

AFR

Reserved

Case :- CRIMINAL MISC. BAIL APPLICATION No.7719 of 2022

Applicant :- Abdul Razak Peediyakkal

Opposite Party :- Union Of India Enforcement Directorate
Thru.Assitant Director

Counsel for Applicant :- Pranav Agarwal

Counsel for Opposite Party :- Kuldeep Srivastava, Shiv P. Shukla

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Mr. Rizwan, learned counsel for the applicant and Sri Kuldeep Srivastava, learned counsel for the Enforcement Directorate.

2. As per learned counsel for the applicant, the present applicant is in jail since 10.03.2022 in ECIR No.ECIR/02/HIU/2018, under Sections 3, 4 & 70 of the Prevention of Money Laundering Act, 2002, Police Station – Directorate of Enforcement, APJ Abdul Kalam Road, New Delhi.

3. Learned counsel for the applicant has submitted that the present applicant has been falsely implicated in the case by the Enforcement Directorate (hereinafter referred to as "E.D.") inasmuch as no case is made out against the accused-applicant under Section 3 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as "the PMLA"), which is punishable under Section 4 of the PMLA.

4. Learned counsel for the applicant has submitted that the offence of money laundering as defined under Section 3 of the PMLA specifically posits that whosoever '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 including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering.

5. Learned counsel has further submitted that the definition of 'proceeds of crime' is provided under Section 2 (u) of the Act which means "any property derived or obtained, directly or indirectly, by any

person as a result of criminal activity relating to a scheduled offence or the nature of any such property”.

6. Therefore, the commission of the scheduled/predicate offence by way of which ‘any property derived or obtained, directly or indirectly is a mandatory requirement for a ‘property’ to become ‘proceeds of crime’. In support of his argument, learned counsel for the applicant has referred para-251 of the **Vijay Madanlal Choudhary and Others Vs. Union of India and Others, 2022 SCC OnLine SC 929**, which is being reproduced herein below:-

"251. The “proceeds of crime” being the core of the ingredients constituting the offence of money-laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act — so long as the whole or some portion of the property has been derived or obtained by any person “as a result of” criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, “as a result of” criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the concerned case (crime), it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the concerned tax legislation prescribes such violation as an offence and such offence is included in the Schedule of the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person “as a result of” criminal activity relating to the concerned scheduled offence. This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any process or activity constitutes offence of money-laundering under Section 3 of the Act.”

7. Learned counsel for the applicant has submitted that there are three predicate offences relating to the issue in question wherein the present applicant was not named. FIR No.276/2013 [1st Predicate Offence'] dated 23.04.2013 against 22 persons was registered under Sections 143, 147, 153B r/w 149 of the Indian Penal Code, 1860; Section 5 (1) (a) r/w 25 (1) (a) of the Arms Act, 1959; Section 4 & 5 of the Explosives Substances Act, 1908 and Section 18 of the Unlawful Activities (Prevention) Act, 1967. The said case emanating from the FIR stands closed up to the Hon'ble Supreme Court vide its orders dated 13.04.2017 and 04.07.2017 in SLP (Criminal) Nos. 4511-4513 of 2017 and 2875 of 2017 respectively. Further, FIR No. 199/2020 dated 07.10.2020 [2nd Predicate Offence'], has been registered U/s 153A/295A/124A of the Indian Penal Code, 1860; 17 and 18 of UAPA and 65/72/76 of the Information Technology Act, 2002. FIR No.04/2021 dated 16.02.2021 [3rd Predicate Offence'] has been registered U/s 120B and 121A of the IPC; Sections 13, 16, 18 and 20 of UAPA; Section 3, 4, and 5 of the Explosives Substances Act and Section 3 and 25 of the Arms Act against Anshad Badharudeen and Firoz Khan.

8. Learned counsel for the applicant has reiterated that the present applicant is not an accused in any of the aforesaid three predicate offences. However, he has been arrested on 10.03.2022 pursuant to the ECIR in question.

