

Crl.O.P(MD)No.6110 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 12.04.2023

PRONOUNCED ON : 18.04.2023

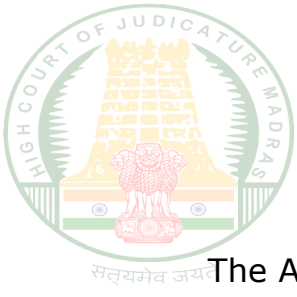
PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN

CRL OP(MD). No.6110 of 2023

- 1.R.Aravinth,
S/o.Rajkumar,
No.1 of 2,St.Pauls Road,
A.R.Line,Palayamkottai,
Tirunelveli District.
(Presently Under Judicial
Custody in Central Prison, Madurai).
- 2.S.Gopalakrishnan,
S/o.Subramanian,
No.91,Crown City Phase II,
Kovilpalayam,
Sarkar Samakulam,
Coimbatore-641 107.
(Presently Under
Judicial Custody in Central Prison, Madurai)
- 3.S.Bharathraj,
S/o.Selvaraj,
No.1,Sri Karpaga Vinayaga Street,
Appadurai Road,
Thalakudi Village,
Lalgudi Taluk,
Trichy-621216.
(Presently Under
Judicial Custody in Central Prison, Madurai)
... Petitioners/Accused Nos.2 to 4

Vs



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The Assistant Director(PMLA),
Directorate of Enforcement,
No.1A, P and T Nagar Main Road,
Madurai-625 017.

... Respondent/Complainant

For Petitioners : Mr.B.Kumar, Senior Counsel
for M/s.Sri Law Associates

For Respondent : Mr.AR.L.Sundaresan,
Additional Solicitor General
assisted by
Mr. R.Vijaya Rajan
Special Public Prosecutor for
Enforcement Directorate

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :-

C-24B.To enlarged on bail in C.C.No.1 of 2023 on the file of the learned II Additional District Court (CBI Court) Cum Special Court for PMLA Cases, Madurai and thus render justice.

ORDER : The Court made the following order :-

The petitioners / Accused Nos.2 to 4 were arrested and remanded to judicial custody on 18.11.2022 in C.C.No.1 of 2023 on the file of the learned II Additional District Court (CBI Court) cum Special Court for PMLA Cases, Madurai for the offence under Sections 44(1)(b) and 45 of the Prevention of Money Laundering Act, 2002 and seek for bail.



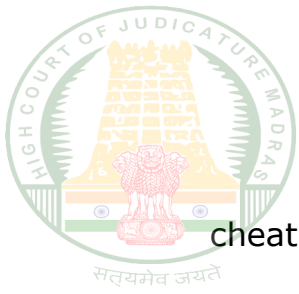
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2.The respondent has registered a complaint in ECIR No.MDSZO/24/2021, dated 15.12.2021 under Sections 44(1)(b) and 45 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA, 2002') as against the accused persons pursuant to the registration of the F.I.Rs' by the Tamil Nadu State Police as against M/s.Bluemax Capital Solutions Limited and its Directors and others during the years 2020 and 2021, on the complaint received from the general public that they were lured by the accused persons to invest money in trading of forex, commodities, gold etc., as promised to pay higher returns. All the F.I.Rs' were covered under the list of Scheduled offences of Section 2(1)(x) and (y) of PMLA, 2002. During the investigation found that M/s.Bluemax Capital Solutions Private Limited was incorporated on 23.07.2014 under the Companies Act, 1956. The petitioners were the Directors of the said company and they had played an active roles in day to day activities of the company. It was not authorized to provide a forex trading platform in India. It is neither registered under SEBI nor had obtained any permission from the RBI for the purpose of forex trading. However, they had collected money from the general public for trading in forex, commodities, gold etc. After collecting money from the general public, they did not invest it in trading. The website of the company was created to show as if real-



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time forex trading was being done regularly in the accounts created in the names of investors in the portal of the said company. The money invested by the general public would be shown in their trading accounts and bogus trading account statements with profit and loss details used to be provided to all the investors on investment and on monthly basis. It was designed to mislead investors by showing genuine trading in forex, commodities, gold etc., through trading charts etc., which duped them into thinking that their money was being indeed invested in real-time trading. They collected around Rs.108 crores from the general public / investors in four Bank accounts standing in the name of M/s.Bluemax Capital Solution Private Limited (two accounts), M/s.Bluemax Solutions and M/s.Dheepiti Exports and Imports. Further, revealed that in the year 2018, they utilized crypto wallets to collect money from investors and they were asked not to deposit or transfer money in their bank accounts and were offered other digital mediums. Thereafter, they have not repaid the money to the investors except for some token repayments. All the money had been diverted to non-investor entities/individual persons. Part of the amount around Rs.12 crores was also diverted into cryptocurrency assets such as Bitcoins through their bank accounts maintained with ICICI Bank and Axis Bank. Therefore, they had the intention to

