

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NO.4430 of 2021

ORDER:-

This petition is filed under Sections 437 and 439 of Criminal Procedure Code, 1973 (for short 'Cr.P.C.') seeking regular bail to the petitioner in connection with ECIR/VSKZO/03/2017 registered by Enforcement Directorate, Visakhapatnam registered for the offence under Section 3 r/w 4 of Prevention of Money Laundering Act, 2002 (for short "**PMLA Act**").

2. The facts stated in the petition, in brief, are that on 11.05.2017 basing on the report of Income Tax Office, Investigation, Unit-III, Visakhapatnam, the Station House Officer, MVP Police Station, Visakhapatnam registered F.I.R No.181 of 2017 for the offences punishable under Sections 120-B, 420, 465, 468 & 471 r/w 34 of the Indian Penal Code, 1860 (for short "**IPC**") against Vaddi Mahesh and others on the allegation that in pursuance of their conspiracy created false and forged documents for the purpose of cheating and used the said false documents as genuine knowing fully well as false and made transactions in various banks fraudulently and dishonestly and had a wrongful gain to them correspondently loss to the Government of India by way of transferring Rs.569 crores in foreign exchange transferring the amount outside India i.e. Singapore, Hongkong and China on the basis of bogus documents. Thereafter, the Enforcement Directorate registered the case in ECIR/VSKZO/03/2017 under Section 3 r/w 4 of PMLA Act.

Vaddi Mahesh in his statement stated that the funds which were being transferred to abroad belong to the petitioner and the

same would be utilized for adjustment of the undervaluation of goods imported by some of the importers in India and that petitioner is wanted by DRI for smuggling activities and evasion of customs duties. Likewise, Thankiesh Aravindan, Director of M/s Eagle Mount Trading Ltd., in his statement stated that in his association with the petitioner, he never observed him doing a genuine business transaction in any imports relating to India. One Chellathurai Maheswaran, Nominee Director of M/s SRV Group International Pte. Ltd., Singapore in his statement stated that the petitioner requested him to act as Nominee Director of the company and he handed over USB Dongle and signed cheques to the petitioner with effect from May, 2016 for operation of bank account No.503-312-977-301-USD & account No.695-354-324-001 of M/s SRV Global with OCBC Bank, Singapore and that the bank accounts were handled by him and the same can be confirmed by IP address in the net banking of the above accounts. Basing on the above confession statements, the petitioner was arrayed as an accused.

It is also stated that the petitioner was in custody for about 60 days in Central Prison, Visakhapatnam, but his statement was not recorded by the Enforcement Directorate and subsequently, on P.T. Warrant, the petitioner was produced before the Court below and remanded to judicial custody on 03.09.2020. Petitioner was granted bail under Section 167 (2) of Cr.P.C on 11.11.2019. Thereafter, again on 04.02.2020 the petitioner was detained in connection with detention order issued by the Joint Director, COFEPOSA and the petitioner is in Central Jail No.7, Tihar, New Delhi as a preventive detention detenu. The Enforcement

Directorate officials visited the Central Jail No.7, examined the petitioner from 16.03.2020 to 19.03.2020 and recorded the statement of petitioner in terms of Section 50 of PMLA Act. P.T. Warrant was issued on 27.04.2020 and the petitioner was produced before the Court below and remanded in this case on 03.09.2020. The petitioner's custody was given to Enforcement Directorate for 5 days.

It is further stated that the petitioner filed CrI.M.P.No.1301 of 2020 on the file of Metropolitan Sessions Judge-cum-I Additional District & Sessions Judge, Visakhapatnam, seeking regular bail, but the same was dismissed on 11.11.2020. Again the petitioner filed CrI.M.P.No.1673 of 2020 before the Metropolitan Sessions Judge-cum-I Additional District & Sessions Judge-cum- Special Judge for Trial of PMLA, Visakhapatnam, but the same was also dismissed on 28.12.2020.

