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CrI.O.P.No. 26111 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.03.2024

PRONOUNCED ON : 28.03.2024

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

CrI.O.P.No. 26111 of 2023

Dinesh Chand Surana. ... Petitioner/1st Accused

Vs.

The Assistant Director
Directorate of Enforcement
Government of India
Ministry of Finance, Department of Revenue
2nd and 3rd Floor, C Block, Murugesu Naicker Complex
84, Greaves Road, Thousand Lights
Chennai – 600 006. ... Respondent/Complainant

PRAYER: Criminal Original Petitions filed under Section 439 of Cr.P.C., read with Section 45 of the Prevention of Money Laundering Act, 2002 pleaded to enlarge the petitioner on bail, who was arrested on 12.07.2022 and remanded to judicial custody on 13.07.2022 in SPL CC 11 of 2023 on the file of the respondent police.



Crl.O.P.No. 26111 of 2023

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For Petitioner : Mr V.Raghavachari
Senior Counsel for
Mr. Hitesh Singhvi

For Respondent : Mr. ARL. Sundaresan
Additional Solicitor General
Assisted by
Mr. N.Ramesh,
Special Public Prosecutor (ED)

ORDER

The first accused in Spl C.C.No. 11 of 2022 now pending before the Principal Sessions Court at Chennai (Special Court, PMLA), who had been remanded to custody on 13.07.2022 in ECIR Nos. CEZO-I/37/2020 for commission of offences under Section 3 & 4 of Prevention of Money Laundering Act, 2002, seeks bail.

2. It is the case of the prosecution that the petitioner was the Managing Director of Surana Power Ltd., (SPL) a Public Limited Company and it is alleged that SPL along with other companies had caused loss of Rs.1,495.76 crores to the banks.

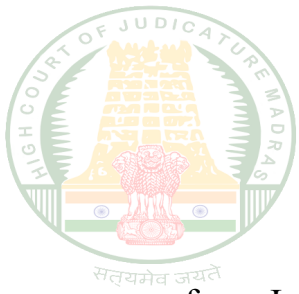


CrI.O.P.No. 26111 of 2023

WEB COPY

3. SPL is a fully owned subsidiary of Surana Industries Ltd., (SIL). The petitioner was the Managing Director of SIL and of SPL. Both the companies are under liquidation owing to orders passed by the National Company Law Tribunal Chennai. It is contended that SPL had borrowed funds to a sum of Rs.1,495.76 crores from a consortium of ten banks led by IDBI bank Ltd for construction of 2x210 MW power plant at Raichur. However, owing to various delays and reasons, SPL could not even start the project and was not able to pay the interest to the banks. The account was declared NPA. The project cost was estimated at Rs.2,400 crores and the loan was sanctioned with debts equity ratio of 75%:25%. Thus the total loan sanctioned was Rs.1,800 crores. SPL was to bring him Rs.600 crores. It was contended that SPL actually brought in 350 Crores.

4. It is the case of the petitioner that there was a delay in disbursement of loans by the bankers and some of the bankers including L&T Infrastructure Finance Co. Ltd., had withdrawn their sanction. This directly affected the progress of the project. It is also stated that Forensic Audit had been conducted and the Report had given a clean chit over the affairs of SPL. It was contended that the banks had stopped disbursing loan



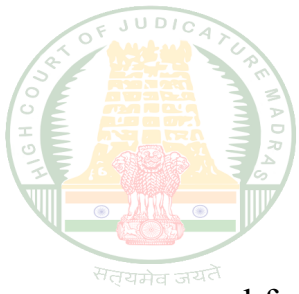
Crl.O.P.No. 26111 of 2023

WEB COPY

from June 2013. Thereafter, since no steps was taken to liquidate the assets or to revive the project, the outstanding which was Rs.1,400 crores increased and finally SPL was subjected to order of liquidation the National Company Law Tribunal, Chennai by order dated 28.01.2019. It had been sated that based on another Forensic Audit Report, the liquidator of SPL had filed an application under Section 66 of IBC 2016 alleging fraud but the said application had been rejected by NCLT.

5. The case of the prosecution is that SPL had awarded contracts to construct the 2 X 210 MW power plant to entities owned and controlled by the petitioner, namely, Vinayaga Infra Ltd., B.K.Power and Machinery, BLS Power Solutions, RR Tools Pvt. Ltd. However, this allegation had been very emphatically denied by the petitioner. It had been stated that the suppliers / contractors were BHEL and other contractors and not the aforementioned companies.

6. It is the further allegation of the prosecution that the petitioner had incorporated several shell companies and there was only paper transactions without actual movement of goods and these companies were



Crl.O.P.No. 26111 of 2023

WEB COPY

used for adjustment of turnover, for inflation of the turnover and to divert the funds and loan amounts and finally to bring them back as contribution of the promoter to the companies. This allegation was also denied and disputed by the petitioner.

