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Crl.O.P.No.20602 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2023

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

Criminal Original Petition No.20602 of 2023

V.Senthil Balaji, M/47
S/o.Velusamy
No.27, Mullai Illam
Dr.DGS Dinakaran Salai
Chennai-600 028.

... Petitioner

-Vs-

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

... Respondent

Prayer : Petition under Section 482 of Cr.P.C., to set aside the return Docket Order dated 29.08.2023 passed by the learned Principal District and Sessions Judge of Chennai Special Court constituted under Section 43(1) of the Prevention of Money Laundering Act, 2002, and consequently direct the learned Principal District and Sessions Judge or the Special Court-I for the Trial of Cases relating to MP and MLA, Chennai to entertain and number the bail application in Crl.M.P.SR.No.21974 of 2023 in C.C.No.9 of 2023 on the file of The Special Court-I for the Trial of Cases relating to MP and MLA, Singaravelar Maaligai, Chennai and dispose of the same on merits within a time frame as fixed by this Hon'ble Court.



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For Petitioner : Mr.N.R.Elango, Senior Counsel
for M/s.Bharani Kumar
For Respondent : Mr.N.Ramesh
Special Public Prosecutor for
Enforcement Directorate

ORDER

(Order of the Court was made by **R.SURESH KUMAR, J.**)

This Criminal Original Petition has been filed seeking a prayer to set aside the return Docket Order dated 29.08.2023 passed by the learned Principal District and Sessions Judge of Chennai Special Court constituted under Section 43(1) of the Prevention of Money Laundering Act, 2002, and consequently direct the learned Principal District and Sessions Judge or the Special Court-I for the Trial of Cases relating to MP and MLA, Chennai to entertain and number the bail application in Crl.M.P.SR.No.21974 of 2023 in C.C.No.9 of 2023 on the file of The Special Court-I for the Trial of Cases relating to MP and MLA, Singaravelar Maaligai, Chennai.

2. The brief facts which are required to be noticed for the disposal of this petition are as follows. That the petitioner is a sitting MLA, against whom ECIR No.MDSZO/21/2021 taking the allegation in C.C.No.19/2021, C.C.No.24/2021, C.C.No.25/2021 on the file of Additional Special Court for Trial of Cases against MP/MLA as predicate offence has been registered by the



prosecution and a complaint was lodged under Section 44(1)(b) and 45(1) read with Section 3 and 4 of Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA Act') on 12.08.2023.

3. It is the case of the petitioner that, on 14.06.2023 he was arrested relating to the said case and during his judicial custody, as he had to undergo a major surgery, that surgery also he had undergone on 21.06.2023. Thereafter, on recovery from his illness, as per the request of the respondent Enforcement Directorate, police custody was given between 07.08.2023 and 12.08.2023 ie., for six days, and he had been under the custody of the respondent. Thereafter, final report insofar as this petitioner is concerned had been filed by the respondent on 12.08.2023.

4. Therefore, it is the further case of the petitioner that, since the investigation is over, no more interrogation is required, and since final report is filed, therefore his judicial custody which has already crossed 78 days is no more required.

5. That apart, it is the further case of the petitioner that, even after he had undergone the major surgery as stated supra, as per the recent report of the doctors' team, he has to still take medication as he has developed some



more ancillary complaints. Therefore, on medical grounds also, he is entitled for bail.

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6. That is the reason why the petitioner had moved a bail application on 28.08.2023 before the Special Court-I at Chennai which has already been designated as a Special Court to try the cases against MLAs and MPs.

7. The aforesaid case, though had been initially pending before the Principal Judge, Chennai, who, by virtue of the Special Court since has been constituted to try the cases against MLAs and MPs, has decided to make over the case to the said Special Court and accordingly an order has been passed on 14.08.2023 according to Mr.N.R.Elango, learned Senior Counsel appearing for the petitioner, by which the learned Principal Judge, Chennai has transferred the case papers or made over the case papers to the Special Court-I for trying the cases exclusively against MLAs and MPs. Therefore, as of now the case ie., C.C.No.9 of 2023 is pending before the Special Court No.I.

8. In view of the said pendency of the main C.C., before the Special Court, the said bail application was filed before the Special Court No.I on 28.08.2023. However, the said Special Court, on the same day has passed the following order.



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" This Court is not notified U/s.43 of the PMLA Act, 2002 by the Central Government. Hence, this bail application has to be filed before the Hon'ble Prl.Judge, CCC. Hence, return time one week."

and returned the bail petition.

9. Therefore, the petitioner had to re-present the papers before the Principal Judge, Chennai, wherein the learned Principal Judge on 29.08.2023 passed the following order.

