

IN THE COURT OF SESSIONS AT CHENNAI

Present: **Tmt.S.Alli, M.L.,**
Principal Sessions Judge.
Friday, the 16th day of June, 2023.

CrI.M.P.No.13522 / 2023

in

ECIR No.MDSZO/21/2021

V.Senthil Balaji, S/o.Velusamy

.. Petitioner / Accused

- vs -

Joint Director,
Enforcement Directorate,
Chennai.

.. Respondent / Complainant

This petition coming on 14.6.2023 before this court for hearing in the presence of Mr.N.R.Ilango, Senior Counsel for M/s.A.S.Aswin Prasanna and Agilesh Kumar, Counsel for the petitioner and of Mr.ARL Sundaresan, Additional Solicitor General and Mr.N.Ramesh, Special Public Prosecutor for respondent and upon hearing them and upon perusing the records, this court delivered the following:

ORDER

1. The petitioner, who was arrested on 14.6.2023 for the offence punishable u/s 3 punishable u/s 4 of the PMLA in ECIR/MDSZO/21/2021 on the file of the respondent, seeks bail.

2. The brief averments in the petition filed by the petitioner are as follows :

The petitioner is the Minister for Electricity Board and Prohibition and Excise Department for Government of Tamil Nadu. A face case was registered and the same is pending in C.C.No.19, 24, 25/2021 on the file of Additional Special Court for Trial Cases of MP/MLA. On the final reports, offences alleged are Sec.406, 409, 420, 506(i) r/w 34 of IPC and the same was committed during the year 2014 when he was the Minister for Transport,

Government of Tamil Nadu. It is alleged that some of the employees of the petitioner had received money for appointments in Transport Corporation. It is to be noted that there was no direct allegation against the petitioner and none of the witness had implicated the petitioner herein in those cases. In this backdrop, the respondent herein has registered the present Enforcement Case Information Report 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 Cases MP/MLA as predicate offences. While this is so, on 13.6.2023, the respondent all of a sudden came to the house of the petitioner early in the morning and detained him. He was not given any grounds for such interrogation. His official residence was searched and his present office at Secretariat was also searched. From 7.00 a.m. in the morning, he was detained by the respondent officers at his house. He was not allowed to meet any of his relatives friends and advocates. The petitioner was taken out of his house on 2.00 a.m. on 14.6.2023, he was not informed of the grounds of arrest and not intimated anyone. The Hon'ble Supreme Court in Satender Kumar Antil V. Central Bureau of Investigation and another has emphasized the compliance of the procedure under Section 41 of Cr.P.C. The petitioner is diagnosed with CAG Triple vessel disease and he is advised to undergo by-pass surgery by the team of Doctors. Hence, the petitioner may be granted bail.

3. Now, the point for consideration is :

“Whether the petitioner is entitled for bail?”

POINT :

4. Heard both sides. Records perused.

5. The learned Senior Counsel appearing for the petitioner would submit that the ECIR No.MDSZO/21/2021 has been registered in the year 2021 and the petitioner / accused has not been interrogated and arrested till 14.6.2023. He has co-operated with the interrogation / investigation from 7.00 a.m. on 13.6.2023 to 2.00 a.m. on 14.6.2023. It is admitted by the respondent / complainant that the accused has co-operated for interrogation. The learned Senior Counsel would further submit that during the search operations, no family members,

friends or advocates are allowed. The accused was served with summons and enquired by the respondent / complainant. Another summon was issued by 1.00 a.m. on 14.6.2023 for interrogation on the same day. The respondent / complainant has not issued any notice u/s 41-A Cr.P.C. and thereby violated the directions of the Hon'ble Supreme Court of India in **Satender Kumar Antil** and therefore, the accused is entitled for bail. The learned Senior Counsel would further submit that the family members were not informed about the arrest of the accused and also the grounds of arrest. Any deviation of Sections 41 to 60 of Cr.P.C. would entitle the accused to be released on bail. He has also submitted that the arrest of the accused by the respondent / complainant is illegal and it cannot be given a clean certificate by the court. The learned Senior Counsel would also submit that the accused is suffering from Triple vessel disease and he requires a surgery on emergency basis. The team of Doctors who treated the accused in Tamil Nadu Government Multi Super Specialty Hospital, Omandurar Estate, Chennai-2 and the Doctors from ESI Hospital opined that the accused is suffering from Triple vessel disease and therefore, interim bail on medical grounds may be granted.

