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THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION Nos.5977 and 5978 of 2021

COMMON ORDER:

Since the facts of the case in both these Criminal Petitions are identical and since they arise out of the same crime number, both these Criminal Petitions filed under Section 438 of Cr.P.C, are taken up together and are being disposed of by this common order.

2. Heard the submissions of Sri L.Ravichander, learned senior counsel appearing for Sri P.Gautham, learned counsel for petitioner in Criminal Petition No.5977 of 2021 and Sri M.Abhinay Reddy, learned counsel for petitioner in Criminal Petition No.5978 of 2021, Sri Anil Prasad Tiwari, learned Special Public Prosecutor for Enforcement Directorate, Hyderabad, appearing for respondent No.1 in Criminal Petition No.5977 of 2021 and sole respondent in Criminal Petition Nos.5978 of 2021 and perused the record.

3. The learned Senior Counsel appearing for the petitioners would submit that the petitioners are falsely implicated in the subject case. They have nothing to do with the alleged offences, which are false and baseless. The petitioners hail from respectable families having deep roots in the society. They never indulged in any crime including the subject crime. It is submitted that present investigation is initiated by the Directorate of Enforcement, Hyderabad, vide File No.ECIR/HYZO/07/2018, on suspected commission of offence/s under Prevention of Money Laundering Act, 2002 (for short “PML Act”). The lenders of M/s.VMC Systems Limited (hereinafter referred to as ‘Company’) have unilaterally

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declared the account of the Company as ‘Fraud’, without even providing an opportunity of hearing to the petitioners and without providing ‘forensic audit report’, which formed the basis for the said declaration. The action of declaring the account of the Company as ‘fraud’, is *sub judice* before this Court in W.P.No.18649 of 2020, wherein, this Court was pleased to restrain all the lenders of the Company from taking any coercive action against the petitioners. Registering the subject crime against the petitioners is nothing but abuse of process of law. In fact, the petitioners, who are the promoters of the Company, made many sacrifices to the Company, including not drawing remuneration since a long time, much before the Company’s account was declared as NPA. Further, the petitioner in Criminal Petition No.5977 of 2021 is a senior citizen aged about 79 years and suffering from various ailments. He is bedridden and cannot walk since the last one and half year. Further, he underwent various surgeries. In **Badresh Bipinbhai Seth Vs. State of Gujarat**[1], the Hon’ble Apex Court held that Section 438 of Cr.P.C. and Article 21 of Constitution of India goes hand-in-hand, and that by enacting the provision for grant of anticipatory bail, the legislature has upheld the fundamental right of the citizens. The petitioners are permanent residents of Hyderabad and hence, there is no chance of fleeing away from justice. The petitioners are ready to abide by any conditions that may be imposed by this Court and ultimately prayed to allow the Criminal Petitions as prayed for.

[1] **(2016) 1 SCC 152**

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4. On the other hand, the learned Special Public Prosecutor for Enforcement Directorate, Hyderabad would contend that a huge amount of about Rs.1747.45 crores has been laundered/siphoned in this case. Since the offences in FIR No.15 of 2018 of CBI, BS & FC, Bangalore, are schedule offences under the PML Act, the Directorate of Enforcement initiated money laundering investigation by registering the subject crime. Investigation revealed that the petitioners in both these Criminal Petitions indulged in money laundering offences by resorting to various dubious transactions of the Company, involving the shell/dummy entities incorporated by them and by other fraudsters. The petitioners, though appeared before the Investigating Officer, never cooperated with investigation and suppressed information, which is causing hindrance to the investigation. If the petitioners are granted anticipatory bail, the same would adversely affect the investigation. Further, the subject case is of the year 2018 and the petitioners, having kept quiet for more than two years, now filed the present petitions before this Court. Investigation is still in progress. If anticipatory bails are granted to the petitioners, they may tamper the evidence and there are also chances of fleeing away from the Country. Further, anticipatory bail should not be granted during investigation, especially when the offence/s are under special enactments like the PML Act, wherein, arrest can take place under Section 19 of the said Act after formation of a reason to believe on the basis of material in his possession, that a person has committed the offence of money laundering. Further, the High Court of Delhi, in **Vakamulla Chandrasekhar Vs.**

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Enforcement Directorate and others[2] held that "*it, prima facie appears to us that under the Scheme of PMLA, the relief of statutory anticipatory bail is excluded.*" Earlier bail petitions of the petitioners were dismissed by the Court below, vide common order, dated 26.07.2021, passed in Crl.M.P.Nos.1958 and 1980 of 2021. No valid grounds are made out by the petitioners for grant of anticipatory bail and ultimately prayed to dismiss both the Criminal Petitions.