" Returned

Since the petitioner / accused Thiru.Senthil Balaji is a Member of Legislative Assembly, Tamil Nadu, the entire case records in C.C.No.9/2023 has been made over to the file of Sessions Judge, Special Court No.I for Trial of Cases related to Members of Parliament and Members of Legislative Assembly of Tamil Nadu. The petition may be presented before the Special Court-I for the Trial of Cases relating to Sessions Judge, Special Court No.I for Trial of Cases related to Members of Parliament and Members of Legislative Assembly of Tamil Nadu. Hence, returned."

and that Court also returned the bail petition.

10. Immediately the returned papers, according to the learned Senior Counsel for the petitioner, has been re-presented once again before the Special Court for Trial of Cases against MLAs and MPs, which Court did not accept the



papers and orally returned the same.

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11. In view of this stand taken by the Principal Judge, Chennai as well as the Special Judge to try cases against MLAs and MPs, the petitioner could not move his bail application. That only triggered him to approach this Court by filing the present original petition.

12. In this context, Mr.N.R.Elango, learned Senior Counsel appearing for the petitioner as well as Mr.N.Ramesh, learned Special Public Prosecutor for the respondent ie., Enforcement Directorate have submitted that, insofar as the jurisdiction of the Court by which this bail application has to be entertained is concerned, neither the petitioner's side nor the respondent's side has expressed any specific view before any of these two Courts.

13. However, the learned counsels would submit that, insofar as the Principal Judge is concerned, that Court was a designated Court within the meaning of Section 43(1) of the PMLA Act by issuance of a notification in this regard issued by the Government of India dated 05.02.2016 in Notification No.372(E) issued by the Ministry of Finance, Department of Revenue.

14. Pursuant to the directives issued by the Hon'ble Supreme Court, the



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State Government in consultation with the High Court of Madras had issued a Government Order in G.O.Ms.No.211, Home (Courts-II) Department, dated 26.04.2019, whereby a Special Court at Chennai as Special Court I in the cadre of a Session Judge having jurisdiction over the entire district of Chennai had been established to try all criminal cases including sessions cases as enumerated therein which involves elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu.

15. The State Government had issued one more notification on the same day, in G.O.Ms.No.210, Home (Courts-II) Department, wherein Special Court No.II in the cadre of Session Judge was established for the same purpose and also an additional Special Court in the cadre of a Session Judge (Senior Civil Judge Cadre) was also established for dealing with such cases in respect of magisterial level offences.

16. Among the three Courts, the main C.C., filed by the respondent against the petitioner had been transferred or made over by the Principal Judge, Chennai to Special Court-I.

17. It is further to be noted that, among the three Special Courts as



mentioned herein above, Special Court No.I, II are District Judge level and Special Court No.III is Senior Civil Judge level.

18. Be that as it may. Insofar as the present issue that has been raised in this original petition is concerned, among these two Courts ie., Principal Judge Court at Chennai, which has been the designated Court within the meaning of Section 43(1) of the PML Act and the Special Court No.I for Trial of Cases exclusively against MLAs and MPs established by virtue of G.O.Ms.No.211, Home (Courts-II) Department dated 26.04.2019, which Court has to hear the bail application moved by the petitioner in the said C.C.No.9 of 2023.

19. Section 43 of the PMLA Act reads thus,

" 43. Special Courts : (1) *The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under Section 4, by notification, designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.*

Explanation : In this sub-section, "High Court" means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.

(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-



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section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial."

20. Under Section 43(1), it is for the Central Government in consultation with the Chief Justice of the High Court, for trial of offence punishable under Section 4, by notification, designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

21. In exercise of the powers under Section 43(1), the Central Government ie., the Department of Revenue, Ministry of Finance, issued S.O.370(E) dated 05.02.2016. The relevant portion of the same reads thus,

"S.O.372(E) : *In exercise of the powers conferred by sub-section (1) of Section 43 of the Prevention of Money Laundering Act, 2002 (15 of 2003) and in supercession of the notifications of the Government of India in the Ministry of Finance, Department of Revenue numbers S.O.841(E), dated the 1st June 2006, S.O.1901(E) dated the 3rd November, 2006, S.O.309(E) dated the 2nd March, 2007, S.O.447(E), dated the 11th February 2009, S.O.1150(e) dated the 23rd May 2012 and S.O.1435(E) dated the 28th June 2012, and in consultation with the Chief Justices of respective High Courts, the Central Government hereby designates*



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the Court(s) of Session, as mentioned in the Table below, as Special Court(s) for area(s) specified in the said Table against the said Courts, for trial of offences punishable under Section 4 of the said Act, namely:

<i>S.No</i>	<i>State or Union Territory</i>	<i>Court of Session designated as Special Court under the Prevention of Money Laundering Act, 2002</i>	<i>Area specified for trial of offence punishable under Section 4 of the Prevention of Money Laundering Act, 2002</i>
24.	Tamil Nadu	Principal District Judge, Chennai.	Districts of Ariyalur, Chennai, Coimbatore, Cuddalore, Dharmapuri, Erode, Kanchipuram, Krishnagiri, Namakkal, The Nilgiris, Perambalur, Nagapattinam, Salem, Tiruppur, Tiruvallur, Tiruvannammalai, Tiruvarur, Vellore, Villupuram, any other proposed new districts.

