Principlal Bench at Andhra Pradesh

Case Details

Case Type	: CRLP	
Filing Number	: 3780/2023	Filing Date: 19-04-2023
Registration Number	: 2904/2023	Registration Date: 19-04-2023
CNR Number	**: APHC01-019400-2023**	

Case Status

First Hearing Date	:
Decision Date	: 12th May 2023
Case Status	: CASE DISPOSED
Nature of Disposal	: Uncontested--ALLOWED NO COSTS
Coram	: 3327K SREENIVASA REDDY
Bench	: Single Bench
State	: ANDHRAPRADESH
District	: VISAKHAPATNAM
Judicial	: CRIMINAL Section
Causelist Name	: BAIL PETITIONS
Short Order	: ADJOURNED

Petitioner and Advocate

1) SURESH GOYAL

Advocate- A VIJAYABHASKAR REDDY

Respondent and Advocate

1) DIRECTORATE OF ENFORCEMENT

Advocate - JOSYULA BHASKARA RAO (SC FOR E D)

THE HON'BLE SRI JUSTICE K. SREENIVASA REDDY

CRIMINAL PETITION NO. 2904 OF 2023

ORDER :

This Criminal Petition, under Sections 437 and 439 of the Code of Criminal Procedure, 1973 (for short, 'CrPC'), is filed seeking to enlarge the petitioner/A.4 on bail in case information report in F.No.ECIR/HYZO/

03/2022 of Directorate of Enforcement, Hyderabad Zonal Office.

2. A case in crime No.29 of 2021of C.I.D. p.s., A.P., Amarvathi, Mangalagiri has been registered for the offences punishable under Sections 166, 167, 418, 420,

465, 468, 471, 409, 201, 109 read with 120B of the Indian Penal Code, 1860 (for short, 'IPC') and 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988. based on a report lodged by the Chairman of Andhra

Pradesh State Skill Development Corporation, Andhra Pradesh (for short, 'APSSDC'). The petitioner herein is arrayed as A.20 in the said crime. The aforesaid FIR has been registered against one Ghanta Subba Rao, the then Special Secretary of Government, Skill Development, Entrepreneurship and Innovation Department, M/s. Siemens Industry Software India Private Limited (SISW), M/s. Design Tech System Private Limited (DTSPL) and others for allegedly swindling of money invested by the Government in a dubious manner. According to the said FIR, APSSDC entered into a Memorandum of Association (MoA) with SIEMENS (combination of SISW and DTSPL), to impart Hi-end technology training to the trainers of APSSDC, pursuant to which DTSPL had to provide training software development including various sub modules designed for the high-end software for advanced manufacturing CAD/CAM, and the MoA does not contemplate any sub contract. As part of the SIEMENS project, 6 clusters at a cost of Rs.546.84 crores (per cluster) were to be formed in which 90% of the total project

cost i.e. Rs.2951.00 crores was supposed to be borne by M/s. SISW and M/s. DTSPL, and the remaining 10% i.e. Rs.330.00 crores was supposed to be borne by the Government. The total project cost for establishing 6 SIEMENS clusters amount to Rs.3281.40 crores.

3. Since Sections 120B, 418, 420, 471 IPC and Section 13 of the Prevention of Corruption Act, 1988 are scheduled offences under the Prevention of Money Laundering Act, 2002 (for short, 'PMLA'), investigation was initiated under the aforesaid case information report dated 07.01.2022. The petitioner herein is arrayed as A.4 in the said case information report. In the course of investigation, the respondent recorded statements of various persons, collected documents/information from agencies, banks, entities, etc. and analyzed bank accounts, and it revealed many discrepancies including diversion of APSSDC funds through various shell companies; the vendors from whom purchases were shown to have been made were pre-

decided in advance; major portion of funds were transferred to Skillar

Enterprise India Private Limited (SEPL) which was incorporated post 'tri party agreement' signed among

M/s. DTSPL, SISW and APSSDC for implementation of SIEMENS project; major portion of the funds received from the government in the account of Execution Partner

M/s. DTSPL was diverted to this newly opened entity SEPL, which has no past experience to execute the scope of work, and SEPL was used for diversion of Government funds which was meant for SIEMENS project. It has been further revealed that major portion of funds were diverted by SEPL to suspicious entities under the guise of supply of software/hardware/materials/ services, which, in reality, was not done. The purpose of diversion of funds was to generate cash and thereby siphon off money from the system without utilizing the same for the SIEMENS project for which the Government sanctioned the funds. On examination of data and analysis of bank account

statements revealed that out of the funds received by SEPL from APSSDC through DTSPL,

