequences of Article 20(3) or Section 25 of the Evidence Act may come into play to urge that the same being in the nature of confession, shall not be proved against him. Further, it would not preclude the prosecution from proceeding against such a person including for consequences under Section 63 of the 2002 Act on the basis of other tangible material to indicate the falsity of his claim. That would be a matter of rule of evidence.

4.23.The above dictum of the Supreme Court makes it clear that at the stage of recording statements during enquiry, it cannot be construed as an investigation for prosecution as such. The process envisaged under Section 50 of PMLA is in the nature of an inquiry against the proceeds of crime and it is not an investigation and the authorities who are recording the statements are not police officers and therefore, these statements can be relied upon as admissible piece of evidence before the Court. The summons proceedings and recording of statements under PMLA are given the status of judicial proceedings under Section 50(4) of PMLA. When such is the sweep of Section 50 of PMLA, the statements that have been recorded by the respondent and which has been relied upon in the complaint must be taken to be an important material implicating the petitioner. The co-accused or the suspected persons in the predicate offence cannot automatically be brought within the same status in the PMLA proceedings and it is always left open to the authorities to deal with them as witnesses. The statements that were recorded from the witnesses during the investigation has been dealt with in paragraph 12 of the

complaint and many of the statements clearly implicate the petitioner. Therefore, the statements that have been recorded from the witnesses and which has been relied upon, is also a strong material that *prima facie* establishes the offence of money laundering against the petitioner.

4.24.The above discussion pertaining to CF-29/20 and CF-27/21 considered along with the statements recorded from the witnesses shows that a very strong case has been made against the petitioner for offence under Section 3 of PMLA.

4.25.The e-mail communications (RUD 39 to 41) that are relied upon the respondent also contains certain attachments/data relating to the recruitment scam. It also *prima facie* establishes a connection between the petitioner, Shanmugam and Karthikeyan who in turn were co-ordinating with the officials of Transport Corporations regarding the recruitments to various posts. This material considered along with the other materials referred supra, strengthens the case against the petitioner. The petitioner has not made out a case by satisfying this Court that there are reasonable grounds for believing that he is not guilty. Hence, the twin conditions that are mandatory under Section 45(1) PMLA has not been satisfied by the petitioner.

4.26.The Hon'ble Apex Court in **P.Chidambaram v. Central Bureau Investigation** reported in **2020 13 SCC 337** had come up with triple test under Section 439 of Cr.PC, while dealing with cases involving economic offences. The principles that were summarised in this judgment is extracted hereunder:

21. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:

(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;

(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) character, behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations.

4.27.It was contended that the petitioner has resigned from his position as a Minister and therefore, the apprehension that he will tamper with the evidence and influence the witnesses, no longer subsists. This Court is not able to agree with this submission. The petitioner resigned from the post of Minister without a portfolio just one day prior to the hearing of this bail petition. The fact that the petitioner continued to hold the position as a Minister for nearly eight months and that to without a portfolio when he was inside the jail, shows the tremendous influence of the petitioner and the importance that is given to him by the State Government.

Even if the petitioner had resigned from his position as a Minister, he continues as a MLA belonging to the same party which is running the Government in the State of Tamil Nadu and therefore, without any hesitation, this Court holds that the petitioner continues to wield a lot of influence on the Government. When such is the position, the witnesses who are mostly the officials belonging to the MTC and the prospective job seekers who had paid the money, will be influenced/tampered with. The past conduct of the petitioner shows that in the predicate offence the complainant was made to compromise the dispute and only after the interference of the Hon'ble Apex Court, the predicate offences revived and it resulted in filing of the final reports. This past conduct also has a lot of bearing in this case. This Court is also taking into consideration the larger interest of the Public/State since the petitioner was involved in a cash for job scam by misusing his position as a Transport Minister and thereby, genuine aspirants for the job were deprived of level playing field and in their place, persons who paid money were accommodated. In this process, the respondent has identified the proceeds of crime at Rs.67.74 crores. If the petitioner is let out on bail in a case of this nature, it will send a wrong signal and it will be against larger public interest. Therefore, this Court holds that even under Section 439 Cr.PC, the petitioner is not entitled to be considered for enlargement on bail.

4.28.In the light of the above discussion, this Court does not find any merits in this bail petition and accordingly, the same is hereby dismissed. The petitioner has suffered incarceration for more than eight months and therefore, it will be more

appropriate to direct the Special Court, to dispose of C.C.No.9 of 2023, within a time frame. Accordingly, there shall be a direction to the Principal Special Court, Chennai, to dispose of C.C.No.9 of 2023, within a period of **three months** from the date of receipt of copy of this order. The trial shall be conducted on a day to day basis in accordance with the guidelines given by the Hon'ble Apex Court in ***Vinod Kumar Vs State of Punjab*** reported in ***[2015 (1) MLJ (Crl) 288 SC]*** .

28.02.2024

Index : Yes
Speaking order
Neutral Citation : Yes
kp
...
To

1.The Deputy Director
Directorate of Enforcement
Ministry of Finance
Chennai Zonal Office-II
B-Wing, Shastri Bhavan
Haddows Road
Chennai 600 006..

2.Principal Sessions Court
Chennai.

3.The Public Prosecutor,
High Court, Madras.

N. ANAND VENKATESH, J.

kp

Pre-Delivery Order in
Crl.O.P.No.1525 of 2024

28.02.2024