

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE RAJENDRA BADAMIKA

CRIMINAL PETITION No. 7248/2022

BETWEEN:

ANAS AHMED S/O ABDUL GAFFAR
AGED ABOUT 37 YEARS
#366, SWISS TOWN
SADAHALLI GATE
NEAR CLARKS EXOTICA
DEVANAHALLI
BENGALURU-562 110

....PETITIONER

(BY SRI. KIRAN S. JAVALI, SENIOR ADVOCATE A/W
SRI. MANE SHIVAJI HANUMANTAPPA, ADVOCATE)

AND:

DIRECTORATE OF ENFORCEMENT
REP. BY ASSISTANT DIRECTOR
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
BENGALURU ZONAL OFFICE
3RD FLOOR, B BLOCK, BMTC
SHANTINAGAR, TTMC
KH ROAD, BENGALURU-560 027

...RESPONDENT

(BY SRI. P. PRASANNA KUMAR, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CODE OF CRIMINAL PROCEDURE, PRAYING TO ENLARGE THE PETITIONER/ACCUSED NO.3 ON BAIL IN SPL.C.C.NO.782/2022 (ECIR/BGZO/47/2021) PENDING ON THE FILE OF PRL.CITY CIVIL AND SESSIONS JUDGE, BENGALURU WHO HAS BEEN ARRAYED AS ACCUSED NO.3

FOR COMMISSION OF ALLEGED OFFENCE UNDER SEC.3 AND 4 OF PREVENTION OF MONEY LAUNDERING ACT.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 17.10.2022, COMING ON FOR 'PRONOUNCEMENT OF ORDER' THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner has filed this petition under Section 439 of Cr.P.C. for enlarging him on bail in Sp.C.C.No.782/2022 (ECIR No.ECIR/BGZO/47/2021) on the file of the Prl. City Civil and Sessions Judge, Bengaluru for the offence punishable under Section 3 read with Section 4 of the Prevention of Money Laundering Act, 2002 (for short 'PML Act').

2. The brief facts of the case are that the Cyber Crime Police in Bengaluru registered an FIR in crime No.8/2021 dated 15.06.2021 against 13 accused for having committed the offence under Section 420 of IPC and Section 66D of the Information Technology Act, 2008. The offence under Section 420 of IPC is a scheduled offence under the provisions of prevention of Money Laundering Act and as such the respondent-

Directorate of Enforcement has taken up the investigation of the matter. Later, on investigation the respondent is of the opinion that there exists a prima-facie case pertaining to money laundering under Section 3 of the PML Act punishable under Section 4 and as such recorded Enforcement Case Information Report in ECIR No.BGZO/47/2021 on 15.06.2021 and investigation was undertaken. It is further alleged that the present petitioner is accused No.3 and he is a partner of the companies M/s. Clifford Ventures and M/s. H & S Ventures Inc. It is also alleged that the said companies were also arraigned as accused registered in FIR No.8/2021 by the Cyber Crime Police. It is the specific allegation that the petitioner herein through the above said entities collected money from the public through investment apps by offering high and lucrative returns under exchange for the money deposited by them and in this regard more than 300 crores was collected from various depositors and more than 290 crores was diverted to various shell companies. It is also alleged that the petitioner has also cheated by

diverting from original category of business in which he had registered and routed his transaction to collect the payments from a different apps named "Power bank" a Chinese based app and diverted the funds. It is also asserted that the petitioner has not co-operated during the course of investigation and hence, the case came to be registered.

3. The petitioner has approached the learned Spl. Court/ Prl. City Civil and Sessions judge, Bengaluru and the bail petition filed by him came to be rejected. Hence, the petitioner is before this Court.

4. Heard the learned counsel for the petitioner and learned standing counsel for respondent. Perused the records.

5. Learned counsel for the petitioner contends that since last 11 months he is in custody and no final report is filed as on today and still investigation is going on. He would also contend that there is no material evidence to prove the scheduled offence and

he is not keeping good health as his heart is functioning only to the extent of 40% and genesis of proceeds of crime is absent. As such he would seek for admitting him on regular bail.

6. Per contra, learned standing counsel has submitted written objections. It is seriously contended that PML Act is a special enactment and admittedly the offence under Section 420 of IPC is a scheduled offence and there is presumption in favour of the prosecution under Section 24 of the PML Act and under Section 45 of the PML Act, he is not entitled for bail as negative burden is casted on petitioner. He would also contend that act is having over riding effect. Hence, he would contend that investigation is at crucial stage and prays for rejection of the bail petition.

7. Having heard the arguments and perusing the records, there is no serious dispute of the fact that petitioner is in judicial custody. Though this aspect was seriously disputed before the trial Court, however, before this Court no such issue was raised. Section 45

of the PML Act deals with special provisions regarding bail and twin tests have been laid down for granting the bail. The first test is regarding public prosecutor is being given an opportunity of opposing the application which is complied and second test is in case the public prosecutor opposes the application and if the Court is satisfied pertaining to reasonable grounds for believing the accused is not guilty of the offence and if that he is not likely to commit any offence while on bail, then he is entitled for bail. Though the first test is complied, the second test is required to be complied.