7. There was a further allegation that the funds from SPL were transferred to Surana Mines and Minerals at Singapore to acquire coal mines in Indonesia, but again it was stated that the entire allegation is baseless.

8. It is contended by the petitioner that not even a single rupee could be termed or identified as proceeds of crime. It is therefore contended that since the petitioner had participated and co-operated during the investigation and is under incarceration from 12.07.2022, he must be released on bail. It had also been stated that there was no material available to hold that the petitioner would flee from justice or would tamper with evidence or threaten witnesses. It had been stated that all the other accused had been granted bail. The petitioner also undertook that he would co-operate with the investigating agency at every point of time.

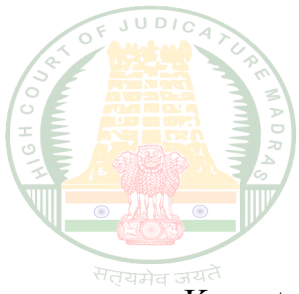


CrI.O.P.No. 26111 of 2023

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9. A counter affidavit had been filed on behalf of the respondent wherein it had been stated that the petitioner is the Managing Director of Surana Power Ltd., (SPL) and also of another company, Surana Industries Ltd., (SIL) and also the promoter of Surana Corporation Ltd., (SCL). The three companies are engaged in the businesses of steel, power and gold respectively. It had been stated that the petitioner had misappropriated the credit facilities extended by the banks and had misappropriated them for personal gain and it was alleged that the total amount involved in all the three companies was Rs.3,986.08 crores. It had been stated that so far as SPL is concerned, the total principal outstanding was Rs.1,495.76 crores. It had been stated that all the Directors and promoters had indulged in manipulation of books of accounts and in transactions with shell companies to increase the turn over to get more credit facilities from the banks and thereafter misappropriating the said amounts, thus indulging in the offence of money laundering.

10. It was stated that SPL was incorporated in March 2008 and the petitioner was the Managing Director of the Company. It had been stated that a proposal was put forward to put up a steel plant at Raichur in



CrI.O.P.No. 26111 of 2023

Karnataka with 25 MW captive power plant.

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11. In the counter affidavit, specific details had been given with respect to the transactions with various companies which were alleged to be under the control of the petitioner. It was also stated that a number of dummy companies were incorporated by the petitioner and in these companies only paper transactions were made. It was also stated that the petitioner had diverted the funds from Surana group of companies to the dummy companies and later the amounts were brought back to the Surana group of companies but in the process, misappropriation of funds had taken place. The specific details about the nature of the transactions had been given in the counter. The method in which the money was laundered by manipulating the accounts was also stated.

12. It was very specifically stated that the petitioner arranged funds through three shell companies which were also named. It was stated that during the course of investigation, movables and immovable properties to a total value of 249 crores alone had been secured and attached. It had been stated that the petitioner is an accused in Special C.C.No. 9 of 2022,



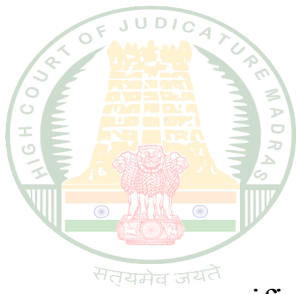
CrI.O.P.No. 26111 of 2023

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Special C.C.No. 10 of 2022 and Special C.C.No.11 of 2022. It had been stated that there is every possibility of the petitioner committing the same offence again and of tampering the evidence and influencing the witnesses. It had also been stated that the companies have been investigated by SFIO and CBI. It had also been stated that the petitioner is not entitled for bail since no case has been made out to hold that there are reasonable grounds to believe that the petitioner would be held not guilty on conclusion of trial. It was therefore, urged that the petition should be dismissed.

13. Heard arguments advanced by Mr.V.Raghavachari, learned Senior Counsel for the petitioner and Mr.ARL.Sundaresan, learned Additional Solicitor General for the respondent.

14. The learned Senior Counsel for the petitioner pointed out that the main allegation of the respondent is that the petitioner, in his capacity as Managing Director of Surana Power Ltd., had presented a project for construction of 25 MW electric plant at Raichur in Karnataka and in this regard had sought loan from a consortium of Banks. It is seen from the records that more than 1,300 crores had been sanctioned. It is however the

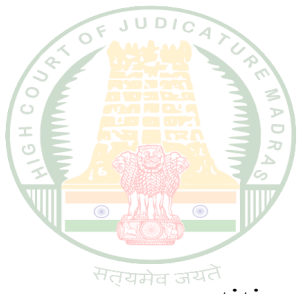


Crl.O.P.No. 26111 of 2023

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specific case of the respondent that towards the said project the said contracts were granted to other companies which were under the direct control of the petitioner. This allegation is denied by the petitioner. But that allegation is a matter of evidence. But it has to be noted that the allegation that those companies were under the direct control of the petitioner is a very serious allegations, since any contract issued has to be done only by a transparent policy being issued.