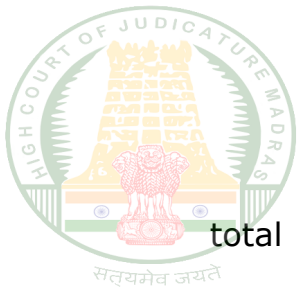


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cheat and divert the innocent general public and to commit the scheduled offence and offence of money laundering once again by diversion of proceeds of crime.

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3.The learned Senior Counsel appearing for the petitioners would submit that on the complaint lodged by one Thangapandian on 15.06.2020 on the allegation that he had invested to the tune of Rs.9,94,700/- and the same was not returned to him. Hence, the police registered the F.I.R in Crime No.441 of 2020 for the offence under Section 420 r/w 120-B of I.P.C. Likewise, so many F.I.Rs' were registered as against the petitioners. Therefore, the first petitioner filed a Writ Petition before this Court in W.P(MD)No.18845 of 2021 and this Court by order, dated 17.06.2021, directed the second respondent therein to consolidate all the F.I.Rs. Thereafter, the petitioners' company settled most of the claim to the tune of Rs.90 crores out of Rs.108 crores through Bank transactions and to the tune of Rs.10.6 crores were returned by cash to the claimants and also after receipt of the same, they had executed affidavits duly notarized in full discharge of their claim against the company, and they would not pursue any action against the petitioners' company. So far the petitioners had settled 1375 depositors and only 61 claimants are reminded and the



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total amount due to them is around Rs.2.52 crores. At that juncture, the respondent registered the complaint on the strength of the F.I.Rs' registered by various police complaints. That apart, more than Rs.2 crores were seized by the respondent by way of gold and bitcoin wallet etc. The property which was purchased by the first petitioner's father was also submitted and directions were issued not to alienate the said property.

4.The learned Senior Counsel appearing for the petitioners would further submit that the fifth accused was granted bail by this Court, after considering the above facts and circumstances in CrI.O.P(MD)No.1365 of 2023, dated 20.03.2023. The petitioners have no bad antecedents and, in fact, the respondent failed to comply with the provision under Section 41A of Cr.P.C before arresting the petitioners. All the F.I.Rs' registered by the State police under the TNPID Act which statutorily provides for compounding the offence under Section 5A of the Act by settling the amount to the claimants. That apart, the petitioners were arrested and remanded to judicial custody on 18.11.2022, and they were incarcerated in imprisonment for the past six months.



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5.Per contra, the learned Assistant Solicitor General appearing for the respondent would submit that there is no solid proof or any evidence that they had refunded Rs.90 crores and settled the investors. On perusal of the statements recorded from the Investors, it was revealed that they settled only 30% to 40% of the amount which was invested by them as a full and final settlement. Therefore, the petitioners are having the crime proceeds and therefore PMLA, 2002 would clearly attract as against them. Hence, there is a bar to grant bail to them under Section 45 of PMLA, 2002. In so far as the fifth accused is concerned, he is the fifth accused was standing on a different footing than the petitioners herein. The fifth accused borrowed money from the petitioners and thereafter returned the same to the petitioners. Hence, this Court granted bail and the same roof would not apply to the petitioners though they settled the investors. Admittedly, they had collected huge money from the general public and failed to return the same. The petitioners deliberately failed to settle all the investors since they planned to divert the entire funds. The entire criminality of the petitioners cannot be set aside by considering selective settlement done by them to the tune of a few crores. It is because of money lending in terms of Section 3 of PMLA, 2002. The petitioners had defrauded 4000 investors in the guise of bogus trading in forex,