6. The learned Additional Solicitor General of India would submit that the accused was arrested on 14.6.2023 in connection with ECIR No.MDSZO/21/2021. The respondent / complainant has complied with the provisions u/s 19 of PMLA, prior to the arrest of the accused. Grounds of arrest has been informed and conveyed to the accused, but he refused to receive and sign in the same. Therefore, arrest Memo has been executed in the presence of two witnesses. He would also submit that for granting of bail for the offences punishable under the PMLA, twin conditions have to be satisfied, but the accused has failed to satisfy the same. The learned Additional Solicitor General of India would also contend that the provision u/s 41-A Cr.P.C. is not applicable to this case, since this case has been registered under PMLA. Intimation about the arrest of the Grounds of Arrest were communicated to the relatives of the accused through SMS, E-Mail, since they did not pick the phone calls. The Enforcement Officials are not the police officers. He would further submit that there is no provision for interim bail in Money Laundering cases.

7. Admittedly, an ECIR No.MDSZO/21/2021 has been registered against the accused Sh.V.Senthil Balaji and others on 29.7.2021. The petitioner / accused was arrested by the respondent / complainant on 14.6.2023 at 1.30 a.m. at his residential premises. After arrest, the accused was admitted in Tamil Nadu Government Multi Super Specialty Hospital, Omandurar Estate, Chennai-2 for his ailments and he was remanded to judicial custody on 14.6.2023. Now, the accused is in judicial custody and under treatment with Kaveri Hospital, Chennai.

8. The learned Senior Counsel appearing for the accused would mainly put forth his arguments for bail on the ground of non-compliance of Sec.41-A Cr.P.C. by the respondent / complainant before the arrest of the accused. The Additional Solicitor General of India stoutly denied the said contention and claimed that the provision u/s Sec.41-A Cr.P.C. is not applicable to this case, since it is a case under the Prevention of Money Laundering Act and would also submit that Sec.19 of PMLA has to be followed by the Authorised Officer before making arrest and it has been scrupulously followed and therefore, the accused is not entitled for bail on the ground of non-compliance of Sec.41-A Cr.P.C.

9. Admittedly, the Prevention of Money Laundering Act, 2002 is a special enactment to prevent and control money laundering and to confiscate and seize the property obtained from the laundered money and also to deal with any other issue connected with money laundering in India. As submitted by the learned Senior Counsel, who appeared for the accused, the Hon'ble Supreme Court of India in **Arnesh Kumar's Case and also in Satender Kumar Antil - vs - C.B.I. and another** has issued certain directions to the Investigating Agencies and courts and one such direction is that *"The Investigating Agencies and their officers are duty-bound to comply with the mandate of Sec.41 and 41-A of the Code and the directions issued by this court in Arnesh Kumar. Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action."*

"The courts will have to satisfy themselves on the compliance of Sec.41 and 41-A of the Code. Any non-compliance would entitle the accused for grant of bail."

10. As per the direction, the notice of appearance in terms of Sec.41A Cr.P.C. be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing. However, the Enforcement Directorate officials are not the police officers as referred in Sec.41-A Cr.P.C. and therefore, they are not expected to follow the procedure under the said provision.

11. The provisions of PMLA have given an overriding effect upon any other law and further explicitly mentions that any provisions of the Code of Criminal Procedure, which are inconsistent with the provisions of this Act, which deal with attachment, confiscation, investigation and prosecution shall not apply. Further, as per Sec.5 of the Code Criminal Procedure, 1973 , the provisions of Code of Criminal Procedure will not affect any Special Statute or any local law. In other words, the provisions of any Special Statute will prevail over the General Provisions of Code of Criminal Procedure in case of any conflict. As per Sec.65 of PMLA, the provisions of Cr.P.C. shall apply in so far as they are not inconsistent with the provisions of this Act and Sec.71 provides that the provisions of the Prevention of Money Laundering Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Therefore, the Prevention of Money Laundering Act has an overriding effect and the provisions of Cr.P.C. would apply only if they are not inconsistent with the provisions of this Act. As such, Sec.41 and 41-A of Cr.P.C. deals with the power to arrest by the police officer and also the conditions to be followed prior to arrest. Likewise, in Sec.19 of PMLA, certain conditions have to be fulfilled prior to the arrest of the accused, who are involved in the offence of Money Laundering. Both the provisions under Sec.41-A Cr.P.C. and Sec.19 of PMLA are inconsistent with each other and therefore, Sec.19 of PMLA has an overriding effect of Sec.41-A Cr.P.C. Now, the court has to consider that whether the Investigating Agency has fulfilled the conditions as per Sec.19 of PMLA or not? Sec.19 of the PMLA requires certain conditions to be fulfilled prior to the arrest. In particular, the authorised officer on the basis of materials in his possession has to record the

