

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on :16.10.2023

Pronounced on : 19.10.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Original Petition No.23629 of 2023

V.Senthil Balaji, M/47,
S/o.Velusamy,
No.27, Mullai Illam,
Dr.DGS Dhinakaran Salai,
Chennai – 28.

... Petitioner/Accused

/versus/

The Deputy Director,
Directorate of Enforcement,
Ministry of Finance,
Chennai Zonal Office – II,
B-Wing, Shastri Bhawan,
Haddows Road,
Chennai – 600 006.
ECIR No.MDSZO/21/2021.

... Respondent/Complainant

Prayer:- Criminal Original Petition has been filed under Section 437 / 439 of the Code of Criminal Procedure, 1973 read with Section 45 of the Prevention of Money Laundering Act, 2002, pleased to enlarge the petitioner on bail pending trial in C.C.No.9 of 2023 on the file of the Learned Principal Sessions Court, Chennai.



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For Petitioner : Mr.N.R.Elango, Senior Counsel,
for Mr.N.Bharani Kumar.

For Respondent : Mr.AR.L.Sundaresan,
Additional Solicitor General,
Assisted by Mr.N.Ramesh, Spl.P.P (ED)

ORDER

This Criminal Original Petition is filed to enlarge the petitioner on bail pending trial, in C.C.No.9 of 2023 on the file of the Learned Principal Sessions Court, Chennai.

2. The petitioner, who was arrested on 14.06.2023 for the alleged offences punishable under Section 3 & 4 of Prevention of Money-Laundering Act, 2002, in C.C.No.9 of 2023, in ECIR No.MDSZO/21/2021, on the file of the respondent/Enforcement Directorate, seeks bail.

3. Mr.N.R.Elango, Learned Senior Counsel appearing for the petitioner submitted that the petitioner confines the prayer for bail on the ground of sickness and not on merits. Relying upon the medical records



pertaining to the health condition of the petitioner and the proviso to Section 44(1)(ii) of Prevention of Money-Laundering Act, 2002 (“PMLA”) and proviso to Section 437/439 of Cr.P.C., which deals about grant of bail on the ground of sickness, the Learned Senior Counsel for the petitioner herein submitted that the health condition of the petitioner necessitate his release on bail.

4. Brief Background of the case:-

The petitioner was arrested on 14.06.2023 and remanded to judicial custody on the same day. On 15.06.2023, the petitioner got admitted in Tamil Nadu Government Multi Super Speciality Hospital, Chennai. Thereafter, he was transferred to Kauvery Hospital, where he was diagnosed *Coronary Artery Disease – Triple Vessel Disease Acute Coronary Syndrome, Unstable Angina Dyslipidemia*. He underwent off pump *Coronary Artery graft Bypass Surgery*. He got discharged from Kauvery Hospital on 17.07.2023 and sent back to prison. At the time of discharge, the petitioner was advised as under:-

- “1. Continue cardiac rehabilitation for 2 months.*
- 2. Do not lift heavy objects for 2 months.*
- 3. Shower and wash your incision daily with soap. Watch for any signs of infection such as redness, swelling,*



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extreme tenderness, cloudy pus like discharge.

4. *Continue Incentive Spirometry & Breathing Exercise.*

5. *Walk daily for 20 minutes. Slowly increase your activity as tolerated.*

6. *DIET: Low salt and plenty of liquids (3Litres/day)”*

5. Later, the petitioner had been under constant medical supervision in the prison. He consistently reporting numbness in his left leg. Recently, the petitioner was taken to Government Stanley Hospital, for medical examination on reference by Medical Officer at Puzhal Prison, Chennai, with the complaints of *Chest discomfort, Head ache and left leg numbness*. The team of Doctors medically examined the petitioner and had given a case summary on 09.10.2023. The treatment report and discharge summary indicates as below:-

“Senior Consultant Cardio thoracic surgeon TN. Govt. Multi Super-speciality Hospital, Omandurar Dr.S.Manoharan M.S. Mch. Opinion obtained.

Vital stable.

CABG and graft site scar healthy.

Cardiac evaluation - ECG, ECHO and Troponin found to be normal.



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Advised - Continue same line of management.

HOD and Professor of Cardiology opinion obtained.

History as recorded.