5. In view of the submissions made by both sides, the point that arises for determination in both these Criminal Petitions is:

> ***"Whether the petitioners in both these Criminal Petitions are entitled for benefit of bail under Section 438 Cr.P.C?"***

POINT:

6. The case of the prosecution, in brief, is that based on the complaint filed by Punjab National Bank, the Central Bureau of Investigation, Banking Securities and Fraud Cell, Bangalore, registered FIR No.15 of 2018 for the offences punishable under Sections 120B r/w 406, 420, 468 and 471 of IPC against M/s.VMC Systems Limited, Hyderabad, Smt.Vuppalapati Hima Bindu, Managing Director, Sri Vuppalapati Venkata Rama Rao, Director (petitioner in Crl.P.No.5977 of 2020), Bhagavatula Venkata Ramana, Promoter & Executive Director of the Company (petitioner in Crl.P.No.5978 of 2020) and another, for bank loan fraud. As per the mandate given under the PML Act, the Directorate of Enforcement initiated money laundering investigation in the said

[2] **Decided on 08.05.2017 in W.P.(Crl.) No.852 of 2017**

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bank loan fraud on 06.12.2018 under PML Act and registered subject crime. As per the complainant bank and the contents of FIR No.15 of 2018, the Company has availed various credit facilities, including letter of credits, from the consortium of banks and subsequently, defaulted in making payments and thus caused loss to a tune of Rs.1745.45 crores. A forensic audit was conducted by the erstwhile Andhra Bank (now Union Bank of India), which revealed that the Company has manipulated their books of accounts and showed inflated trade receivables from its associated companies, involved in circular transactions with its associated companies and had unexplained transactions with M/s.Agri Gold Group of companies and M/s.Servomax India Private Limited and also entered into with M/s.BSNL through M/s.Prithvi Information Solutions Limited and its associated companies. Further, the Company, with active connivance of M/s.Prithvi Information Solutions Limited and others, caused loss to a tune of Rs.3316 crores to the financial creditors. The Company incorporated/ acquired dummy entities, i.e., M/s.Ennar Energy Limited, M/s.Ravi Industries, M/s.Vaishu Industries and M/s.Protech Consultancy, in the name of their petty employees, for parking the proceeds of crime under the guise of fake purchase orders/invoices. Further, the Company used various companies for routing the borrowed funds and these dummy entities are floated by Mr.A.V.Rao, Managing Director of M/s.Servomax India Limited. The Company lured certain entities to give accommodation entry in the books of accounts of their Company for certain commissions or for providing experience certificate in the field of Telecommunications. The

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petitioner in Criminal Petition No.5977 of 2021, being the promoter Director of the Company and also Director in M/s.Ennar Energy Limited, has not made statutory filing with Registrar of Companies, and other statutory authorities for the Company, in order to hide the crucial information pertaining to the operations of the Company. In addition, he acquired 24,97,087 equity shares valued at Rs.2.49 crores of the Company in the year 2010, but the share subscription amount is not traceable in the bank accounts of the Company. That apart, he, along with the Managing Director of the Company, persuaded M/s.FIL Capital Management (Mauritius) Limited, and M/s.Multi-consultant Trustees Limited, Mauritius, to make 100 crore investment in the Company in the year 2010 and on the strength of the said investment, got additional loan sanctioned from various banks. Further, he actively engaged in transfer of proceeds of crimes to overseas related entities and transferred 280 crores to M/s.Cemetric Inc., USA, and M/s.Prithvi INC.LLC, USA, related to his daughter/Vuppalapati Madhavi, under the guise of fake import of software/consultancy services. Thus, he, along with the Managing Director of the Company, are instrumental in inflating the books of accounts by reflecting the aforestated dues from BSNL. The petitioner in Criminal Petition No.5977 of 2021, in active connivance with Vuppalapati Satish Kumar and Mrs.Hima Bindu Vuppalapati, incorporated various entities in the name of Smt. Banda Shilpa, W/o.V.Satish Kumar, to park the proceeds of crime. The petitioner in Criminal Petition No.5978 of 2021, who is also a Director of the Company, engaged in incorporation of shell companies in the name of their employees

