

the file of the Guwahati Zonal Office of the Enforcement Directorate, Government of India, registered under the provisions of the Prevention of Money Laundering Act, 2002 (for brevity, 'the Act of 2002').

[2] By order dated 28.10.2021, this Court directed that no coercive measures should be initiated against the petitioner as anticipatory bail had already been granted to him in relation to FIR No.5(3) 2018 dated 24.03.2018 on the file of the V & AC Police Station, Manipur. The petitioner was, however, directed to co-operate fully with the investigation/inquiry.

[3] Heard Mr. Salman Khurshid, learned senior counsel, appearing along with Mr. N.Ibotombi Singh, learned senior counsel, for the petitioner; and Mr. S.Suresh, learned panel counsel for the Enforcement Directorate.

[4] ECIR No.02/GWZO/2020 was registered by the Guwahati Zonal Office of the Enforcement Directorate (for short, 'ED') on 16.03.2020 basing on FIR No.5(3) 2018 dated 24.03.2018 on the file of the Vigilance & Anti-Corruption Police Station, Manipur. This FIR pertained to offences under Sections 420 and 120-B IPC along with Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. These alleged offences related to award of certain works by Loktak Development Authority, of which the petitioner was the Chairman at the relevant point of time. The award of these works was stated to have been done in violation of the prescribed norms resulting in wrongful financial loss to the Government and the exchequer. The fresh case was registered by the ED in 2020 on the ground that the information/documents pertaining to FIR No.5(3) 2018 dated 24.03.2018 indicated that the accused

persons, including the petitioner, had generated and laundered proceeds of crime and a *prima-facie* case of money laundering, under Section 3 of the Act of 2002, was made out. The petitioner was granted anticipatory bail in relation to FIR No.5(3) 2018 dated 24.03.2018 by this Court, *vide* order dated 26.08.2019 passed in AB No.11 of 2018, and the said order has attained finality. He now seeks similar relief apropos the new case.

[5] Mr. Salman Khurshid, learned senior counsel, would contend that as all the documents pertaining to the events in question have already been seized by the police in connection with FIR No.5(3) 2018 and as the petitioner willingly appeared in response to the summons issued by the ED and supplied the additional documents that were requested, there is no need for his custodial interrogation. He would submit that the petitioner will continue to co-operate with the investigation/inquiry and that he should not be subjected to incarceration at this stage.

[6] *Per contra*, Mr. S.Suresh, learned panel counsel, would argue that the present case involves economic offences and such offences need to be dealt with differently. He would assert that abuse of his official position by the petitioner led to the commission of such offences and the same should be treated all the more seriously. He would point out that the petitioner, being the former Chief Minister of the State and the Chairman of Loktak Development Authority, allowed award of works relating to Loktak Lake in utter violation of the prescribed procedure, resulting in monumental financial losses. He would contend that the petitioner is not entitled to pre-arrest bail and that grant of such

relief would hamper the investigation as the petitioner, owing to his position and status, may tamper with the evidence and witnesses.

[7] Economic offences constitute a class apart and need to be viewed with a different approach in the matter of bail, as such offences are normally sourced in deep-rooted conspiracies involving huge loss of public funds and need to be looked at seriously, being grave offences that affect national economy as a whole and posing a serious threat to the financial health of the country [See the observations of the Supreme Court to this effect in **Y.S.Jagan Mohan Reddy vs. Central Bureau of Investigation {(2013) 7 SCC 439}** and **Rohit Tandon vs. Directorate of Enforcement {(2018) 11 SCC 46}**]. As was pointed out in **Y.S.Jagan Mohan Reddy** (*supra*), while granting bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction would entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of witnesses being tampered with, the larger interests of the public/State and other similar considerations.