Rs.56.00 crores (approx..) was transferred by SEPL to an entity Allied Computers International Asia Limited (ACI), and the said amount was diverted through a web of shell entities by way of layered transactions. No goods or services were supplied by ACI against the said amount received from SEPL, and the diversion of funds, as stated above, was for personal gain. The investigation also revealed that no software/hardware/ services/goods were delivered to ACI or to any other entity used in the channel of diversion, which started from ACI, and that fabricated and concocted documents like purchase order, invoices, bills, etc. were created to project these bogus transactions as genuine. Profiles of most of these companies are nowhere related to software/ hardware services. Funds transferred from PVSP/SEPL to ACI was with an intention to generate cash without genuine business, and whatever cash that had been generated in this chain was handed

over either to Yogesh Gupta or Mukul Agarwal (A.3), who approached Suresh Goyal for generation of cash. SEPL diverted some funds to company of Mukul Agarwal (A.3) viz. Knowledge Podium

Systems Private Limited (KPSPL) and from there, the funds were diverted to personal account of Mukul Agarwal (A.3). The companies/entities which provided cash in lieu of receiving accommodated entries were

identified.

Apart from ACI, other entities viz. Inweb Services

Private Limited, Patric Info Services Private Limited, IT

Smith Solutions Private Limited, Provestment Services Limited, Bhartiya Global Infomedia Limited, etc. were used as bogus billing entry to divert funds received directly from SEPL, and so far, diversion of funds of Rs.67.00 crores has been identified.

It is further alleged that Government funds were diverted by DTSPL, belonging to Vikas Khanvelkar, through SEPL and a web of shell companies, and in lieu of transfer of

funds, cash was provided by entry operators who were managing the shell companies. Petitioner herein is a Chartered Accountant and runs a C.A. firm by name M/s. SSRA & Co. The allegation is that the petitioner knows Mukul Agarwal and Suman Bose through his association with Dassault Systems India Private Limited, while Sumon Bose is the country head of DSIPL and Mukul Agarwal was its

CFO/Director (Admn. & Finance), and he is their Tax Consultant. Petitioner is close friend of Mukul Agarwal and through him, the petitioner associated with DSIPL for tax compliance. Petitioner was approached by Mukul

Agarwal for arrangement of cash in lieu of the diverted Government funds released for SIEMENS project, and on the instructions of petitioner, arrangement of cash in lieu of transfer of funds to shell companies was done. Petitioner arranged bogus entries with the help of entry providers to divert the government funds which were transferred from DTSPL to SEPL and further to ACI and

other entitles. Petitioner floated several companies without any actual business activities where the petitioner and his wife Smt.Anju Goyal are Directors/ share holders, and that she is one of the Directors and shareholders in M/s. SM Professional Services Private Limited (SMPS), which received funds from DTSPL, SEPL and ETA Greens Buildtech Private Limited, the original of which can be traced to the funds received from APSSDC. The purpose of transfer of funds could not be explained by the petitioner.

4. Learned senior counsel Sri Vinod Kumar Deshpande, appearing on behalf of Sri A.Vijay Bhaskar Reddy, learned counsel for the petitioner strenuously contended that Section 19 of the PMLA requires that before arrest of a person, the Authorized Officer must have reason to believe, basing upon the material in his possession, which has to be recorded in writing, that the person is guilty of the offence punishable under the said

Act. He submitted that the Authorized Officer placed reliance on oral and hear-say material viz. statement under Section 50 of the PMLA, which is devoid of any corroboration/tangible evidence, and the investigation has been carried on for more than 15 months, in addition to the investigation already been conducted by multiple other agencies in the said issue. He contended that in a predicate offence/FIR which has been registered by CBCID in crime No.29 of 2021 of C.I.D.

p.s., A.P., Amarvathi, Mangalagiri, the petitioner has been shown as A.20. By an Order dated 14.03.2022, in Criminal Petition No.1275 of 2022, this Court granted anticipatory bail to the petitioner in the said crime. The petitioner is co-operating with the investigating agency and there is absolutely no accusation as against the petitioner that he is interfering with the investigation or tampering with the prosecution evidence, and further the conditions imposed while granting the bail, have been relaxed.