9. Under the provisions of Sections 44 and 45 of PMLA, the E.D. has filed complaint and supplementary complaint under Sections 3, 4 & 70 of the PMLA dated 06.02.2021 and 06.05.2022 respectively. The aforesaid complaint has been filed against five accused persons, namely, K.A. Rauf Sherif, Atikur Rehman, Masud Ahmed, Sidique Kappan and Mohd. Alam. However, pursuant to the supplementary complaint four individuals/ entities have been made accused by the E.D. i.e Abdul Razak Peediyakkal (present accused-applicant), Ashraf Khadir alias Ashraf MK, Munnar Villa Vista Pvt. Ltd., Tamar India Spices Pvt. Ltd. Learned counsel for the applicant has fairly indicated

the allegations against the present applicant in para-12 of the bail application, which reads as under:-

"12. The following principal allegations and the case set up against the Applicant/Accused in the Supplementary Complaint is as under:

I. The purported 1st and 2nd Predicate Offence (s) are the very basis on which the Applicant/Accused is being investigated in the present Complaint and Supplementary Complaint i.e. the same set of offences which the Ernakulum Judgement finds no substance in order to enlarge the main conspirator on bail;

II. Admittedly, the Applicant/Accused is a long-time member of an organization known as Popular Front of India [PFI] and purportedly 12 cases have been registered against the PFI, in which admittedly the Accused/Applicant is not an accused;

III. Apparently, in terms of the investigation a residential plot viz. Munnar Villa Vista Project [Project], Munnar, Kerala is being developed with a motive to launder money and the Applicant/Accused is the largest shareholder of the Project;

IV. In terms of Supplementary Complaint, the Project has revealed certain discrepancies/irregularities in its funding mentioned therein. There is no allegation as regards the Applicant/Accused as regards the certain discrepancies/irregularities in the funding of the Project. It is submitted that there per force cannot be any allegation against the Applicant/Accused inasmuch he is only a shareholder in the Project and has neither managerial nor directorial role thereto. True Copy of the Company Master Date of Company 'Munnar Villa Vista Private Limited' as available on www.mca.nic.in is annexed herewith and marked as ANNEXURE A-6. True Copies of the minutes of the Board meeting dated 30.07.2018 and 01.07.2020 of Company 'Munnar Villa Vista Private Limited' is annexed herewith and marked as ANNEXURE A-7 [COLLY];

V. It is submitted that a bare reading of the table at Para 8 of the Supplementary Complaint establishes the following:

a) Monies amounting to Rs.33,72,043/- have been transferred from 11.07.2012 to 10.06.2020 to Rehab India Foundation, an NGO;

b) These are legitimate transactions through RTGS/NEFT, emanating from the coffers of the Applicant/Accused;

c) There is no averment that the said monies have been derived from the commission of any predicate/scheduled offence, let alone 1st Predicate Offence;

d) In any case the commission of the 2nd and 3rd so called Predicate Offence took place after the transactions of the Applicant/Accused dated 11.07.2012 to 10.06.2020, therefore, the 2nd and 3 'predicate offences cannot per force lead to 'proceeds of crime'.

VI. Furthermore, a reading of Paras 8.3 to 8.7 nowhere delineates, how the monies transferred by the Applicant/Accused emanate out of any Predicate Offence;

VII. The Applicant/Accused further submits that he has no business interests in Qatar, Malaysia and Switzerland. The Applicant/Accused only has business interests in Abu Dhabi. True Copy of the business interests of the Applicant/Accused are annexed herewith and marked as ANNEXURE A-8."

10. Learned counsel has further submitted that the main conspirator in terms of para-10 of the complaint, namely, K.A. Rauf Sherif was enlarged on bail by the Special Court for PMLA Cases under the PMLA, at Ernakulam, Kerala on 12.02.2021. He has also submitted that the E.D. vide e-mail dated 20.12.2021 asked the accused-applicant to appear before it at New Delhi on 27.12.2021 with the requisite documents. In response thereto, the accused-applicant vide e-mail dated 20.12.2021 requested from the E.D. to summon him in his Cochin office. Thereafter, the accused-applicant received further summons dated 14.02.2022 to appear in New Delhi on 19.02.2022 and the accused-applicant promptly appeared before the authorities at New Delhi. However, the E.D. has arrested the present applicant on 10.03.2022 from Calicut Airport without having any cogent reasons. Thereafter, he was sent to the judicial custody on 16.03.2022.

11. Learned counsel for the applicant has referred various judgments of the Apex Court to submit that it is a trite law that there exist three main factors while granting bail to any accused person i.e. (a) the accused shall not tamper with the evidence; (b) the accused shall not influence the witness(s) and (c) the accused shall not be at flight risk, therefore, gravity of offence cannot be the sole ground to deny bail. Learned counsel for the applicant has submitted that the present applicant undertakes that if he is released on bail, he shall

abide by all terms and conditions of the bail order and shall not misuse the liberty of bail.