It is further stated that petitioner also approached the Hon'ble Supreme Court by filing W.P. (CrI.) No.18 of 2021 seeking declaration that reading of twin limitation for grant of bail into Section 45 (1) of PMLA Act without any specific reincorporation or resurrection thereof by any legislative amendment in Section 45 (1) of PMLA Act, despite the clause (ii) of Section 45 (1) having already been wiped out from the Statute since inception by holding the same as ultra vires and also sought for quashing of investigation under PMLA conducted by the Enforcement Directorate, Visakhapatnam. The petitioner also filed SLP (CrI.) 327 of 2021 before the Hon'ble Supreme Court challenging the order dated 28.12.2020 in CrI.M.P.No.1673 of 2020 passed by the learned Special Judge.

It is also stated that in pursuance of the resolution dated 12.05.2021 passed by the High Powered Committee of High Court of Andhra Pradesh, the petitioner approached the Special Judge, PMLA, Visakhapatnam for grant of interim bail for 90 days. But on 05.07.2021 the learned Special Judge dismissed the said application by observing that the petitioner already filed writ petition before the Hon'ble Apex Court in I.A.No.33033 of 2021 seeking interim bail in W.P. (Crl.) No.18 of 2021 and SLP (Crl.) No.327 of 2021, which are pending adjudication and petitioner is not supposed to approach two forums for same relief for interim bail. Thereafter on 19.07.2021, the entire batch matters including SLP (Crl.) No.327 of 2021 was listed before the Hon'ble Supreme Court and the same were disposed of as withdrawn with liberty to approach the High Court against the impugned order passed by the trial Court. In view of the liberty granted by the Hon'ble Apex Court, the petitioner has approached this Court.

It is also stated that petitioner is a senior citizen who is aged about 62 years and is suffering from various aged related ailments including Bronchial Asthma, Hyperlipidemia with Coronary Artery Disease, hypertension, uncontrolled diabetes mellitus, essential hypertension, Severe Osteoarthritis Bilateral Knee Joints, Grade-2 internal hemorrhoids with bleeding per rectum, anxiety neurosis, vertigo with Syncopal Attack and Cervical Spondylitis with Radiculopathy, as such his case may be considered for grant of bail.

3. The 2nd respondent filed a detailed counter affidavit *interalia* contending that several show cause notices were issued to the petitioner by Directorate of Revenue Intelligence (DRI), Delhi and

Kolkata Zone Officer for evasion of customs duty and for smuggling goods. Petitioner was detained under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short “COFEPOSA”) in the past and he is currently under detention under COFEPOSA in Tihar Jail. It is stated that from the information obtained from the officials of DRI that using several firms in Nepal, the petitioner was making imports through India into Nepal via Customs Transit Declaration (CTD) Scheme and he was smuggling high value undeclared goods into India in those containers without paying customs duty and he was making payments to the overseas sellers of those smuggles goods.

It is also stated that documents retrieved by forensic analysis revealed that the computer of the petitioner contained statements of various bank accounts of several firms showing banking transactions with companies operated by Vaddi Mahesh viz., M/s Meghana Softech Pvt. Ltd. and M/s Kaustav Exports and Imports Pvt. Ltd. It is stated that funds transferred to the above said companies in Singapore and Hongkong were further transferred to other companies in Singapore and Hongkong viz., M/s Swiss Fox Pvt. Ltd., Singapore, M/s Wow Deals Pvt. Ltd., Singapore and M/s Newrise Industrial Limited, Hongkong and M/s Pacific International China Ltd., Hongkong. The petitioner did not cooperate with the respondent during his custody and gave evasive answers.

It is further stated that the petitioner is a big flight risk as he is having deep roots in Singapore and Hongkong and if bail is granted, the petitioner would not be present for trial. The petitioner has a long history of fleeing from justice. The petitioner

did not respond to the summons issued by the respondent under Section 50 of PMLA Act. The COFEPOSA detention order issued by the Government of India in the year 2015 could not be executed till 2020 as the petitioner fled India and continued to abscond till 2019 and as such the petitioner is not entitled for bail.

4. Heard Sri Vikram Chowdary and Sri P.Veerareddy, learned Senior Counsel representing Sri Gnani Vivek Karri, learned counsel for the petitioner and Sri Josyula Bhaskara Rao, learned Standing Counsel for Enforcement Directorate.