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and transferred Rs.280 crores to M/s.Cemetric Inc., USA, and M/s.Prithvi Inc. LLC, USA, under the guise of import of software/consultancy services. In the course of investigation conducted by the prosecution, the following alleged fraud has come to light:

> *"M/s.VMCSL with the active connivance of M/s.Prithvi Information Solutions Limited and others, caused loss to a tune of Rs.3316 crores to the Financial Creditors. The details of loss caused by M/s.VMCSL are as under:*

S.No.	***Name of Financial Creditors***	***Total dues***
1.	*Punjab National Bank*	*590,17,18,106.59*
2.	*Andhra Bank*	*1151,53,57,628.57*
3.	*L & T Finance*	*61,14,84,059.00*
4.	*L & T Infra*	*12,77,67,160.00*
5.	*Cisco Systems Capital Pvt. Ltd.*	*33,21,11,548.00*
6.	*Corporation Bank*	*439,98,02,196.00*
7.	*J M Financials*	*2,29,87,44,726.14*
8.	*SBI*	*7,97,87,47,902.04*
		33,16,39,56,712

Thus, both the petitioners alleged to have committed offence under Section 3 of the PML Act.

7. As seen from the material placed on record, both the petitioners are said to be erstwhile directors of M/s. VMC Systems Limited, which was in the business of manufacture and sale of electronic products, with specific focus on AC-DC power convertors and communication products. A huge amount of about Rs.1747.45 crores has been laundered/siphoned and that lead to registration of subject FIR No.15 of 2018 on the file of CBI, BS & FC, Bangalore. There are serious and grave allegations against the petitioners that they have indulged in money laundering offences by resorting to various dubious transactions in between the companies, involving the shell/dummy entities incorporated to perpetuate the fraud and

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siphoned the amounts. As per the submissions made by the learned Special Public Prosecutor, voluminous record is required to be examined and statement of huge number of witnesses is required to be recorded. Under Section 19 of the PML Act, after formation of a reason to believe on the basis of material in his possession, that a person has committed the offence of money laundering, be arrested. In **Vakamulla Chandrasekhar**'s case (supra) relied upon by the learned Special Public Prosecutor, the High Court of Delhi held that "*it, prima facie appears to us that under the Scheme of PMLA, the relief of statutory anticipatory bail is excluded.*" Further, in view of huge magnitude of conspiracy angle and possible involvement of the petitioners herein and pending their interrogation, granting any sort of relief, including anticipatory bail, to the petitioners would disable the respondent/ prosecution from further proceeding to trace the proceeds of crime and attaching it provisionally under Section 5(1) of PML Act, which is the basic objective of the said Act. In view of the serious allegations as indicated above, thorough investigation and interrogation is warranted. It is also pertinent to state that in the event of grant of bail under Section 438 Cr.P.C, it may not be possible for the respondent/prosecution to trace the proceeds of the crime and take necessary action in terms of Section 5(1) of the PML Act. Further, there are serious allegations of petitioners not cooperating with the Investigating Officer and responding to the notices issued by the Enforcement Directorate. Investigation is still in progress. If the petitioners are granted anticipatory bail, the same would adversely affect the investigation. Earlier bail petitions

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of the petitioners were rightly dismissed by the Court below, vide common order, dated 26.07.2021, passed in Crl.M.P.Nos.1958 and 1980 of 2021.

8. In view of the facts and circumstances of the case, it is apt to state that the Hon'ble Apex Court consistently held that the economic offences having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. While granting bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. In the instant cases, grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the petitioners/accused and in collecting the useful information and also the material, which might have been concealed. Success in such interrogation would escape, if the petitioners/accused knows that they are protected by the order of the Court. Grant of anticipatory bail, particularly in economic offences, would definitely hamper the effective investigation. Having regard to the material collected so far by the respondent/Enforcement Directorate and considering the stage of investigation, this Court is of the view that it is not a fit case to

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grant anticipatory bail to the petitioners/accused under Section 438 of Cr.P.C.

9. Accordingly, both the Criminal Petitions are dismissed.

Miscellaneous petitions pending if any, in both the Criminal Petitions shall stand closed.

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Dr. SHAMEEM AKTHER, J

Date: 08.10.2021
Bvv/scs