The learned senior counsel further contended that Section 45 of the PMLA contemplates grant of regular bail when the petitioner satisfies the twin conditions prescribed therein viz. one is that he is not guilty of any offence punishable under the PMLA and the other is that is he not likely to commit any other offence while on bail. It is his submission that the case in crime No.29 of 2021 was registered on 09.12.2021 and till today, no charge sheet has been filed in the predicate offence, and in the absence of any charge sheet being filed, a presumption cannot be drawn as against the petitioner for commission of any scheduled offence under the PMLA. The learned senior counsel relied on the following decisions.

(i) In *Vijay Madanlal Choudhary & others v. Union of India*[1]*;*

(ii) In *P.Chidambaram v. Directorate of Enforcement*[2]*;*

(iii) In *Sanjay Raghunath Agarwal v. Directorate of Enforcement*[3]*;*

5. On the other hand, the learned Deputy Solicitor General of India, appearing on behalf of the respondent, relied heavily upon Section 45 of the PMLA. He contended that there is an embargo imposed under Section 45 (1) of the PMLA for grant of bail, and these limitations are in addition to those imposed under the CrPC and have an over-riding effect over the provisions of the Code in case there occurred any inconsistency

[1] 2022 SCC OnLine SC 929
[2] (2020) 13 SCC 791
[3] 2023 SCC OnLine SC 455

between the provisions of the two in view of the provisions of Section 65 of the PMLA. The learned DSG submitted that investigation conducted so far revealed many discrepancies including diversion of APSSDC funds through various shell companies, and the vendors from whom purchases were shown to have been made were pre-decided in advance, and major portion of funds were transferred to SEPL which was incorporated post 'tri party agreement' signed among M/s. DTSPL, SISW and APSSDC, and that major portion of funds received from

the Government were diverted to newly opened entity SEPL which has no past experience to execute the scope of work in the subject project.

The learned D.S.G. further submitted that during the course of investigation, certain entrepreneurs were examined under Section 50 of the PMLA and it is found that the funds which were diverted by DTSPL to SEPL and thereafter to shell/defunct entities and cash that was generated was withdrawn from the system. It is further submitted that the entire bogus transactions were done on the basis of concocted and fabricated documents and invoices. He further submitted that the companies/entities which provided cash in lieu of receiving accommodated entries were identified, and some of these persons/entities were examined under Section 50 of the PMLA and they admitted that they provided cash against the funds received in their bank accounts.

Basing on the aforesaid contentions, the learned D.S.G. prayed to dismiss the bail application since

investigation is still pending.

6. Heard and perused the record.

7. Based on a report lodged by the Chairman of APSSDC, a case in crime No.29 of 2021of C.I.D. p.s., A.P., Amarvathi, Mangalagiri was registered on 09.12.2021 against one Ghanta Subba Rao, the then Special Secretary of Government, Skill Development, Entrepreneurship and Innovation Department, M/s. SISW, M/s. DTSPL and others for allegedly swindling of money invested by the Government in a dubious manner. The case was registered for the offences punishable under Sections 166, 167, 418, 420, 465, 468, 471, 409, 201, 109 read with 120B IPC and 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988. As per the report, APSSDC entered into an MoA with SIEMENS (combination of SISW and DTSPL), to impart Hi-end technology training to the trainers of APSSDC, pursuant to which DTSPL had to provide training software development including various sub modules designed for the high-end software for advanced manufacturing CAD/CAM. As part of the SIEMENS project, 6 clusters at a cost of Rs.546.84 crores (per cluster) were to be formed in which 90% of the total project cost i.e. Rs.2951.00 crores was supposed to be borne by M/s. SISW and M/s. DTSPL, and the remaining 10% i.e. Rs.330.00 crores was supposed to be borne by the Government. The total project cost for establishing 6

SIEMENS clusters amount to Rs.3281.40 crores.

Investigation was initiated by the respondent under case information report in F.No.ECIR/HYZO/ 03/2022 of Directorate of Enforcement, Hyderabad Zonal Office, since Sections 120B, 418, 420, 471 IPC and Section 13 of the Prevention of Corruption Act, 1988 are scheduled offences under the PMLA. Documents collected from APSSDC and the Forensic Auditor, who provided copy of show cause notice issued by the office of the Director General of GST Intelligence, Pune (DGGI), along with forensic audit report reports, were examined under the purview of PMLA. It is alleged that there are many discrepancies including diversion of APSSDC funds through various shell companies. It is alleged that major portion of funds were transferred to SEPL, which was incorporated post 'tri party agreement' signed among M/s. DTSPL, SISW and APSSDC for implementation of SIEMENS project, and major portion of the funds received from the Government in the account of Execution Partner M/s. DTSPL, was diverted to the newly opened entity SEPL, which does not have any past experience to execute the subject work.