[8] Similar parameters would have to be kept in mind while considering an application for pre-arrest bail under Section 438 Cr.P.C. in relation to offences under the Act of 2002. Notably, in **P.Chidambaram vs. Directorate of Enforcement {(2019) 9 SCC 24}**, a two Judge bench of the Supreme Court had observed that power under Section 438 Cr.P.C., being an extraordinary remedy, has to be exercised sparingly; and more so, in cases of economic offences as

such offences stand apart as a different class inasmuch as they affect the economic fabric of the society. *Per* the Supreme Court, the privilege of pre-arrest bail should be granted only in exceptional cases and such discretion has to be properly exercised by the Court, after application of mind as to the nature and gravity of the accusations, the possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. The Supreme Court further observed that anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the Court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.

[9] Shortly thereafter, a Constitution Bench had occasion in **Sushila Aggarwal and others vs. State (NCT of Delhi) and another {(2020) 5 SCC 1}** to consider the entire gamut of issues that arise in the context of grant of anticipatory bail. Having reviewed an abundance of case law on the subject, including **P.Chidabaram** (*supra*), the Supreme Court laid down the principles to be followed in relation to exercise of power under Section 438 Cr.P.C. Significantly, the Bench held that anticipatory bail could be granted, having regard to the circumstances, in respect of all offences unless there is a statutory bar or restriction in respect of such offence(s). The Bench observed that an application seeking anticipatory bail should contain bare essential facts relating to the offences; why the applicant reasonably apprehends arrest; and his side of the story. These, according to the Supreme Court, are essential for the Court which considers his application so as to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to

be imposed. The Bench pointed out that while considering an application for grant of anticipatory bail, the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation or tampering with the evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The Court was held to be justified in imposing conditions and it was observed that the need to impose restrictive conditions would have to be judged on a case-to-case basis, depending upon the material produced by the State or the Investigating Agency.

The Supreme Court also held that the Court should be generally guided by considerations, such as nature and gravity of the offence, the role attributed to the applicant and the facts and circumstances, as grant of anticipatory bail is a matter of discretion and it is equally a matter of discretion, depending upon the facts and circumstances, for the Court to impose conditions. The Bench pointed out that an order of anticipatory bail would not, in any manner, limit or restrict the role and duty of the police or Investigating Agency to investigate into the charges against the person who sought pre-arrest bail and it would always be open to the police or Investigating Agency to move the Court, that granted pre-arrest bail, for arrest of the accused in the event of violation of any condition, including non-cooperation during investigation, evasion, intimidation of witnesses or offering inducement to witnesses with a view to influence the outcome of the investigation or trial, etc.

[10] In the light of the aforesaid legal scenario, certain pertinent facts in the case on hand require to be noted.

The petitioner is a person of political stature, a former Chief Minister of the State and the present Leader of the Opposition. He has deep roots in society and there are no grounds to suspect that he would distance himself from the reach of the law. The events that formed the basis of the alleged offences date back to the years 2008-2009 and are already the subject matter of FIR No. 5(3) 2018 dated 24.03.2018. The petitioner secured anticipatory bail in relation to the said FIR in August, 2019, and the said order remains operative as on date. Registration of the said FIR is not a bar for initiation of fresh proceedings under the Act of 2002 independently and it appears that this step was taken on 16.03.2020, *vide* ECIR No.02/GWZO/2020 on the file of the Guwahati Zonal Office of the ED. Summons dated 28.09.2021 were issued to the petitioner pursuant to such registration and, admittedly, he appeared before the ED on 22.10.2021 in response thereto. The petitioner brought out all the relevant facts in his petition and also stated the reason as to why he apprehends arrest.

[11] Significantly, in his affidavit-in-objection, the Assistant Director, ED, Sub-Zonal Office, Imphal, affirmed existence of the threat of arrest by pointing out that, ordinarily, arrest would be part of the investigation process and that his office would require custodial interrogation to record statements and provide evidence. That apart, the fact that he reserved the right of the ED to exercise its power of arrest under Section 19 of the Act of 2002 if reason existed to believe, at the relevant time, that the petitioner is guilty of the offence of money laundering, buttresses the perception of the threat of arrest. However, this statement is purely self-serving as it is not for the ED to determine the

petitioner's guilt or innocence as that would be entirely within the domain of the Special Court that would try the case. Reliance was also sought to be placed by the Assistant Director on the twin conditions contained in Section 45 of the Act of 2002, but the observations of the Supreme Court in paragraph No.42 of the decision rendered in **Nikesh Tarachand Shah vs. Union of India & another** **{(2018) 11 SCC 1}**, make it amply clear that Section 45 has no application to grant of anticipatory bail and it would apply to grant of regular bail after an arrest is made under Section 19 of the Act of 2002.

