

Sanjay Pandey Vs. CBI
Bail matter no. 246/2022
FIR RC no. 2212022E0030

21.12.2022

Present : Sh. Rajan Dahiya, Ld. Sr. PP for CBI.

Sh. Tanveer Ahmed, Sh. Aditya
Wadhwa, Sh. Siddharth Sunil and
Ms. Swati Khanna , Ld. Counsel for
accused Sanjay Pandey.

This is the application moved on behalf of accused Sanjay Pandey for seeking bail in RC no. 2212022E0030 dated 07.07.2022 registered under Section 120-B, 409, 420 of IPC; Sec. 69 B, 72, 72A of the IT Act, Sections 20,21,24,26 of the Indian Telegraph Act, Sec 3&6 of Indian Wireless Telegraphy Act and Sec 13(2) r/w 13(1)(d) of the PC Act.

2. As per record, prior to the arrest of accused/applicant in this case on 24.09.2022, he was arrested by Enforcement Directorate (ED), in ECIR/DLZO-I/28/2022 dated 11.07.2022 on 19.07.2022. As per record, the bail application of applicant moved in said ED matter was dismissed by this court vide order dated 04.08.2022. However, subsequently, he was granted bail by the Hon'ble Delhi High Court vide order dated 08.12.2022. Copy of said order has been placed on record alongwith the written submissions on behalf of applicant/accused on the instant application. In response to the written

submission filed by accused, CBI also filed its reply-cum-submissions on record.

3. I have heard the arguments from both the sides and carefully gone through the entire record including the written submissions as well as order dated 08.12.2022 of the Hon'ble High Court vide which the accused/applicant has been granted bail in aforementioned connected ED matter.

4. It has been argued on behalf of accused/applicant that in said bail order dated 08.12.2022, Hon'ble Delhi High Court was pleased to observe that the ingredients of none of the predicate offences which formed the basis of the alleged offence of money laundering under PMLA, have been made out. Ld. Counsel has drawn attention of this court to the observations contained in para no. 49, 54-56 and 63 of said order with regard to the alleged offences of Sections 409, 420 and 120B IPC. Ld. Counsel has further drawn attention of the court to para no. 42-45 containing similar observations with regard to the offence of Section 72 of IT Act. It is submitted that even with regard to Section 13(2) and 13 (1)(d) of PC Act, the Hon'ble Court was of the view that none of said provision can be invoked against the applicant, as there was no allegation raised by the Prosecution regarding giving or receiving of a bribe or illegal gratification. The Counsel further argued that as per said order of the Hon'ble High Court, NSE is a private entity and

therefore, no offences under Section 13 of PC Act can be said to have been committed over the course of M/s iSec contractual dealing with it.

5. It is further argued that in the light of the aforementioned order, the accused/applicant deserves to be granted bail even in the instant case because rest of the offences of the present FIR under Section 20, 21, 24 and 26 of Indian Telegraph Act, 1885, Section 3 and 6 of Indian Wireless Telegraphy Act, 1933 and Section 72 A of Information Technology Act 2000 are bailable offences. Ld. Counsel further submitted that even otherwise, accused is in custody in this case for 02 months and 28 days and is no more required for the purposes of investigation because the case of CBI is based on documentary evidence which has already been collected.

6. On the other hand, Ld. Sr. PP for CBI has vehemently opposed the bail application and submitted that accused cannot be allowed to take benefit of aforementioned order of Hon'ble High Court as the same was passed in a bail application moved in a separate ED matter of ECIR/DLZO-I/28/2022 and CBI was not even party to said bail application and never got the opportunity to put forward its case before Hon'ble High Court regarding predicate offences of the instant FIR. It is further submitted that the report filed by the CBI which finds mention in the para 34 of said order was filed in a quashing petition filed by the accused herein for quashing of

instant FIR which is still pending before the Hon'ble High Court.

7. I have given my thoughtful consideration to the rival contentions raised from both the sides and also carefully gone through the entire record.

8. It is pertinent to note here that aforementioned ED matter i.e. ECIR/DLZO-I/28/2022 is based on the premise that accused persons including the applicant herein indulged in illegal interception of MTNL lines at NSE during the period 2009-2017, resulting into commission of various offences under 120-B, 409, 420 of IPC, Section 72 of IT Act, Section 13(2) r/w 13(1)(d) of the PC Act covered in the category of scheduled offences/predicate offences under Prevention of Money Laundering Act (PMLA) and same also led to generation of proceeds of crime to the tune of Rs. 4.54 crores given by NSE to applicant's company M/s iSec Services Pvt. Limited for the aforementioned illegal activity, thereby making them (accused) also liable for the offence of money laundering punishable under Section 4 of PMLA.

