

..1..

MHCC020023192022



**IN THE COURT OF SPECIAL JUDGE FOR PMLA
FOR GREATER BOMBAY AT BOMBAY**

**ORDER BELOW EXHIBIT-01
IN
PMLA REMAND APPLICATION NO.184 OF 2022**

The Directorate of Enforcement]
(Through: Assistant Director,]
Zonal Offic-I, Kaiser-I-Hind Building,]
Ballard Estate, Fort, Mumbai – 400 001.)] Applicant.

Versus

Mohammed Nawab Mohammed Islam]
Malik @ Nawab Malik]
Aged: 62 years, Occu.: Politician, MLA,]
R/o.: Noor Manzil, Kurla (West), Mumbai.] Accused.

Appearance:

Ld. ASG Mr. Anil Singh a/w ld. SPP Mr. Hiten Venegaonkar a/w ld.
Adv. Mr. Aditya Thakker and SPP Mr. Gonsalves for the Applicant/ED.

Ld. Sr. Counsel Mr. Amit Desai a/w. Ld. Adv. Mr. Gopal Shenoy, ld.
Adv. Mr. Taraq Sayed and ld. Adv. Ms. Bhumika Gada for the Accused.

**CORAM: H.H. THE SPECIAL JUDGE (PMLA)
SHRI R.N. ROKADE
(CR NO.54)**

DATE : 23rd February, 2022.

ORAL ORDER
(Dictated and pronounced in open Court)

This is a Remand Application filed by Enforcement

..2..

Directorate for custody of accused Mohammed Nawab Mohammed Islam Malik @ Nawab Malik (hereinafter referred to as 'accused' for the sake of convenience) for the purpose of investigation under the provisions of the Prevention of Money Laundering Act, 2002 (hereinafter referred as 'PMLA, 2002' for short).

Shorn of superfluities, the prosecution case is as under:

2. A FIR bearing no.RC-01/2022/NIA/MUM, dated 03.02.2022 has been registered by the NIA against Dawood Ibrahim Kaskar @ Dawood Ibrahim, who has been designated as a Global Terrorist by United Nations under United Nations Security Resolution 1267 and also listed under the Fourth Schedule of the UAPA Act, 1967. He runs an international terrorist network namely D-Company, which is involved in various terrorist/criminal syndicate, money laundering, circulation of FICN, unauthorized possession/acquisition of key assets for raising terror funds and is working in active collaboration with international terrorist organization including Laskhar-e-Taiba (LeT), Jaish-e-Mohammad (JeM) and Al Qaeda (AQ).

3. Dawood Ibrahim after leaving India started controlling his aforementioned criminal activities in India through his close associates such as Haji Anees @ Anees Ibrahim Shaikh, Shakeel Shaikh @ Chhota Shakeel, Javed Patel @ Javed Chikna, Ibrahim Mushtaq Abdul Razzaq Memon @ Tiger Memon, Iqbal Mirchi (deceased), Haseena Parker (deceased) and others.

4. The said D-Company under Dawood Ibrahim Kaskar and his aforementioned associates, has established a special unit for

..3..

striking terror in the people of India by attacking eminent personalities in India including political leaders, businessmen and others by using explosives/firearms and other lethal weapons and is planning to instigate and trigger incidents which may lead to the onset of violence in various parts of India, including National Capital Region, Mumbai and other major cities in India.

5. In the said FIR by NIA, Dawood Ibrahim Kaskar @ Dawood Bhai, Haji Anees @ Anees Ibrahim Shaikh, Shakeel Shaikh @ Chhota Shakeel, Javed Patel @ Javed Chikna, Ibrahim Mushtaq Abdul Razzaq Memon @ Tiger Memon have been mentioned as named accused.

6. On the basis of said FIR, an ECIR dated 14.02.2022 has been recorded by the Directorate vide ECIR No.ECIR/MBZO-1/10/22.

7. On the basis of FIR No.190/2017 dated 18.09.2017 registered at Kasarvadavli Police Station, Thane, against Iqbal Kaskar, Mumtaz Shaikh and Israr Ali Jamil Sayyed for the offence of extortion, an ECIR No.ECIR/MBZO/1/04/2017 was recorded by Enforcement Directorate on 26.09.2017.