8. The allegations disclose that petitioner being the partner in M/s. Clifford Ventures and M/s. H & S Ventures Inc. collected money from public for starting online gaming business in which Rummy will be offered for public online for playing and consequent upon win or lose, money transaction would be there. However, it is important to note here that the services of Razorpay and PayU were obtained by the petitioner and as such the said two firms provided the services by enabling

gateway services. However, both the companies started to receive complaints that money was paid to the said companies through an app called Power Bank and Sunfactory by promising the general public that heavy returns would be given to them on their investment. Admittedly, the nature of services which was represented to Razorpay and PayU were not adhered to and it was Power Bank and Sunfactory which lured the general public to invest the money. It is also evident that Power Bank and Sunfactory were not available on Google Playstore and later on complaint came to be filed in Cr.No.8/2021. Later on Enforcement Directorate has taken up this case. It is also evident from the records that there is specific allegations that the present petitioner did not co-operate during the investigation and the software developer informed that some source code in the software for gaming platform was manipulated by the present petitioner and gateways were linked to Power Bank and Sunfactory. Initially the amount was deposited to the accounts of M/s. Clifford Ventures and

M/s. H & S Ventures Inc. and later on money flows to various shell companies which is alleged to have been manipulated by the present petitioner itself. Section 3 of the PML Act deals with money laundering and the explanation to Section 3 makes it very clear regarding this aspect.

9. There is no dispute of the fact that the petitioner is partner in both M/s. Clifford Ventures and M/s. H & S Ventures Inc. and admittedly more than 290 crores was diverted to various companies and though the services of Razorpay and PayU were taken, but the amount was routed through Power Bank and Sunfactory apps. Thus it clearly establish the intention of the petitioner for routing the transactions from different sources of business. It is important to note here that act of receiving financial investments from public with a false promise to provide higher returns on such investment would cause severe financial loss to the investors and it also affect the economic impairment to thousands of investors. The records also

prima-facie disclose that money collected from public has been transferred to several various companies by the petitioner without there being any reason/opportunities. It is further alleged that it is a process of concealment and layering of funds that had been acquired by duping the public at large.

10. Further all along it is alleged that petitioner was operating Rummy game through the abovementioned firms, but during the course of investigation, it was found to be false. The investigation also reveals that huge amount of money was transferred to multiple fictitious entities from November 2020, many of which were handled by Chinese. It is further specific allegation that the petitioner is not co-operating with the investigation all along and he is involved in cheating the public to the tune of nearly 300 crores. Further under Section 24 of the PML Act there is presumption in favour of the prosecution and negative burden is casted on petitioner/accused. As observed above, the petitioner

has not established the second twin test as contemplated under Section 45 of the PML Act and the presumption available under Section 24 is not rebutted. There is no serious dispute that offence under Section 420 of IPC is a scheduled offence and explanation of Section 3 of PML Act makes it clear that the act of the petitioner falls under the definition of Section 3 of PML Act which is punishable under Section 4 of the PML Act.

11. Learned counsel for the petitioner has invited the attention of the Court to the first Proviso of Section 45 of the Act and argued that since the petitioner is suffering from heart ailment, there is no bar under Section 45 for granting the bail. In this regard he produced certain documents to show that he is under treatment. But merely on that ground the petitioner cannot be admitted on bail considering the involvement in such a huge fraud. Apart from that he could be provided treatment in the hospital and it is not the case that no such treatment is available in the

hospital. Under such circumstances, the said ground is not available to the petitioner.

12. Admittedly after completing preliminary investigation, the complaint came to be lodged and there is prima-facie material. The other ground for bail on predicate offence cannot be entertained as admittedly it is a economic offence and it is required to be dealt firmly. Further the explanation under Section 50 of the PML Act is required to be considered during the course of the trial and prima-facie there is material evidence which disclose that he has cheated public at large by receiving deposits to the tune of more than Rs.300 crores. Even the allegations were that he has not even co-operated during the course of investigation and under such circumstances, question of he seeking the bail does not arise at all. Admittedly petitioner is also involved in similar offences in other States also. Looking to these facts and circumstances, this is not a fit case wherein discretion can be exercised in admitting the petitioner on bail.

13. Learned counsel for the petitioner has placed reliance on the decision in the case of ***Vijay Madanlal Choudhary and Others vs. Union of India and Others*** reported in ***2022 SCC Online SC 929***. But the facts and circumstances are entirely different and when investigation is still under progress, question of enlarging him on bail at this juncture does not arise at all. Hence, the petition being devoid of any merits does not survive for consideration and needs to be rejected. Accordingly, I proceed to pass the following:

ORDER

The petition stands ***rejected***.

**Sd/-
JUDGE**

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CT:NR