15. The next aspect is about the creation of shell companies. A detailed list has been given in the counter affidavit about the various shell companies which are alleged to have been incorporated by this petitioner. The modus operandi was to award sub-contracts to companies which are controlled by the petitioner in the first place. It is to be noted that this would necessitate diversion of the loan amount to the various shell companies and thereafter, re-route them back to the petitioner. It is thus seen that there was systematic white washing of the money. It was laundered again and again. It is also seen that though it is contended that two forensic audits had been conducted and no irregularity had been found, third audit was conducted over the affairs of the companies and the report is not to the advantage of the



CrI.O.P.No. 26111 of 2023

petitioner. All these aspects require deep investigation.

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16. In 2023 SCC OnLine SC 645 [Y.Balaji Vs. Karthik Desari & Anr. Etc.,] the Hon'ble Supreme Court while examining the scope of Section 3 of PML Act had held as follows:-

“95. Section 3 of the Act which defines the offence of money- laundering reads as follows:

“3. Offence of money-laundering.—Whosoever 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 including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

Explanation.—For the removal of doubts, it is hereby clarified that,—



(i) a person shall be guilty of offence of money- laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—

- (a) concealment; or*
 - (b) possession; or*
 - (c) acquisition; or*
 - (d) use; or*
 - (e) projecting as untainted property; or*
 - (f) claiming as untainted property, in any manner whatsoever;*
- (ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.”*

96. If the main part of Section 3 is dissected with forensic precision, it will be clear



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CrI.O.P.No. 26111 of 2023

that Section 3 addresses itself to three things (we may call them 3 'P's) namely, (i) person; (ii) process or activity; and (iii) product. Insofar as persons covered by Section 3 are concerned, they are, (i) those who directly or indirectly attempt to indulge; or (ii) those who knowingly assists; or (iii) those who are knowingly a party; or (iv) those who are actually involved. Insofar as process is concerned, the Section identifies six different activities, namely (i) concealment; (ii) possession; (iii) acquisition; (iv) use; (v) projecting; or (vi) claiming as untainted property, any one of which is sufficient to constitute the offence. Insofar as product is concerned, Section 3 identifies "proceeds of crime" or the property representing the proceeds of crime as the product of the process or activity."

17. In the instant case, the allegation against the petitioner with respect to diversion and misappropriation of funds is that SPL had borrowed funds of Rs.1,4945.76 crores and had not even started the 2 X 210 MW power plant at Raichur in Karanataka. The account was also declared as



Crl.O.P.No. 26111 of 2023

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NPA. It is also seen that for construction, SPL had awarded sub-contracts to entities which were, according to the respondent, controlled by the petitioner. Further very specifically shell companies were incorporated and there was only paper transaction reflecting the turn over. The amounts diverted back to the companies showing them as contribution of the petitioner. All these are series allegations.

18. The further allegation is that the funds were transferred to Surana Mines and Minerals at Singapore for acquiring coal mine in Indonesia but no such mines had been acquired.

19. All these aspects very clearly point out that the petitioner had indulged in systematic white washing of the loan amounts received from the banks. They had been re-routed as if they were his contribution to various companies.

20. In *AIR 2016 SC 106 [Gautam Kundu V. Manoh Kumar]*, the Hon'ble Supreme Court had observed as follows:-



Crl.O.P.No. 26111 of 2023

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“33..... We have noted that Section 45 of the PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. As mentioned earlier, Section 45 of the PMLA imposes two conditions for grant of bail, specified under the said Act. We have not missed the proviso to Section 45 of the said Act which indicates that the legislature has carved out an exception for grant of bail by a Special Court when any person is under the age of 16 years or is a woman or is a sick or infirm. Therefore, there is no doubt that the conditions laid down under Section 45A of the PMLA, would bind the High Court as the provisions of special law having overriding effect on the provisions of Section 439 of the Code of Criminal Procedure for grant of bail to any person accused of committing offence punishable under Section 4 of the PMLA, even when the application for bail is considered under Section 439 of the Code of Criminal Procedure. ”



Crl.O.P.No. 26111 of 2023

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21. It is thus seen that the petitioner will have to satisfy two conditions for grant of bail namely, that there are reasonable grounds that the petitioner would be held not guilty and that there must also be a trust that the petitioner would not indulged in similar activities in future. Unfortunately, the petitioner had not satisfied either of the two conditions. The Petition stands dismissed.

28.03.2024

vsg

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Index:Yes/No

Neutral Citation:Yes/No

Speaking order : Yes/No

To

The Assistant Director

Directorate of Enforcement

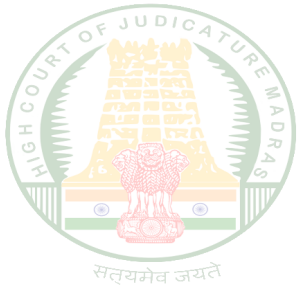
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Crl.O.P.No. 26111 of 2023

C.V.KARTHIKEYAN, J.

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Pre Delivery Order made in
Crl.O.P.No. 26111 of 2023

28.03.2024

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