

Court No. - 28

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION
U/S 438 CR.P.C. No. - 307 of 2022

Applicant :- Anirudh Kamal Shukla

Opposite Party :- Union Of India Thru. Assistant Dir. Directorate Of
Enforcement Lko

Counsel for Applicant :- Purnendu Chakravarty, Anuuj Taandon

Counsel for Opposite Party :- A.S.G.I., Shiv P. Shukla

Hon'ble Krishan Pahal, J.

1. Heard Sri Anuj Tandon, learned counsel for the applicant, Sri Shiv P. Shukla, learned counsel for the Enforcement Directorate and perused the material placed on record.

2. The present anticipatory bail application has been filed on behalf of the applicant in Complaint Case No.15 of 2019, E.C.I.R. No. ECIR/15/PMLA/LZO/2010, under Section 3/4 of Prevention of Money Laundering Act, 2002 at Police Station- Directorate Enforcement, District Lucknow with a prayer to enlarge him on anticipatory bail.

3. The applicant is stated to have moved an anticipatory bail application before the Special Judge, PMLA Lucknow, which was rejected by it vide order dated 07.01.2022

Facts in Brief

4. The Enforcement Directorate lodged an ECIR on 26.08.2010 in pursuance of the schedule offence bearing F.I.R. No. RC-8A/2007 dated 31.03.2007. After issuance of provisional attachment order No.01 of 2016 dated 28.03.2016, a complaint under Sections 44 and 45 of P.M.L.A., 2002 has been filed against the applicant and other co-accused persons for an offence under Sections 3/4 of P.M.L.A., 2002.

5. In pursuance of F.I.R. No. RC-8A/2007, under Sections 120B, 420, 467, 468 and 471 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, several charge-sheets have been filed against different co-accused persons including the one against the applicant and his brother Ashwani Kumar Shukla along with one other co-accused person.

6. As per the F.I.R. lodged by the C.B.I./A.C.B., Lucknow in 2007 during the period of 14.11.2005 to 7.11.2016, V.K. Srivastava, Senior Manager, R.K. Mishra, Senior Manager, Naresh Chandra Bhardwaj, Senior Manager, Dinesh Kumar, Clerk of Bank of India and Vikram Dixit entered into a criminal conspiracy with some unknown persons and got sanctioned 08 housing loans on the basis of false and fictitious documents such as I.T.R., PAN, Sale Deeds, Voter I.D. etc. The said loan accounts turned NPA in the name of non existent borrowers causing a loss to the tune of Rs.1.17 crores approximately to the Bank of India in lieu of wrongful gain. During investigation, proceeds of crime to the tune of Rs.19,49,000/- in the form of movable/immovable property was attached and was confirmed by Adjudicating Authority vide order dated 16.09.2016. The applicant- Anirudh Kamal Shukla is stated to have entered into a criminal conspiracy with R.K. Mishra, Senior Branch Manager Credit and Vinny Sodhi @ Vikram Dixit and applied for sanction of an overdraft limit of Rs.24.60 lakhs for the business purpose against the mortgage of property of Ram Nath Sharma and applied jointly along with the name of his brother Ashwani Kamal Shukla by submitting fake ITRs, PAN Card, NEC, Valuation Report in respect of property mortgaged, mutation certificate, will and sale deed. The investigation revealed that Rs.25,000/- was transferred to the current account of the applicant on 06.11.2006, which was utilized in business and the same is stated to have been admitted by the applicant.

Rival Contentions

7. Learned counsel for the applicant has stated that he has no previous criminal history except the present complaint cases and the predicate offence filed against him. There is no possibility of the applicant fleeing from justice or directly or indirectly inducing, threat or promise to any person. The present ECIR has been registered purely on the basis of predicate offence bearing F.I.R. No.RC-81/2007 dated 31.03.2007. The charge-sheet has been filed against the applicant and the other co-accused persons in the case filed by C.B.I. and the applicant is already on bail in it vide order dated 28.10.2010 passed by this Court in Bail No.8010 of 2010.