During investigation, it has been revealed about diversion of major funds to suspicious entities done by SEPL under the pretext of supply of software/ hardware/materials/services. It is alleged that in reality, the supply of such goods and services was not done. On examination of data and analysis of bank account statements shows that about Rs.56.00 crores, out of the funds received from APSSDC, was transferred by SEPL to

the entity ACI, and the said amount was diverted through a web of shell entities by way of layered

transactions.

8. Insofar as role of the petitioner is concerned, it is alleged that the petitioner has been approached by A.3 for arrangement of cash in lieu of the diverted Government funds released for SIEMENS project, and on the instructions of petitioner, being the Chartered Accountant, arrangement of cash in lieu of transfer of funds to shell companies was done. The petitioner was examined by the investigating agencies number of times. Investigating agencies searched residential premises of the petitioner on 24.02.2023 and his office premises was searched on 01.03.2023, and he was arrested on 04.03.2023. It is also pertinent to mention here that the petitioner, who is arrayed as A.20 in the crime registered by CBCID in crime No.29 of 2021 of C.I.D.

p.s., A.P., Amarvathi, Mangalagiri, was granted anticipatory bail by this Court by an Order dated 14.03.2022, in Criminal Petition No.1275 of 2022. Now, it has to be seen whether arrest of the petitioner would meet up to the requirements of the PMLA or not.

9. Section 19 of the PMLA reads thus:

> "19. Power to arrest.—(1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.
>
> (2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.
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> (3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Special Court or Magistrate's Court."

10. Section 45 of the PMLA reads thus:

"45. Offences to be cognizable and non-bailable.—

(1) 1[Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence under this Act shall be released on bail or on his own bond unless— (i) the Public Prosecutor has been given a opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, or is accused either on his own or along with other coaccused of money-laundering a sum of less than one crore rupees may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made

by—

(i) the Director; or

(ii)any officer of the Central Government or a State Government authorised in writing in this behalf by

> the Central Government by a general or special order made in this behalf by that Government.
>
> (1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.
>
> (2) The limitation on granting of bail specified in 5*** sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.
>
> Explanation.—For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and nonbailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfilment of conditions under section 19 and subject to the conditions enshrined under this section."

A perusal of the abovesaid provision goes to show that the Public Prosecutor has to be given an opportunity to oppose the application for bail, and where the Public Prosecutor opposes the application for bail, duty cast on the Court is that it should be satisfied whether there are

reasonable grounds to believe that the person accused is not guilty of such offence and that he is not likely to commit any offence while on bail. The said provision is analogous to Section 37 of the NDPS Act, 1985.

11. A plain reading of the abovesaid provision contemplates that if the Court comes to conclusion that there are reasonable grounds for believing that the person accused is not guilty of such offence and the second condition is that he is not likely to commit any offence while on bail. With the aforesaid provisions, I now proceed to verify whether the accusations that have been made as against the petitioner herein would come within the purview of Section 45 of the PMLA.

12. The petitioner is a Chartered Accountant by profession. The allegation is that he was approached by A.3 for transfer of funds to shell companies. Though a case has been registered as against the petitioner in crime No. 29 of 2021 of C.I.D. p.s., A.P., Amarvathi, Mangalagiri,

dated 09.12.2021, CBCID has not filed any charge sheet in the said crime till today in the predicate offence. It is pertinent to mention here that the petitioner was granted anticipatory bail in the predicate offence. The investigating agency has been investigating into the case for the last more than 14 months. But, it has not filed any charge sheet to that extent showing complicity of the petitioner herein. In respect of the investigation which has been carried on, in crime No.29 of 2021, till today, it has not come to light that any money has been flown to the account of the petitioner herein to show the complicity of the petitioner. Absolutely, no date or nothing has been averred as against the petitioner except stating that he was approached by A.3 for transfer of funds to shell companies. It is also borne out of the record that the petitioner remained present ever since investigation started, irrespective of the agency. He was available to the investigating agency and fully cooperated as and when he was called. He appeared before the C.I.D. multiple times. In pursuance of the conditions imposed while

granting anticipatory bail to the petitioner, he was appearing before the investigating agency. Though residential premises of the petitioner were searched, no incriminating material has been seized. Thereafter, search and seizure was conducted at the office premises of the petitioner on 01.03.2023, and even there also, nothing incriminating material has been found. The petitioner herein was summoned by the respondent to appear on 02.03.2023 and 03.03.2023 and was examined at length. The petitioner was arrested on 04.03.2023. He was taken into police custody between 14.03.2023 and 18.03.2023. Despite the fact that for the last more than 15 months, different investigating agencies are conducting investigation, there is absolutely no accusation to the extent of any monies flown into the account of the petitioner. Except stating that the petitioner was instrumental in assisting A.3 in diversion of funds to the shell companies, there is no other material to connect the petitioner to the crime.