The Assistant Director further stated that the ED was of the firm belief that the petitioner would tamper with evidence, witnesses and might attempt to dispose of the proceeds of crime. Though, these rather general statements have been made in the affidavit-in-objection, they ignore the passage of time and the crucial fact that the very registration of this case by the ED was on the strength of the information/documents in FIR No.5(3) 2018 dated 24.03.2018 and such documents have already been seized. In fact, in the order dated 26.08.2019 passed in the petitioner's AB No.11 of 2018, this Court noted that the entire evidence in the case would be based on documents and the same had already been seized and produced before the jurisdictional Court. It may also be noted that by 05.08.2019, the date of conclusion of the hearing of the petitioner's AB No.11 of 2018, 21 witnesses had already been examined in relation to FIR No.5(3) 2018 dated 24.03.2018 and the investigation of the case was proposed to be completed within three months. It was reported to the Court that the investigation of the case was going on full-swing. This Court therefore

went on to observe that there was no chance of any tampering with the evidence.

[12] At this stage, it would be premature and wholly inappropriate for this Court to go into the issue of the petitioner's guilt or otherwise *vis-à-vis* any wrongdoing in the award of the subject works in 2008-2009. It is for him to face the process of law that has been initiated and prove his innocence. Presently, all that is required to be considered is whether he would be entitled to grant of pre-arrest bail.

The irrefutable fact is that the present case originated from FIR No.5(3) 2018 dated 24.03.2018 and the evidence seized in connection therewith is already in the custody of the authorities. The petitioner has also been granted anticipatory bail in relation to the said FIR in August, 2019. Documentary evidence, which would be the fulcrum of the case, having already been secured and given the passage of time since registration of the earlier case, there is no manifest risk of the petitioner tampering with evidence or witnesses at this late stage. Further, his status and firm roots in society being undisputed, the petitioner is not shown to be a flight-risk. This Court finds no tangible reason to believe that he would abscond or try to evade the law and, in any event, the same can be guarded against by imposing restrictions. Further, as he has presented himself willingly before the ED after receiving the summons and Mr. Salman Khurshid, learned senior counsel, would assure this Court that he would continue to co-operate with the investigation and supply all such additional documents that are in his possession and may be sought during the

investigation, this Court does not find any grounds warranting custodial interrogation at this stage in relation to events that took place long ago.

[13] The bail petition is accordingly allowed.

The petitioner shall be released on bail forthwith in the event of his arrest in connection with ECIR No.02/GWZO/2020 dated 16.03.2020 on the file of the Guwahati Zonal Office of the Enforcement Directorate, Government of India, subject to the following conditions:

- a. The petitioner shall execute a personal bond for a sum of ₹ 1 lakh (Rupees One Lakh) only and shall also furnish two sureties for a like sum each to the satisfaction of the Assistant Director, Sub-Zonal Office of the Enforcement Directorate at Imphal, Manipur.
- b. The petitioner shall continue to co-operate with the investigation by presenting himself for interrogation as and when required and shall produce documents in his possession, if any, as and when required by the Enforcement Directorate.
- c. In the event, the petitioner fails to do so, the Enforcement Directorate would be at liberty to approach this Court and seek cancellation of this order.
- d. The petitioner shall not tamper with the evidence in any manner or seek to influence any witness; be it by threat, intimidation or by inducement or promise.

- e. The petitioner shall not leave the country without the permission of the Enforcement Directorate. He shall deposit his Passport with the Assistant Director, Sub-Zonal Office of the Enforcement Directorate, Imphal, Manipur, within two days from the date of receipt of a copy of this order.

A copy of this order shall also be communicated online/through WhatsApp to the learned counsel.

CHIEF JUSTICE

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