reasons to believe in writing in the File. The respondent has complied the said condition by recording his reason to belief in writing and it is available in File and a copy of the same has been produced before this court. Proof has also been produced to show that the Deputy Director of Enforcement Directorate has been authorised to investigate the matter. Another aspect of Sec.19 of PMLA is the communication of the grounds of arrest to the accused and a mere communication of grounds of arrest would not suffice and the authorised officer has to record his reasons to believe in writing and it has to be communicated to the detenu. But, the accused in the present case Sh.V.Senthil Balaji was said to have refused to receive the Grounds of Arrest and also refused to sign. As he is not co-operating for the same, the arrest memo was said to have been executed in the presence of two witnesses and the same has been recorded by the authorised officer in the Grounds of Arrest and the two witnesses have also signed in the arrest memo. In these circumstances, the non-communication of Grounds of Arrest to the accused is not considered as a violation. From the above discussion, the court is of the opinion that the respondent / complainant is not expected to follow the procedure u/s 41-A Cr.P.C and on the other hand, they are expected to fulfill the conditions as required u/s 19 of PMLA and it has been followed.

12. The learned Senior Counsel, who appeared for the accused would also submit that intimation has not been given by the respondent to the relatives of the accused to the effect of the arrest of the accused and also the Grounds of Arrest. The relatives of the accused are not available at the place of arrest and it is not disputed. The respondent attempted to intimate the arrest of the accused and the Grounds of arrest over phone to the wife and brother of the accused, but they did not pick the phone calls. Therefore, intimation was given through SMS and Emails of the wife and brother of the accused and to prove the same, copies of the call, SMS history and computer generated Email copy has been produced before this court.

13. The next contention of the learned Additional Solicitor General of India is that for granting bail for the offences punishable under Prevention of Money Laundering Act, the court has to satisfy the twin conditions in Sec.45 of PMLA, but, the accused has not passed the test

and therefore, he may not be released on bail. As per Sec.45(1)(i) of PMLA, the Special Public Prosecutor has to be given an opportunity to oppose the bail application. However, as per Sec.45(1)(2) of PMLA, from the available materials placed before this court, this court is not satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he will not likely to commit any offence while on bail, if he is ordered to be released on bail. Therefore, the court has arrived at a conclusion that the petitioner / accused is not entitled for bail as he has not satisfied the twin conditions laid down Under Sec.45 of PMLA.

14. The bail application has been filed u/s 439 Cr.P.C. and also prayed to enlarge the petitioner on bail. However, the learned Senior Counsel, who appeared for the accused would submit that considering the serious ailments suffered by the accused, the court may consider to release the accused on interim bail. The respondent / complainant denied the said contention and also claim that there is no procedure in the Act to release the accused on interim bail. The judgment in **Satyendar Kumar Jain - vs - Directorate of Enforcement**, the Hon'ble Supreme Court of India granted interim bail by observing that "*We think it appropriate that the citizen is having a right to take treatment of his choice, at his own expenses in a private hospital.*" In **Sanjay Jain -vs- Enforcement of Directorate**, the Hon'ble High Court of New Delhi, while considering the grant of interim bail on medical and humanitarian grounds, has held that "*Clearly it is not every ailment that entitles an accused for grant bail on medical grounds, the expression used in the first proviso to Sec.45 of PMLA is that a person can be released on bail if he is sick or infirm.*" In the present case, the accused has diagnosed with Triple vessel disease and a copy of the Medical Report issued by Tamil Nadu Government Multi Super Specialty Hospital, Omandurar Estate, Chennai-2 has been produced by the accused. This court has also suo motto called for a medical report from the Director of Tamil Nadu Government Multi Super Specialty Hospital, Omandurar Estate, Chennai-2 The report dated 15.6.2023 by the said hospital would reveal that the accused has suffered with Acute Coronary Syndrome (Heart attack due to heart muscle artery blockage) and presently his health condition is stable. As per the order of the Hon'ble High Court of Madras in HCP No.1021/2023 dated

15.6.2023, the accused was ordered to be shifted to Kaveri Hospital, Chennai to undergo treatment of their choice, at his own costs. Keeping in view of the observations of the Hon'ble Supreme Court of India in respect of granting of interim bail on medical grounds and the fact that the accused being admitted in a hospital from the time of his arrest and shifted to another hospital of his choice and now under treatment and also considering the nature and gravity of the offence said to have been committed by the accused, the court is of the view that he may not be released on interim bail on medical grounds as prayed for by him.

15. In view of the discussions made above, keeping in mind of the nature and gravity of the offence, nascent stage of the investigation, the court is of the considered view that the petitioner / accused cannot be released on bail and the petition deserves to be dismissed.

16. In the result, the petition is dismissed.

Delivered by me in open court today.

S ALLI

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ALLI
Date: 2023.06.16
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ss

Principal Sessions Judge.