13. In pursuance of the agreement, it is borne out of the record that 2,13,000 students were trained, and to that extent, certificates have been issued to all the students that they have been trained. The service certificates issued by the other companies would go to show that the monies are being spent on the training programmes. It is also submitted that 40 skill development units were established for training students at large. In connection with the programme done by the SIEMENS, an appreciation letter has been issued to that extent.

14. It is also submitted that the averments to the extent that monies have been transferred to SEPL and from SEPL to ACI, and from ACI to other shell companies. Learned senior counsel appearing for the petitioner submitted to the extent that money is transferred to the account of ACI and in turn ACI purchased certain keys, software expertise, which is part of

record. It does to show that major portion of the amounts have been transferred to the companies was in order to purchase material from the said companies. The ECIR and the other investigating agency CID are proceeding on the footing that material has not been supplied by the said companies and the receipts on purchase of material relied upon by the petitioners has not been looked into by the agencies. A Sweeping accusation has been made to the extent that receipts of the purchase orders are vague and same have been fabricated. No amounts have been transferred to the account of the petitioner.

15. In *Vijay Madanlal Choudhary & others v. Union of India* (1 supra), relied on by the learned senior counsel appearing for the petitioner, it is held thus: (paragraphs

345, 346, 400, 401 and 406).

"345. Be it noted that the legal presumption under Section 24(a) of the 2002 Act, would apply when the person is charged with the offence of moneylaundering and his direct or indirect involvement in any process or activity connected with the proceeds of crime, is established. The existence of proceeds of crime is, therefore, a foundational fact, to be established by the prosecution, including the involvement of the person in any process or activity connected therewith. Once these foundational facts are established by the prosecution, the onus must then shift on the person facing charge of offence of money-laundering — to rebut the legal presumption that the proceeds of crime are not involved in money-laundering, by producing evidence which is within his personal knowledge. In other words, the expression "presume" is not conclusive. It also does not follow that the legal presumption that the proceeds of crime are involved in money-laundering is to be invoked by the Authority or the Court, without providing an opportunity to the person to rebut the same by leading evidence within his personal knowledge[555].

346. Such onus also flows from the purport of Section 106 of the Evidence Act. Whereby, he must rebut the legal presumption in the manner he chooses to do and as is permissible in law, including by replying under Section 313 of the 1973 Code or even by cross-examining prosecution witnesses. The person would get enough opportunity in the proceeding before the Authority or the Court, as the case may be. He may be able to discharge his burden by showing that he is not involved in any process or activity connected with the proceeds of crime. In any case, in terms of Section 114[556] of the Evidence Act, it is open to the Court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case. Considering the above, the provision under consideration [Section 24(a)] by no standards can be

said to be unreasonable much less manifestly arbitrary and unconstitutional.

400. It is important to note that the twin conditions provided under Section 45 of the 2002 Act, though restrict the right of the accused to grant of bail, but it cannot be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. The discretion vests in the Court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the 2002 Act. While dealing with a similar provision prescribing twin conditions in MCOCA, this Court in *Ranjitsing Brahmajeetsing Sharma*[634], held as under:

"**44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act.** If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. **Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial.** Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not

necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby"

(emphasis supplied)

401. We are in agreement with the observation made by the Court in *Ranjitsing Brahmajeetsing Sharma*[635]. The Court while dealing with the application for grant of bail need not delve deep into the merits of the case and only a view of the Court based on available material on record is required. The Court will not weigh the evidence to find the guilt of the accused which is, of course, the work of Trial Court. The Court is only required to place its view based on probability on the basis of reasonable material collected during investigation and the said view will not be taken into consideration by the Trial Court in recording its finding of the guilt or acquittal during trial which is based on the evidence adduced during the trial. As explained by this Court in *Nimmagadda Prasad*[636], the words used in Section 45

