

**IN THE COURT OF THE ADDITIONAL SPECIAL SESSIONS JUDGE,
(SPE/CBI)-III, ERNAKULAM**

Present :-

SRI.SHIBU THOMAS, SPECIAL JUDGE.

Tuesday the 13th day of February, 2024/ 24th Magha, 1945.

Crl. M.P. No. 172/2024

in

SC PMLA 04/2023

Petitioner/Accused No.32 :

Shri. Deepak Sathyapalan,
aged 46 years, S/o. P.A. Sathyapalan,
Polakkulathu House, Market Road,
Kacheripady, Ernakulam-682018.

Represented By

:

Adv. Basil Mathew.

Respondent/Complainant :

Assistant Director, Directorate of
Enforcement, Government of India,
Cochin Zonal Office, Kanoos Castle,
A.K. Seshadri Road, (Mullassery
Canal Road West, Cochin -682011.

Represented By

:

Adv.M.J. Santhosh
Spl. Public Prosecutor,
Directorate of Enforcement

This petition coming on for hearing on 13th day of February, 2024 in the presence of Counsel on both sides having stood over for consideration on the same day the Court passed the following:-

ORDER

This bail application filed by A32, u/s 439 Cr.PC.

2. The prosecution case is that petitioner along with other accused in this case, committed offences defined u/s 3 punishable u/s 4 of PMLA. The predicate offences as stated in the FIR No. 650/2021 registered on 14.07.2021 by Irinjalakkuda Police Station against the petitioners u/s 406, 420, 409, 465 r/w 34 of IPC. Since the offences u/s 420 of IPC in the predicate offence is a scheduled offence under PML Act 2002 and ECIR has been recorded on 02.08.2021 with ECIR No.ECIR/KCZO/45/2021. The said crime registered by Irinjalakkuda Police Station has been subsequently transferred to Crime Branch dated 21.07.2021 and the Crime Branch re-registered the case as crime No.165/ CB/TCR/R/ 2021 by SPCB, Thrissur.

3. The crux of the prosecution case is that, the petitioners in collusion with high profile persons including politicians, conspired to misappropriate the funds of the Karuvannur Service Co-operative Bank and

to defraud the depositors of their hard earned money, they created fictitious borrowers, manipulated the officials, violated the bye-laws of Co-operative Bank, contravened the provisions and rules under the Co-operative Societies Act and disregarded the circulars of Registrar of Societies, to obtain illegal loans and to acquire property involved in money laundering and their act constitute the offence of money laundering u/s.3 of PML Act, 2002.

4. The case of the petitioner is that he is totally innocent of the offences alleged against them. He is prepared to execute bond with sufficient sureties and they are ready to abide any condition imposed by this Court. During argument, the learned counsel for the petitioner submitted that this petitioner was not arrested during investigation; he was available during investigation and has extended full co-operation with the investigation; there is no possibility of tampering of evidence or influencing witnesses or fleeing from justice since all evidences in this case are documentary in nature which cannot be tinkered by the accused/petitioners. It is further submitted that in compliance of the summons issued by this Court, he appeared and he is ready to furnish sufficient sureties to release them on bail. He ready to co-operate with the

further investigation if any and also to appear in this Court as and when directed. For these grounds, the petitioner prayed to release him on bail.

5. On the other hand, the learned Special Prosecutor appearing for the complainant/respondent would oppose the said applications by contending that he is not entitled to be released on bail in view of the twin conditions provided u/s. 45 of PMLA. It is also submitted that the petitioner failed to appear before the investigating officer though special instructions were given to appear before the investigating officer. Since he is a person not co-operated with the investigation in this case, he is not entitled to be released on bail. It is further submitted that since there are serious allegations against the petitioner and other accused and the matter is pending for trial, they cannot be released on bail and prayed to dismiss the petition at this stage.

6. Heard both sides.

7. I have gone through the records and heard elaborately. There are indeed serious allegations against the petitioner. However, in this case, this Court took cognizance on the complaint submitted by the complainant/respondent. The matter is pending for trial. The petitioner was not arrested during the investigation of PMLA case. The complainant

does not have a case against him, that the petitioner neither participated in nor co-operated with the investigation. The investigating officer even after filing the complaint, did not apply for the custody of the petitioner. The statement of the petitioner u/s.50 of PML Act was recorded at several times. The learned counsel for the petitioner submitted that as such the petitioner is not required to pass the test of Sec. 45 of PML Act at this stage and it is only applicable in a case where the petitioner filed a petition either u/s. 439 of the Code after arrest during investigation or u/s.438 of Code apprehending their arrest during investigation. It is an admitted case of the complainant that the applicant was not arrested during investigation. This application is made while the petitioner appeared before Court on summons.

8. In Rana Kapoor's case, the Hon'ble High Court of Delhi considered similar facts, Sec. 170 of Cr.P.C and sec. 45 of PML Act as well as the judgment of the Hon'ble Supreme Court in Satinder Kumar Antil's case and granted bail to the petitioners of that case. It is pertinent to note in the case on hand that no attempt was made by the complainant to arrest the petitioners during the investigation stage and no petition is filed in this Court seeking custody of any of them. Bearing in mind the principles laid

down in Satinder Kumar Antil's case and Rana Kapoor's case, I am of the view that the restrictions in Sec. 45 of PML Act is not a ground to reject the bail applications filed by the petitioners at this stage. The learned Prosecutor argued that investigation into the embezzled amount by the petitioners is still ongoing and presence of accused are indispensable for the purpose of interrogation and confrontation and there is chance of tampering the evidence. He further argued that petitioner failed to appear before the investigating and failed to co-operate with the investigation. The apprehension of the prosecution can be alleviated by imposing conditions for which petitioner is willing, ready and amenable. Therefore, the petition is allowed and petitioner is released on bail with following conditions:-

1. Petitioner shall execute bond for Rs.1,00,000/- (Rupees One lakh only) each with two solvent sureties each for the like amount.
2. Petitioner shall not leave the State without prior permission of the Court.
3. He shall produce his original passport within two weeks. If he is not in possession of passport, file an affidavit to that effect.
4. He shall co-operate with the investigating agency.
5. He shall appear before the Investigating Officer as and when required till completion of the investigation into the embezzled amount by accused.

6. He shall appear before the investigating officer in every Mondays for a period of 15 days from today.

7. He shall not influence, intimidate any of the witnesses and shall not interfere with the trial of this case.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open Court on this the 13th day of February, 2024.

Sd/-

Shibu Thomas
Special Judge, (SPE/CBI) – III
Ernakulam

Appendix: Nil.

Id/-

Special Judge, (SPE/CBI) – III

Typed by:-

Com by:-