Vitals stable.

Serial ECG taken - SR, q in III, avf. non-specific T wave inversion in V2-V6. No fresh changes.

ECHO -no RWMA, Adequate LV function, No pericardial effusion, No LV thrombus.

Cardiac enzymes - Troponin I and CPKMB are within normal range.

Opined to continue same discharge medications.

Advised at Discharge -

T. ASPIRIN 150MG 0-1-0

T. CLOPIDOGREL 75MG 0-1-0

T.ATORVASTATIN 40MG 0-0-1

T. DILTIAZEM 30MG 1-1-1

T. TRIMETAZIDINE 35 MG 1-0-1

T. ISOSORBIDE MONONITRATE 30 MG 0-0-1

T. S. OMEPRAZOLE -D 40MG 1-0-0 (Before food)

T. IRON & FOLIC ACID 0-0-1

T. PARACETAMOL 500MG SOS.



To review after 2 weeks.”

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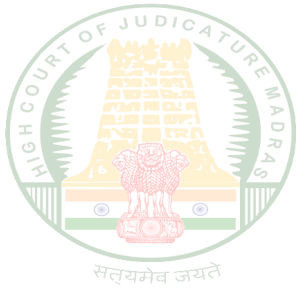
6. Mr.N.R.Elango, Learned Senior Counsel for the petitioner pleaded that, under the scheme of PMLA, Section 45 restricts grant of bail based on gravity of money laundered. The twin conditions mentioned in this Section is subject to the proviso which enables Court to grant bail if the accused is sick or infirm. In the instant case, the medical record adequately discloses '*Sickness*' of the petitioner. The term '*Sickness*' cannot be equated to terminal illness. Any person, who in need of continuous medication and medical care not fit to carry on his daily needs on his own, not able to sit or walk continuously for more than 10 minutes, will fall within the term '*sick*'. He further submitted that, Mr.V.Senthil Balaji, the petitioner, having undergone bypass surgery, need to be released on bail, based on medical report.

7. Mr.AR.L.Sundaresan, Learned Senior Counsel/Additional Solicitor General representing Enforcement Directorate submitted that, the medical report relied by the petitioner though indicate he is '*sick*', the said ailment is not of a nature which requires medical care which is not available in



the prison. The proviso to Section 45 (1)(ii) of PMLA, cannot be resorted in all cases of sickness. The exemption to Section 45(1)(ii) of PMLA, under its proviso can be exercised only in case of sickness or infirmity so grave that, it is life threatening and cannot be treated in the prison Hospital or Government Hospital. In the case of this petitioner, a team of eminent Doctors of Government Stanley Hospital has examined him and had not reported any alarming health issue which will endanger his life.

8. The Learned Additional Solicitor General for the respondent further submitted that, the petitioner besides not satisfying the condition for seeking bail on health ground also does not satisfies the triple test under Sections 437/439 of Cr.P.C., for granting bail. According to Learned Additional Solicitor General for the respondent, the accused though in prison, is retained in the Cabinet by the Ruling Party as Minister without Portfolio. The depth of his influence thus, well made by the Government in Power. Therefore, influencing the witness is imminent, if he is released on bail. Next, his brother Mr.Ashok Kumar, one of the prime suspect in this case is still at large. Therefore, possibility of a). flight risk, b). influencing witnesses and c). tamper with evidence not be ruled out.



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9. The following of judgments by the Hon'ble Supreme Court of India and High Courts were cited by the Learned Counsels on both sides to buttress their respective submission.

1). *Vijay Mandanlal Chaudhary -vs- Union of India*, reported in 2022 SCC Online SC 929.

2). *Asst Director, Directorate of Enforcement -vs- N.Umashankar & Others*, order dated 22.11.2021 in SLP.No.7563 of 2021.

3). *Union of India vs. Rattan Mallik Alias Habul* reported in (2009) 2 SCC 624.

4). *Surjeet -vs- State (Govt. of NCT of Delhi)* reported in 2021 SCC Online Del 228.

5). *Karim Morani -vs- Central Bureau of Investigation* reported in 2011 SCC Online Del 2967.

6). *Rajkishor Gunnidhi Dash -vs- State of Maharashtra* reported in 2020 SCC OnLine Bom 1126



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7). *Akhtar Parwez -vs- State of West Bengal* reported in 2022 SCC OnLine Cal 471.