8. Learned counsel for the applicant has further stated that the predicate offence relates to OD mortgaged loan account opened in the name of his brother Ashwani Kumar Shukla with the Bank of India, Harsh Nagar, Kanpur. The property mortgage is found to be fake. The

loan is alleged to have been applied by Ashwani Kumar Shukla along with the applicant. The only allegation against the applicant is that a sum of Rs.25,000/- was transferred from OD mortgaged loan account to the current account of co-borrower Ashwani Kumar Shukla which was utilized in the business. It has further been stated that the entire proceeds of crime originating from the schedule offence was transcribed in the provisional attachment order and the present applicant was not named as defendant in the original complaint. The brother of the applicant is only named in that complaint as defendant no.7 for the limited role that a sum of Rs.25,000/- was transferred from OD mortgaged loan account to the current account and subsequently the said amount was deposited with ED in the form of FDR. Learned counsel for the applicant has further submitted that no proceeds of crime has been deciphered and derived in respect of the applicant. There is no provisional attachment issued in respect of the applicant. There is no evidence with regard to possession, acquisition or use and projecting or claiming any proceeds of crime as tainted property *qua* applicant. The applicant himself is stated to have got an FIR lodged against Vikram Dixit on 20.10.2007 at Case Crime No.338 of 2007, under Sections 406, 420, 504 and 506 IPC, Police Station Kakadev Kanpur, wherein charge-sheet has been filed. The applicant is unaware of the entire transactions as he is a resident of Thane, Maharashtra.

9. Learned counsel for the applicant has placed much reliance on the case law settled by the Supreme Court in case of ***Nikesh Tarachand Shah vs. Union of India & Anr.***¹, wherein the Supreme Court has declared twin conditions for grant of bail under Section 45(1) of P.M.L.A. as unconstitutional. Learned counsel for the applicant has further stated that there is no chance of the applicant tempering with evidence and he may be admitted to anticipatory bail. The applicant has not been arrested by the Enforcement Directorate since filing of complaint during last eight years and the applicant is co-operating with the department since then. There is no likelihood of the offence being repeated by the applicant.

10. Learned counsel for the applicant has also placed much reliance on the judgment of this Court passed in the case of ***Ramji Singh vs. Central Bureau of Investigation Anti Corruption Branch Lko.***² dated 02.03.2022 and on the judgment of Orissa High Court in case of ***Jyoti***

1 (2018) 11 SCC 1

2 (Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No.12682 of 2021)

Prakash Jay Prakash vs. Union of India (E.D.)³ and also on the judgment of Supreme Court passed in the case of ***Siddharth vs. State of Uttar Pradesh & Anr.***⁴.

11. Per contra, Sri Shiv P. Shukla, learned counsel for the Enforcement Directorate has vehemently opposed the anticipatory bail application stating that the OD mortgaged loan account was opened in the name of Ashwani Kumar Shukla along with applicant with Bank of India, Harsh Nagar Branch on the basis of forged property documents made available by co-accused person Vikram Dixit through Ram Nath Sharma (Guarantor). This property situated at 122/212, Lajpat Nagar, Kanpur was not clear in title and the same was not in physical possession of Ram Nath Sharma as a Legal Suit No.1815 of 1996 is already pending in the court between Ram Nath Sharma and his sister in respect of ownership.

12. The brother of the applicant is stated to have admitted that Rs.25,000/- was tainted money. The said amount of Rs.25,000/- was paid vide cheque no.215054 dated 06.11.2006 to M/S D.K. Agricultural and Engineering. The Enforcement Directorate has examined and recorded the statement of the applicant and all co-accused persons under Section 50 of P.M.L.A., 2002 wherein the applicant is stated to have confessed his crime.