5. Learned senior counsel submitted arguments mainly highlighting Section 45 of PMLA Act. He submits that twin conditions contemplated under Section 45 of PMLA Act were held to be unconstitutional as it violates Articles 14 and 21 of the Constitution of India by the Hon'ble Apex Court in **Nikesh Tarachand Shah Vs. Union of India and another**¹ and thereafter an amendment was carried out vide Finance Act, 2018 (Act 13 of 2018) with effect from 19.04.2018, but however the original Section 45 (1)(ii) has not been revived or resurrected by the said Amendment Act and further, the amending Section 45 (1) of PMLA Act, which came into effect from 19.04.2018 is silent about its retrospective applicability. Hence, as of today, there is no rigor of said two further limitations under original Section 45(1)(ii) of PMLA Act for releasing a person on bail under the said Act.

6. Learned senior counsel submits that the petitioner has nothing to do with the companies either in India or abroad and the accused Vaddi Mahesh himself admitted the ownership of various

¹ (2018) 1 SCC 1

companies, as such the petitioner has been implicated in this case without any basis. He submits that the petitioner has been arrested on extraneous considerations at the behest of vested interests, who want to deter the petitioner from releasing from jail. He submits that the petitioner has been in jail from 02.05.2020 till date i.e. he has been in prison for more than 360 days. He submits that prosecution cannot have any apprehension that the petitioner may abscond, if he is released on bail. It is submitted that on 09.09.2019 petitioner himself voluntarily surrendered before the Court and submitted himself to the jurisdiction of the Court.

7. Learned senior counsel submits that the petitioner is a senior citizen and he has been suffering from various aged related ailments including Bronchial Asthma, Hyperlipidemia with Coronary Artery Disease, hypertension, uncontrolled diabetes mellitus, essential hypertension, Severe Osteoarthritis Bilateral Knee Joints, Grade-2 internal hemorrhoids with bleeding per rectum, anxiety neurosis, vertigo with Syncopal Attack and Cervical Spondylitis with Radiculopathy, as such his case may be considered for grant of bail.

8. *Per contra*, Sri Josyula Bhaskara Rao, learned Standing Counsel for Enforcement Directorate has strenuously opposed bail and would submit that petitioner who is the main accused and beneficiary of the proceeds of crime, has settled in Singapore and most of the proceeds of crime has been layered and parked in Singapore and Hongkong by him and the investigation is being done to identify, attach and confiscate those proceeds of crime.

9. Learned Standing Counsel submits that Hon'ble Apex Court in catena of cases observed that while granting bail the Court has to keep in mind the nature of accusation, 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 accused at the trial, reasonable apprehension of the witness being tampered with and the larger interest of Public/State. He submits that the economic offences are class apart. The present case involves hundreds of crores. These kind of cases will have larger impact on the economy of the country and have to be treated separately. He relied on several judgments of the Hon'ble Apex Court in this regard.

10. This Court without going into merits of the case, taking into consideration the factors that the petitioner has been languishing in jail from the last 360 days, petitioner himself voluntarily surrendered before the Court below in the year 2019, other accused were already enlarged on bail and the health condition of petitioner, this Court deems it appropriate to grant interim bail to the petitioner for a period one month on certain conditions.

11. The petitioner shall be enlarged on interim bail for a period of one month i.e. from 08.09.2021 to 07.10.2021 (both days inclusive) in connection with ECIR/VSKZO/03/2017 registered by Enforcement Directorate, Visakhapatnam on his executing a bond for a sum of Rs.10,00,000/- (Rupees ten lakhs only) with two sureties each for a like sum to the satisfaction of learned Metropolitan Sessions Judge-cum-Additional District and Sessions

Judge-cum-Special Judge for Trial of Prevention of Money Laundering Act, Visakhapatnam. On such release, the petitioner shall not leave the country and shall not tamper with evidence and influence the witnesses. The petitioner shall appear before the Assistant Director, Directorate of Enforcement, Visakhapatnam on every day during the interim bail period between 10.00 a.m. and 12.00 p.m.

Post this matter on 05.10.2021.

LALITHA KANNEGANTI, J

7th September, 2021

PVD

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

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