8). *Nasir Abdul Kadar Kevel alias Nasik Dhaklya -vs- State of Maharashtra* reported in 2018 SCC OnLine Bom 1562.

9). *Directorate of Enforcement -vs- Raj Singh Gehlot*, dated in CRL.M.C.4711/2022.

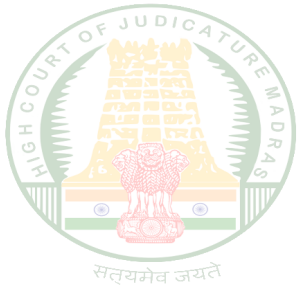
10). *State through Deputy Commissioner of Police, Special Branch, Delhi -vs- Jaspal Singh Gill* reported in (1984) 3 SCC 555.

11). *State of U.P. -vs- Gayatri Prasad Prajapati* reported in 2020 SCC OnLine SC 843.

12). *Megala -vs- State rep. by Dy. Director, Madras High Court Order dated 15.06.2023 in HCP.No.1021 of 2023.*

13). *Mahendra Manilal Shah etc., -vs- Rashmikant Manuskhai Shah & Another* reported in 2009 SCC OnLine Bom 2095.

14). *Fazal Nawaz Jung and Another -vs- State of Hyderabad* reported in 1951 SCC OnLine Hyd 60.



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15). *Pawan Alias Tamatar -vs- Ram Prakash Pandey and Another* reported in (2002) 9 SCC 166.

16). *Surinder Kairam & Another -vs- State* reported in 2002 (65) DRJ 660.

17). *Sanjay Jain (IN JC) -vs- Enforcement Directorate, Delhi Hight Court in Bail Application No.3807 of 2022, order dated 05.06.2023.*

18). *State vs. Sardool Singh and Another* reported in 1975 SCC OnLine J & K.

19). *Sridhar Vandayar & Another -vs- the State Rep. by Inspector of Police* reported in 2000 SCC OnLine Mad 45.

20). *P.Dharmaraj -vs- Shanmugam and others* reported in 2022 SCC OnLine SC 1186.

21). *Y.Balaji Vs. Karthik Desari and Another* reported in 2023 SCC Online SC 645.

22). *Sameer Mahandru -vs- Directorate of Enforcement* reported in 2023 SCC Online Del 3606.

10. Heard the Learned Senior Counsel for the petitioner and the



Learned Additional Solicitor General for the respondent/Enforcement Directorate.

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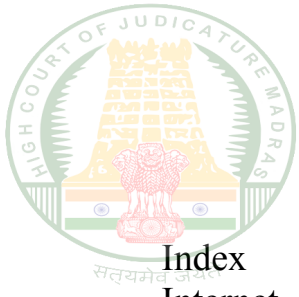
11. The Line of judgments on either side taken into consideration.

The health report of the petitioner does not appear to be a medical condition which could be taken care only if he is released on bail. That apart, his past conduct, his present position as Minister without Portfolio and the abscondence of his brother Mr.Ashok Kumar, coupled with the attack on the Income Tax Officials, all cumulatively leads to an irresistible conclusion that, certainly, he will directly and indirectly influence or cause deterrence to witnesses, if released on bail.

12. The non-cooperation of the co-accused Mr.Ashok Kumar, who is blood brother of the petitioner also justifies the apprehension of Enforcement Directorate that, there is flight risk causing impediment in progress of trial.

13. For the above reasons, this Court is not inclined to grant bail to the petitioner. Accordingly, this Criminal Original Petition is dismissed.

19.10.2023



Index :Yes/No.
Internet :Yes/No.
Speaking order/Non Speaking order.
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Dr.G.JAYACHANDRAN, J.

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Copy to:-

1. The Learned Principal Sessions Court, Chennai.
2. The Deputy Director, Directorate of Enforcement, Ministry of Finance, Chennai Zonal Office – II, B-Wing, Shastri Bhawan, Haddows Road, Chennai – 600 006.
3. The Central Prison, Puzhal, Chennai.
4. The Special Public Prosecutor, High Court, Madras.

Delivery order made in
CrI.O.P.No.23629 of 2023



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19.10.2023