13. Learned counsel for the Enforcement Directorate has further stated that the provisional attachment order dated 28.03.2016 finds the reference of the aforesaid transaction of Rs.25,000/- at serial no.7. He has further submitted that the applicant along with his brother had entered into a criminal conspiracy with R.K. Mishra, Senior Branch Manager Credit and Vinny Sodhi @ Vikram Dixit for sanction of an overdraft limit of Rs.2.50 lakhs for business purpose against the mortgaged of property of Ram Nath Sharma by submitted fake documents. Learned counsel for the E.D. has stated that the charge-sheet in the present case had already been filed on 27.11.2018 and the cognizance has been taken on 11.04.2019. Summons and non bailable warrants have already been issued against the co-accused persons. There is no reason for entertaining an anticipatory bail of the applicant at this stage. The accused himself should surrender before the Special Court and apply for regular bail.

3 (ABLAPL No.15091 of 2019)

4 Criminal Appeal No.838 of 2021 (Arising out of SLP (Crl. No.5442 of 2021))

14. Sri Shiv P. Shukla, learned counsel for the Enforcement Directorate has placed much reliance on the judgment of Supreme Court in case of ***Assistant Director vs. Dr. V.C. Mohan***⁵, wherein it has been held that the rigors of Section 45 of the PMLA would be applicable to the petitioners who file applications for grant of anticipatory bail in the case of offences under the PMLA. The relevant excerpt from the judgment is reproduced below for ready reference:-

".....The observations made herein have been misunderstood by the respondent. It is one thing to say that Section 45 of the PMLA Act to offences under the ordinary law would not get attracted but once the prayer for anticipatory bail is made in connection with offence under the PMLA Act, the underlying principles and rigors of Section 45 of the PMLA Act must get triggered - although the application is under section 438 of Code of Criminal Procedure."

15. It has also been held by this Court in the case of ***Pankaj Grover vs. Union of India***⁶ as follows:-

"42..... In socio-economic offences proceed of crimes are larger and further, offenders are economically sound, therefore, in releasing them on bail/anticipatory bail probability of abscondance not within country but beyond country is more probable. Usually socio-economic offenders abscond to some other country and after that it becomes difficult to bring them back and complete the criminal proceeding against them. Further, their monetary sound condition particularly proceed of crime obtained not by honest working but by deceiving others causes more prone situation for influencing witnesses and other evidences. Furthermore, status and position of offender provides opportunity to influence investigation and prosecution."

16. Learned counsel for the Enforcement Directorate has further stated that the anticipatory bail application of the co-accused- Naresh Chandra Bhardwaj has already been dismissed vide order dated 24.12.2021 passed in Criminal Misc. Anticipatory Bail Application U/ S 438 Cr.P.C. No.11679 of 2021. Learned counsel for the Enforcement Directorate has further stated that the right of anticipatory bail is not part of Article 21 of the Constitution of India as has been held in case

5 S.L.P. Criminal No.8441 of 2021

6 (Cri. Misc. Anticipatory Bail No.7661 of 2021)

of *State of M.P. vs. Ram Krishna Balothia and Another*⁷.

17. It is further submitted that provision of PML Act makes it clear though the commission of scheduled offence is an essential pre-requisite for initiating proceeding under PML Act, the offence of money laundering is independent of the scheduled offence. In support of his contention he relied upon Judgment of Hon'ble Telangana High Court in case of *State of V. Vijay Sai Reddy vs Enforcement Directorate*⁸, wherein it was held that trial for the offence of money laundering is independent trial and it is governed by its own provisions and it need not get interfered by the trial of scheduled offences.

18. It is further submitted that PML Act is Special Act to deal with economic offences. Offence under PML Act is made as cognizable and non-bailable and granting anticipatory bail may hamper the societal and national interest. In support of his contention learned counsel relied upon Judgment of Supreme Court in the case of *Jai Prakash Singh v. State of Bihar & Anr.*⁹, wherein it is held that "parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the Court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the Court is prima facie of the view that the applicant has falsely been entangled in the crime and would not misuse his liberty."