8. On the basis of various FIRs by Mumbai Police, an ECIR was recorded by MBZO-I/08/19 against Iqbal Mirchi and others. In order to cause effective investigation against the “Dawood gang” and their associates as a whole, PMLA case vide No.ECIR/MBZO-1/10/22 against Dawood Ibrahim, ECIR/MBZO-I/04/2017 against Iqbal Kaskar (brother and associate of Dawood Ibrahim) and ECIR/MBZO-

..4..

I/08/19 against Iqbal Mirchi and others (another associate of Dawood Ibrahim) have been merged and a combined investigation has been initiated in the matter. The present ECIR is a fresh ECIR registered against the accused.

9. During the investigation, Enforcement Directorate conducted search on the premises of associates of Dawood Ibrahim and Chhota Shakeel and various incriminating materials have been seized under section 17 of PMLA. In addition to this, various statements of witnesses have been recorded under section 50 of the PMLA.

10. It is revealed that the accused and Haseena Parker (sister of Dawood Ibrahim) planned to usurp property bearing survey no.336, 336/1 to 25, 338 at village Kurla-1, Mumbai, lawfully belonging to Munira Plumber and her mother. The accused was already occupying 'Kurla General Store' in the said premises. It is further alleged that the accused took control of Solidus Investments Pvt. Ltd. from Patels becoming tenants of the godown/shed in the said property. He alongwith Haseena Parker, Salim Patel and Sardar Khan hatched a criminal conspiracy and illegally took control of the said property as agreed by them in the meetings. The accused illegally paid money to get absolute control and ownership of the said property. He also introduced fake tenants in the said property. It is alleged that the accused in connivance with D-gang members i.e. Haseena Parker, Salim Patel and Sardar Khan hatched a criminal conspiracy for usurping the prime property having market value of around Rs.300 crores actually belonging to Munira Plumber. Thus, it

is proceeds of crime as defined under section 2(1)(u) of PMLA.

11. In the background of the aforesaid allegations, the ld. ASG contended that the role of the accused is crucial for investigation under PMLA. Prima facie, he is guilty of the offence of money laundering as defined under section 3 of the PMLA. His custodial interrogation is required for further investigation in the matter. He is required to be confronted with other persons whose statements have been recorded during investigation under PMLA. On the material possessed by the Enforcement Directorate, the accused is guilty of the offence of money laundering. He has been arrested today i.e. on 23.02.2022 at about 14.45 hours under section 19 of PMLA, 2002. Having regard to the reasons mentioned in the application, it is prayed for granting custody of the accused to the Enforcement Directorate for 14 days.

12. The accused is produced before the Court at about 4.50 p.m. He has stated that he is arrested from his house without issuing summons. He further submitted that he was taken forcibly from his house and detained in the Enforcement Directorate Office. Officer took his signature on the summons. Except these, he has no complaints of ill-treatment at the hands of Enforcement Directorate Officials.

13. The ld. Senior Counsel Mr. Amit Desai for the accused vehemently urged that there is no material for satisfaction that the accused is guilty of the offence of money laundering. It is urged that most of the transactions took place in the year 1999 before PMLA was

enacted. The case is hit by Article 20(1) of the Constitution, which prohibits retrospective application of the PMLA. The accused is not member of Dawood gang. He is not named in the predicate offence. The case is politically motivated to create perception that the accused who is Elected Representative, is involved in anti-national activities. It is further urged that the accused is illegally arrested by the Enforcement Directorate early in the morning without issuing any notice as per section 41A of the Cr.P.C.

14. To bolster up the aforesaid submission, reliance is placed upon the ruling of the Hon'ble Supreme Court in the case of **“Arnesh Kumar Vs. State of Bihar And Another”, (2014) 8 Supreme Court Cases 273**, wherein it was held that, *'Before a Magistrate authorises detention under Section 167 CrPC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty-bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that the condition precedent for arrest under Section 41 CrPC has been satisfied and it is only thereafter that he will authorise the detention of an accused'*. Reliance is also placed upon the ruling of the Hon'ble Madras High Court in the case of **“State Vs. Tr. Nakeeran Gopal”, 2019 SCC OnLine Mad 42**.

15. An endeavour is made to show that section 41A of the Cr.P.C. is applicable to all the cases where the offence is punishable with imprisonment for a term which may be less than 7 years or which may extend to 7 years. As the applicant was illegally arrested, he prayed for rejection of the prayer of the Enforcement Directorate.