22. In the said notification, in all the States, such Special Courts have been established.

23. In Sl.No.24, for the State of Tamil Nadu, certain Courts have been designated as Special Courts under Section 43(1) of the PMLA Act. The



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Principal District Judge, Chennai has been designated as a Special Court for such kind of offences arising out of the PMLA Act in the areas covering the Districts of Ariyalur, Chennai, Coimbatore, Cuddalore, Dharmapuri, Erode, Kanchipuram, Krishnagiri, Namakkal, The Nilgiris, Perambalur, Nagapattinam, Salem, Tiruppur, Tiruvallur, Tiruvannammalai, Tiruvarur, Vellore, Villupuram..

24. Apart from these Courts, some other Courts also have been designated as Special Courts viz., VIII Additional City Civil and Sessions Judge, Chennai, IX Additional City Civil and Sessions Judge, Chennai, XII Additional City Civil and Sessions Judge, Chennai, XIII Additional City Civil and Sessions Judge, Chennai, XIV Additional City Civil and Sessions Judge, Chennai. Like that, in respect of areas in some other Districts, the Principal District Judge, Madurai and II Additional District and Sessions Judge, Madurai have been designated as Special Courts.

25. Insofar as the final report that has been filed by the respondent against the petitioner dated 12.08.2023 is concerned, it is an offence punishable under Section 4 of the PMLA Act. Section 4 makes it clear that whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.



WEB COPY 26. It has been the specific case of the respondent that, the offence allegedly committed by the petitioner is to be punished under Section 4 of the PMLA Act, based on which only the final report dated 12.08.2023 has been filed.

27. Therefore, whatever the offence that has been alleged against anyone, which is punishable under Section 4 of the PMLA Act, that has to be tried only by Special Courts designated under Section 43(1) of the PMLA Act by virtue of the notification of the Central Government issued in consultation with the Chief Justice of the High Court concerned, where the proposed Court is located.

28. It is further to be noted that, under Section 43(1) of the PMLA Act, it is only the Central Government which is empowered to designate such Courts because, the language used in Section 43(1) makes it clear that the "Central Government shall designate". (Emphasis supplied)

29. Therefore, by virtue of the notification dated 05.02.2016, the Central Government already exercised such powers in consultation with the



Chief Justice of the High Court and Courts have been designated as Special Courts.

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30. When that being the position, since the territorial jurisdiction of the case in hand is in Chennai District only, therefore Chennai being one of the jurisdictional area under the notification issued by the Central Government as referred to above, which comes under the jurisdiction of the Principal District Judge, Chennai, naturally the said case has to be tried in the said Court, since the alleged offence is to be punished only under Section 4 of the PMLA Ac.

31. When that being so, we feel that the very transfer of the case or made over made by the learned Principal Judge, Chennai by transferring the case papers to the Special Court No.I for Trial of Cases exclusively against MLAs and MPs, is not in consonance with Section 43(1) of the PMLA Act *vis-a-vis* the notification issued by the Central Government dated 05.02.2016 under notification No.SO.370(E). Therefore, the bail application filed by the petitioner in the said C.C., also, in our considered opinion, has to be heard and disposed only by the Principal Judge, Chennai.

32. In this context, since the case papers have already been transmitted to the Special Court-I, it became necessitated now to withdraw and re-transfer



the said made over from the Special Court No.I to the Principal Judge, Chennai and thereafter the unnumbered bail application shall be taken up for hearing and be disposed of at the earliest.

33. In view of the aforesaid, we are inclined to dispose of this Criminal Original Petition with the following directions.

- (a) The impugned endorsement / return order passed by the Principal Judge, Chennai is hereby set aside.
- (b) As a sequel, there shall be a direction to the Principal Judge, Chennai to withdraw the made over on C.C.No.9 of 2023 on the file of the said Court and accordingly entertain the bail application in Criminal M.P.SR.No.21974 of 2023 by numbering the same, if it is otherwise in order, and decide the said application after hearing both sides, at the earliest.
- (c) Registry is directed to return the original bail application case papers filed along with this original petition to the learned counsel on record for the petitioner, with acknowledgement after retaining the photocopy of the same.



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of.

34. With the above directions, the Criminal Original Petition is disposed

(R.S.K.,J.) (K.B.,J.)
04.09.2023

Index : Yes
Internet : Yes
Neutral Citation : Yes
KST

Note : Issue order copy today (04.09.2023)

To

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



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R. SURESH KUMAR, J.
AND
K.KUMARESH BABU, J.
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04.09.2023