19. It is further submitted that the offence of money laundering has been committed by the accused-applicant with other co-accused and he has continuously projected the same as being untainted. Section 3 specifically provided that 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 and projecting it as untainted property shall be guilty of offence of money-laundering." The offence of money laundering would be counted from the day on which the proceeds of crime had been projected as being untainted.

20. In order to examine the contentions it would be useful to advert to section 45 of PML Act, 2002. The same read thus:-

"45. Offences to be cognizable and non-bailable.--(1)
Notwithstanding anything contained in the Code of

7 (1995) 3 SCC 221

8 Cr. Petition Nos.1073 and 1074 of 2021

9 (2012) 4 SCC 379

Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless--

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by--

(i) the Director; or

(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.

(1-A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order; and, subject to such conditions as may be prescribed.

(2) The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail."

21. Section 45 specially provides two conditions which is mandatory in nature and must be complied before granting bail to accused of offence.

22. The same is reiterated is case of ***Gautam Kundu vs Directorate of Enforcement***¹⁰, the Supreme Court held as under:-

29. Section 45 of PML Act starts with a non obstante

clause which indicates that the provisions laid down in Section 45 of PML Act will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. Section 45 of PML Act imposes the following two conditions for grant of bail to any person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule of PML Act:

(i) That the prosecutor must be given an opportunity to oppose the application for bail; and

(ii) That the court must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is not likely to commit any offence while on bail.

30. The conditions specified under Section 45 of PML Act are mandatory and needs to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PML Act. Section 65 requires that the provisions of CrPC shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PML Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PML Act has an overriding effect and the provisions of CrPC would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PML Act will have to be complied with even in respect of an application for bail made under Section 439 CrPC. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant."

23. In case of ***Union of India v. Varinder Singh***¹¹, Supreme court observed that Sec 45 of PML Act imposes conditions for grant of bail. Bail cannot be granted without complying with requirements of section 45 of PML Act.

Conclusion

24. In case of ***Y.S jagan Mohan Reddy v. CBI***¹², the Supreme Court

¹¹ 2017 SCC OnLine SC 1314

¹² (2013) 7 SCC 439

observed as under:-

"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

25. In State of **Gujrat v. Mohanlal Jitamalji Porwal**¹³, the Hon'ble Supreme Court observed:

"[...] the entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national; interest [...]"

26. In case of **P. Chidambaram v. Directorate of Enforcement**¹⁴, the Supreme Court observed as under:-

"67. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory

¹³ (1987) 2 SCC 364

¹⁴ (2019) 9 SCC 24

bail. 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. "

27. The PML Act, 2002 deals with the offence of money laundering and Parliament enacted this law to deal and curb the activities of money laundering. Being a special enactment it has overriding effect on general law. Section 71 of PML Act specially provides that provisions of PML Act shall have overriding effect on any other law time being in force. From aforesaid view it is very clear that provisions of Code of Criminal Procedure will not be applicable until there is no specific provision given in PML Act, 2002.

28. Money Laundering being an offence is economic threat to national interest and it is committed by the white collar offenders who are deeply rooted in society and cannot be traced out easily. These kind of offences are committed with proper conspiracy, deliberate design with the motive of personal gain regardless of the consequences to the society and economy of Country. Hence, for money-launderers "jail is the rule and bail is an exception".

29. The arguments tendered by the counsel for the applicant can be agitated at the stage of regular bail but not under Section 438 Cr.P.C.

30. On prima facie reading of the material placed on record and considering the parameters of Section 45(1) PMLA as well as the gravity of the alleged offences, it cannot be held that the applicant was not guilty of the alleged offences or that he was not likely to commit any such offence while on bail and accordingly the anticipatory bail application is **dismissed**.

31. However, it is made clear that the observations made hereinabove are exclusively for deciding the instant anticipatory bail application and shall not affect the trial or deciding the regular bail application.

Order Date :- 21.03.2022

Ravi Kant