> of the 2002 Act are "reasonable grounds for believing" which means the Court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubt.
>
> **406.** It was urged that the scheduled offence in a given case may be a non-cognizable offence and yet rigors of Section 45 of the 2002 Act would result in denial of bail even to such accused. This argument is founded on clear misunderstanding of the scheme of the 2002 Act. As we have repeatedly mentioned in the earlier part of this judgment that the offence of money-laundering is one wherein a person, directly or indirectly, attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime. The fact that the proceeds of crime have been generated as a result of criminal activity relating to a scheduled offence, which incidentally happens to be a noncognizable offence, would make no difference. The person is not prosecuted for the scheduled offence by invoking provisions of the 2002 Act, but only when he has derived or obtained property as a result of criminal activity relating to or in relation to a scheduled offence and then indulges in process or activity connected with such proceeds of crime. Suffice it to observe that the argument under consideration is completely misplaced and needs to be rejected."

In *P.Chidambaram v. Directorate of Enforcement* (2 supra), relied on by the learned senior counsel appearing for the petitioner, it is held thus: (paragraph 23).

> **"23.** Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced

> that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial."

In *Sanjay Raghunath Agarwal v. Directorate of Enforcement* (3 supra), relied on by the learned senior counsel appearing for the petitioner, it is held thus:

(paragraph 14).

> **"14.** Keeping in mind the specific role attributed to the appellant, let us now revert back to the facts pleaded and arguments advanced. At the outset, there is no controversy about the following facts:
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> ***(i)*** *that* the registration of the ECIR and the lodging of the prosecution complaint in the year 2022 were a sequel to the registration of the FIR for the predicate offence, way back in the year 2013, at the instance of one M. Srinivas Reddy, Managing Director, Farmax and also a sequel to the order passed by SEBI in the year 2020;
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> ***(ii)*** *that* no final report has been filed in the FIR for the predicate offence, for the past nine years;
>
> ***(iii)*** *that* even M. Srinivas Reddy, the *defacto* complainant in the FIR for the predicate offence, was sought to be arrested as an accused in connection with the ECIR, but the application of the Enforcement Directorate for remand was rejected;
>
> ***(iv)*** *that* the appellant is a Chartered Accountant by profession and has been in jail from 26.09.2022; and
>
> ***(v)*** *that* the relevant portion of paragraph 8 of the prosecution complaint filed by the Enforcement Directorate, which we have extracted in the preceding paragraph, gives room for a valid argument that the

second condition found in Clause (ii) of sub-section (1) of Section 45 of PMLA is satisfied *qua* the appellant."

16. In the aforesaid identical case in *Sanjay Raghunath Agarwal's* case (3 supra), lodging of the prosecution complaint is sequel to the registration of the FIR in the predicate offence way back in the year 2021. In the present case on hand also, no charge sheet has been filed in the predicate offence for the last more than 15 months. The petitioner herein is also a Chartered Accountant by profession and has been in jail from 04.03.2023. It is the first offence insofar as the petitioner is concerned. There are no other complaints registered as against him. The said argument gives room to say that second condition in clause (2) of sub-section

(1) of Section 45 of the PMLA would be satisfied. In the aforesaid circumstances, continued incarceration of the petitioner, in my opinion, is not justified.

17. In respect of a query raised by the investigating agency, the petitioner herein gave response to each and

every question that has been asked for. Prosecution complaint was also filed on 01.05.2023. The petitioner was arrested on 04.03.2023 and since then he is in judicial custody. Time and again, petitioner is continuously attending before the investigating agency and co-operating with the investigation. This Court is of the opinion that it is not necessary to detain the petitioner in jail further. In view of the aforesaid facts and circumstances, this Court feels that request of the petitioner for grant of bail can be considered, however, on certain conditions.

18. In the result, the Criminal Petition is allowed. The petitioner shall be enlarged on bail on his executing a personal bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two sureties each for the like sum to the satisfaction of the I Additional Sessions Judge-cumMetropolitan Sessions Judge, Visakhapatnam.

On release, the petitioner shall co-operate with the investigating agency and shall attend before the investigating agency once in a week i.e. on every Friday between 10.00 AM and 5.00 PM. The petitioner shall surrender his passport before the Court below.

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

JUSTICE K. SREENIVASA REDDY

12.5.2023
DRK

THE HON'BLE SRI JUSTICE K. SREENIVASA REDDY

ORDER
IN
CRIMINAL PETITION NO. 2904 OF 2023

DATE: 12.5.2023

DRK