16. Perused the application under section 65 of PMLA carefully. It appears from the report that an FIR bearing no.RC-01/2022/NIA/MUM, dated 03.02.2022 has been registered by the NIA against Dawood Ibrahim Kaskar @ Dawood Ibrahim and his associates. On the basis of the said FIR, present ECIR No.ECIR/MBZO-1/10/22 is registered to trace out proceeds of crime. It appears from the report that during the investigation, statements of various witnesses were recorded by the Enforcement Directorate. It appears from the statement of Munira Plumber that she owns plot admeasuring approx. 3 acres known as Goawala Compound, LBS Marg, near Phoenix Market, Survey No.336, 336/1 to 25, 338 of village Kurla-1, Mumbai. The said property was her ancestral property inherited by her father. After demise of her father, she alongwith her mother succeeded to the said property. It appears from her statement that she has not sold the property to the accused. It appears from the statement of Sardar Shah Wali Khan that Haseena Parker was actual owner of the said property. There were many disputes and encroachments over the said property. Prima facie, the aforesaid statements shows that the accused usurp the said property through his brother Aslam Malik. Sardar Shah Wali Khan stated that the accused and Hasina Parker were trying to grab larger piece of the

property. Prima facie, from the statements of the witnesses, it is alleged that the accused usurp the said property which belongs to Munira Plumber and her mother.

17. At this juncture, it is necessary to note the relevant provisions of section 3 and 19 of PMLA, which read as under:

“Section-3: Whosoever directly or indirectly attempt to indulge or knowingly assists or 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.”

“19. Power to arrest. — *(1) If the Director, Deputy Director, Assistant Director, or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him the grounds for such arrest.*

(2) The director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section to the Adjudicating Authority, in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (1) shall within twenty-four hours, be taken to a [Special Court or] Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall

exclude the time necessary for the journey from the place of arrest to the [Special Court or] Magistrate's Court.”

18. As per section 3, the offence of money laundering is continuing in nature and it continues till such time a person enjoying the proceeds of crime by its concealment or possession or acquisition or use of untainted property or use or projecting the same as untainted property.

19. In the light of aforesaid exposition of law, reverting to the facts of the case, prima facie, there is material to indicate that the accused is in possession of the said property. Therefore, I am not inclined to accept the submission advanced by the ld. Senior Counsel for the accused that no offence is made out against the accused under section 3 of the PMLA. Prima facie, an Assistant Director, on the basis of material in his possession, has reason to believe that the accused has committed an offence under section 3 of the PMLA. Arrest order indicates that grounds of arrest are communicated to the accused. It seems that there is substantial compliance under section 19 of the PMLA. Therefore, I am not inclined to accept the submissions advanced on behalf of the ld. Counsel for the accused that accused is illegally arrested.

20. It appears from the report that accused has not co-operated with the investigation on the crucial aspect. Prima facie, there are reasonable grounds to believe that the accusations are well-founded under PMLA. The investigation is at the nascent stage. Having regard to the serious allegations and statements in support of

..11..

it, I am of the considered view that custodial interrogation of the accused is necessary to unearth all the ramifications involved in the crime. It is imperative to note that custodial interrogation of the accused is necessary to collect seized, recovered documents at the instance of the accused. The proceeds of crime has traversed since last 20 years and more. Therefore, sufficient time is required to be granted for the investigation of the offence. Resultantly, I am inclined to pass the following order:

ORDER

Accused Mohammed Nawab Mohammed Islam Malik @ Nawab Malik is remanded in the custody of Enforcement Directorate till 03.03.2022.



Date: 23.02.2022.

(R.N. ROKADE)
Special Judge (PMLA)
Court Room No.54, Gr. Bombay.

Dictated on : 23.02.2022
Transcribed on : 23.02.2022
Signed by HHJ on : 23.02.2022

| CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER” | | |
|--|------------|---|
| UPLOAD DATE | TIME | NAME OF STENOGRAPHER |
| 24.02.2022 | 02.00 p.m. | Bharat Kashinath Gaikwad |
| Name of the Hon'ble Judge | | SHRI R.N. ROKADE Special Judge (PMLA) Court Room No.54, Gr. Bombay. |
| Date of Pronouncement of Judgment/Order | | 23.02.2022 |
| Judgment/order signed by P.O. on | | 23.02.2022 |
| Judgment/order uploaded on | | 24.02.2022 |