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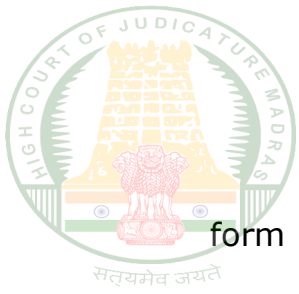
commodities, gold etc. However, the respondent filed the complaint in terms of Sections 3 and 4 of PMLA, 2002. As per Section 44 of PMLA, 2002, the respondent is authorized to file subsequent complaints in respect of further investigation that may be conducted to bring other offence as against the accused persons involved in the offence for the purpose of money laundering. As per the explanation inserted in Section 3 of PMLA, 2002, the offence of money laundering is held to be a continuous offence and will continue till such time any person is in possession and enjoyment of proceeds of crime derived by criminal activity relating to the scheduled offence and it is evident from the investigation that huge amount was collected from the general public and not repay the same. In support of his contention, he relied upon the Judgment reported in **2022 Live Law (SC), 633 in the case of Vijay Mandalal Choudhary Vs. Union of India**, in which, the Honourable Supreme Court of India held that "we hold that such a provision has reasonable nexus with the purposes and objectives sought to be achieved by the 2002 Act of prevention of money laundering and confiscation of proceeds of crime involved in money laundering, including to prosecute persons involved in the process or activity connected with the proceeds of crime so as to ensure that the proceeds of crime are not dealt with in any manner which



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may result in frustrating any proceedings relating to confiscation thereof. It has been held that there are stringent safeguards provided in Section 19 of PMLA, 2002. The provision does not suffer from the vice of arbitrariness. Further reliance is placed on the case of Kamma Srinivasa Rao Vs. Directorate of Enforcement the High Court of Telangana in Cr.Nos.9825, 9846 and 10021 of 2021, where the Honourable High Court of Telangana, allowed the appeals of Enforcement Directorate which challenged the order of Special Court refusing the accused to remand for investigating them under PMLA, 2002 for not allowing Section 41 A of Cr.P.C., by holding that "Section 41 and 41 A of Cr.P.C is not applicable to arrests made under Section 19 of PMLA being a special statute envisages a different procedure for arrest".

6.The learned Assistant Solicitor General appearing for the respondent would further submit that the twin condition as mandated in Section 45 of PMLA, 2002 shall apply to this case and the petitioners have not adduced anything contrary to establish that they are not involved in the offence and the petitioners are not entitled to bail. The constitutional validity of the amended Section 45 of PMLA, 2002 was upheld in a similar case (Vijay Mandanlal Choudhary's case) by holding that "467 (xiii)(c) the provision in the



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form of Section 45 of the 2002 Act, as applicable post amendment of 2018, is reasonable and had direct nexus with the purposes and objects sought to be achieved by the 2002 Act does not suffer from the vice of arbitrariness or unreasonableness". Therefore, he vehemently opposed the granting of bail to the petitioners.

7.Heard the learned counsel appearing on either side and perused the materials available on record.

8.The first accused is the company, and the petitioners are arraigned as Accused Nos.2 to 4. The main allegations against the petitioners are that they had collected a sum of Rs.108 crores from the general public/investors by making false promises of higher returns for their investors in the guise of bogus trading in forex commodities, gold etc. Since they failed to return the amount to the investors on the complaint from the investors, various F.I.Rs' have been registered for the offence under Sections 420 and 120(b) of I.P.C and also under TNPID Act. Hence, the offences are coming under the list of scheduled offences under PMLA, 2002 The respondent lodged a complaint in ECIR No.MDSZO/24/2021, dated 15.12.2021. This Court granted bail to the fifth accused in



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Crl.O.P(MD)No.1365 of 2023, dated 20.03.2023 on the following grounds:-

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"14. As far as the petitioner is concerned, he is arraigned as Accused No.5. The allegation as against the petitioner is that he conspired with A.1 to A.4 and utilized crypto wallets to collect money from the investors. He received a sum of Rs.15 crores from the proceeds of crime under PML Act, 2002 from the company and utilized the capital for the business purposes including export of gold jewels through the company called M/s.Dheepti Exports and Imports, which is a proprietorship in the name of his wife. The said transactions were happened between 05.12.2018 and 01.03.2018. The Bank details revealed that a sum of Rs.14,17,99,000/- had been received by the petitioner from the first accused company. However, the entire amount had been returned to the said company from 08.11.2019 to 20.02.2020. The entire amount had been returned through Bank transfers. It was also duly reflected in the bank statement of the petitioner. That apart, the petitioner also produced documents to show that the accused company had refunded to the tune of Rs.90 crores through bank transfers and to the tune of Rs.10.6 crores by way of cash to the investors, namely, the complainants. The balance to be paid is only to the tune of Rs. 2,52,72,181/- in respect of 61 investors. However, it was repaid by the accused company and not by the