9. It is also important to note that for consideration of bail in a case involving offence of money laundering, the case has to withstand the stringent conditions of Section 45 PMLA as well as the triple test of 439 Cr.PC. As such, when a bail plea is opposed by the prosecutor in an ED case, the court

needs to satisfy that the accused is not guilty of the offence of money laundering and will not commit any such crime after his release on bail.

10. Perusal of the order dated 08.12.2022 shows that vide said order, Hon'ble High Court was pleased to grant bail to the applicant herein on the satisfaction of existence of the twin conditions contained in Section 45 of PMLA and while granting bail, the Hon'ble High Court has discussed the essential ingredient of the alleged predicate offences in the light of the allegations contained in the instant FIR and made following observation :

" 76. Since I have prima facie given a finding that none of the ingredients of the scheduled offence are made out, the provisions of PMLA are not attracted.

77. I am of the view that in the present case, no scheduled offence is prima facie made out, concomitantly there cannot be proceeds of crime having been generated as there is no criminal activity relating to a scheduled offence. This position is in consonance with the dicta of **Vijay Madanlal Choudhary (supra)** where the Hon'ble Supreme Court held as under:

"406.... The fact that the proceeds of crime have been generated as a result of criminal activity relating to a scheduled offence, which incidentally happens to be a Signature Not Verified Digitally Signed by AMIT BAIL APPLN. 2409/2022 Page 44 of 48 ARORA Signing Date:08.12.2022 14:31:26 noncognizable offence, would make no difference. The person

is not prosecuted for the scheduled offence by invoking provisions of the 2002 Act, but only when he has derived or obtained property as a result of criminal activity relating to or in relation to a scheduled offence and then indulges in process or activity connected with such proceeds of crime. Suffice it to observe that the argument under consideration is completely misplaced and needs to be rejected."

"78. Since none of the ingredients of the scheduled offences viz., Section 72 IT Act, Section 120B r/w 409 and 420 IPC, section 13(2) read with 13(1)(d) PC Act are made out, there is no occasion to allege acquisition or retention of 'proceeds of crime', which under Section 2(u) of PMLA is defined to mean proceeds arising out of 'scheduled offences'."

11. In the light of the aforementioned observation made by the Hon'ble High Court regarding lack of essential ingredient of the predicate offences, this court is inclined to grant bail to the accused/applicant even in the instant case. Mere fact that CBI was not a party to bail application of the applicant moved before the Hon'ble High Court in said ED matter, cannot be a ground to urge before this court to take a different view with regard to the predicate offences. Undoubtedly, the observations contained in the aforementioned order are reflective of only the prima facie view taken by the Hon'ble High Court but, this court also at this stage is required to only take a prima facie view of the matter

for consideration of bail application of the accused. Furthermore, the reply filed by the CBI in the quashing petition pending before the Hon'ble High Court was also taken into account by the Hon'ble High Court before passing the aforementioned order in favour of the applicant.

12. Considering the fact that the Hon'ble High Court has already granted bail to the accused/applicant in the connected ED matter, which in the light of Section 45 PMLA embodies far more stringent conditions for grant of bail, I find no reason to decline bail to the applicant in the present case. As already noted above, all the offences other than predicate offences of the present FIR are bailable. In view thereof, accused is granted bail with the conditions that :

1. Applicant shall furnish personal bond in the sum of Rs.1,00,000/- with two sureties in the like amount;
2. Applicant shall appear before the court as and when the matter is taken up for hearing;
3. Applicant shall provide his mobile number to the IO concerned, which shall be kept in working condition at all times. The applicant shall not switch off, or change the same without prior intimation to the IO concerned, during the period of bail;
4. The applicant shall join investigation as and when called by the IO concerned.
5. In case the applicant changes his address, he will inform the IO concerned and this Court also;
6. Applicant shall not leave the country during he bail

period and surrender his passport, if any, at the time of release before the IO concerned;

7. Applicant shall not communicate with, or come into contact with any of the prosecution witnesses or tamper with the evidence of the case.

13. Nothing stated herein shall amount to expression of opinion on merits of the case.

14. Let a copy of this order be sent to the Superintendent Tihar Jail. Copy of the order be given dasti to both the parties as prayed.

**(SUNENA SHARMA)
SPECIAL JUDGE (PC ACT) (CBI)
ROUSE AVENUE DISTRICT COURTS
NEW DELHI/21.12.2022**