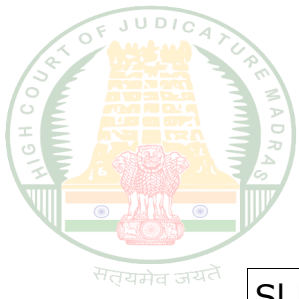
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petitioner herein. The objection raised by the respondent is that whatever the amount received by the petitioner is proceeds of crime. Therefore, the offence under Section 3 of PML Act, 2002 attracted against the petitioner. Hence, there is a bar under Section 45 of PML Act, 2002. Whereas as stated above, as far as the petitioner is concerned, he received money from the first accused company and returned back the same through bank transactions. That apart, Accused Nos.1 to 4 also settled the amount to the tune of Rs.106 crores to the investors through bank transfers and by way of cash. Therefore, the petitioner made out a prima facie case in order to satisfy the twin conditions as contemplated under Section 45 of PMLA."

9.In so far as the petitioners are concerned, they directly collected money from the investors and settled the investors by way of bank transactions and also cash. The balance to be settled to the tune of Rs.2.52 crores in respect of 61 investors. In this regard, the learned senior counsel appearing for the petitioners submitted that the following properties of the petitioners seized by Enforcement Directorate, Madurai and immovable property attached by the Economic Offences Wing, Tirunelveli and the petitioners also deposited an amount before the TNPID Court, Madurai, which reads as follows:-



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Sl.No.	Properties and Place of seizure by ED & EOW	INR Amount
1.	Indian currencies of Rs.25.20 lakhs and Foreign Currencies equivalent to INR 6 lakhs (approx) seized from the residential premises of the petitioner No.1 on 10.11.2022.	Rs. 31,20,000/-
2.	Indian currencies of Rs.20,29,160/- and gold jewels of 1010 gms equivalent to Rs.48,68,682/- seized from the residential premises of the petitioner No.3 on 10.11.2022.	Rs. 68,97,842/-
3.	Freezed wallet ID connected to petitioner No.3 having E-mail ID rrojfx@gmail.com in M/s.WazirX containing crypto assets at Zanimal labs private limited, Mumbai on 21.12.2022.	Rs.1,19,73,172/-
4.	Inspector, EOW, Tirunelveli vide letter dated 15.12.2021 sent directions to Sub-Registrar not to alienate the residential land and building belonging to Mr.Rajkumar, father of petitioner No.1.	Rs.2,00,00,000/- (Approx)
5.	Petitioners deposited an amount before the TNPID Court, Madurai as per the order dated 24.09.2020 of this Court in Crl.O.P(MD)No.9901 of 2020 for anticipatory bail granted to the petitioner Nos.1 to 3 in scheduled offence case.	Rs. 25,00,000/-
	Total	Rs.4,44,91,014/-



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10.However, the learned Assistant Solicitor General appearing for the respondent would submit that the investors were settled only to the tune of 30% to 40% of the total investment made by them and still the petitioners possessing the crime proceeds and started another business in the same common name of "Zoxo Markets" to do similar business defrauding the gullible public on the lines of M/s.Bluemax Capital Solution Private Limited or M/s.Bluemax Global Limited and there is every likelihood that the petitioners may indulge or commit the same kind of offence once again and as such curtailing their personal liberty is very much essential in order to prevent them for repeating the same kind of offence.

11.Considering the said submissions and also the period of incarceration undergone by the petitioners from the date of their arrest, namely on 18.11.2022, this Court is inclined to grant bail to the petitioners, subject to the following conditions:

[a] **Accordingly, the petitioners are ordered to be released on bail on condition that the petitioners shall deposit the original title deeds stands in the name of the**



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petitioners or their relatives or friends not less than the value of Rs.1 crore each to the credit of C.C.No.1 of 2023 on the file of the learned II Additional District Court (CBI Cases) cum Special Court for PMLA Cases, Madurai.

(b) The petitioners execute a bond for a sum of **Rs.1,00,000/- (Rupees One Lakh only) with two solvency sureties each** for a like sum to the satisfaction of the learned II Additional District Court (CBI Cases) cum Special Court for PMLA Cases, Madurai.

[c] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity.

[d] the petitioners shall report before the respondent police daily at 10.30 A.M., until further orders.



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[e] the petitioners shall not commit any offences of similar nature.

[f] the petitioners shall not abscond either during investigation or trial.

[g] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[h] On breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]***.

[i] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

(G K I J)
18.04.2023

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TO

- 1.The Assistant Director(PMLA),
Directorate of Enforcement,
No.1A, P and T Nagar Main Road,
Madurai-625 017.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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G.K.ILANTHIRAIYAN,J

PS

ORDER
IN
CRL OP(MD) No.6110 of 2023

Date : 18.04.2023