12. Learned counsel for the applicant has drawn attention of this Court towards the order dated 23.12.2022 passed by this Court in Criminal Misc. Bail Application No.13642 of 2022 whereby co-accused Sidhique Kappan has been granted bail. Therefore, learned counsel has submitted that since co-accused Sidhique Kappan has been enlarged on bail, therefore, the present applicant may also be enlarged on bail on the basis of principles of parity.

13. *Per contra*, Sri Kuldeep Srivastava, learned counsel for the E.D. has submitted that during PMLA investigation, the fact emerged that the funds amounting to Rs.1.36 Crore, raised/collected abroad by the office bearers/ members/ activists of PFI, CFI and their related organizations, were routed to the Bank Accounts of K.A. Rauf Sherif, the National General Secretary of CFI. Further, the investigation against PFI has so far revealed that more than Rs.100 Crore have been deposited in the accounts of PFI and its related entities over the years. It has come into the notice of the Investigating Agency that foreign funds have been remitted to India through hawala/ underground channels and through remittance sent to the accounts of members/ activists/office bearers of PFI/CFI and other related organizations.

14. Initially, active participation of five accused persons have been noticed thorough reliable evidences and materials whose names have been indicated in the first complaint but after further investigation, name of the present applicant came into the notice, therefore, in the supplementary complaint, the applicant has been made accused. Pursuant to the exercise being undertaken through further investigation, role of the present applicant, who is a PFI member based in Kerala and Abu Dhabi, for doing the aforesaid illegal activities has been emerged. Thereafter, he has been issued summons to cooperate in the investigation. Since the present applicant is based at Abu Dhabi and is indulged in the aforesaid illegal activities i.e.

remitting funds to PFI through hawala or other underground channels, therefore, he has not properly cooperated in the investigation, rather has stated time and again that the explanation so sought by the E.D. would be replied by his Chartered Accountant. As per admission of the present applicant before the E.D., he has stated that he became the member of PFI in 2014-15 and is still a member. He was made Divisional President in June, 2021, later he resigned from such post in December, 2021. He used to contribute to PFI in the form of monthly subscription. On being asked from him whether he had given any money in any other organization, he stated that he had donated money to Rehab India Foundation (hereinafter referred to as "RIF") as Zakath and has not remembered the exact amount but the same could be obtained from his Bank statement accounts.

15. As per Sri Srivastava, learned counsel for the E.D., the applicant has admitted that though he was based in Abu Dhabi, he was still made the Director of Thejus in 2010. It has been noticed by the Investigating Agency that the accused-applicant has transferred a huge sum of Rs.33,72,043.00 over the period 11.07.2012 to 22.07.2020 to RIF. He explained that he had donated the aforesaid money to RIF as Jakath. Sri Srivastava has drawn attention of this Court towards para-7 of the complaint wherein the brief summary of result of investigation under PMLA relating to the present applicant has been given, which goes to show that the present applicant has transferred a substantial amount to Rehab India Foundation through three Bank accounts; one from HDFC Bank and two from South Indian Bank vide two separate Bank accounts. Sri Srivastava has also drawn attention of this Court towards the remaining paragraph of para-7 of the complaint, more particularly, para 7.10, which explains "raising of funds abroad and their transfer to India through illegal channels". Para 7.10 (i) (ii) & (iii) indicates that the fund amounting to Rs.10 Crore in two installments were transferred by the present applicant to another PFI member Mohamed Ashraf Pilasheri of Calicut and that the explanation of proposal to buy a plot was a mere afterthought and

pretext used by the applicant to conceal the true nature of movement of funds. Relevant extracts of the documents have been shown in the complaint.

16. Therefore, Sri Srivastava has stated that role of the present applicant is so serious and he being a big businessman based in Abu Dhabi, if released on bail, may abscond or may influence the trial proceedings as the trial is pending consideration before the learned trial court where the charges have been framed. He has also submitted that the role of the present applicant is altogether different from that of co-accused Sidhique Kappan, who has been granted bail by this Court on 23.12.2022 inasmuch as the role assigned to Sidhique Kappan is in respect of hatching criminal conspiracy with K.A. Rauf Sherif. Except the allegation that Rs.5,000/- were transferred in the Bank account of co-accused Atikur Rahman, there is no other transaction either in the Bank account of Sidhique Kappan or in the Bank account of co-accused.

17. Sri Srivastava has also submitted that if the bail of the present applicant is considered, satisfaction in respect of Section 45 of PMLA may be given inasmuch as unless the twin conditions mentioned under Section 45 of the PMLA are satisfied, the bail may not be granted. Therefore, Sri Srivastava has submitted that the present applicant may not take the aid of the dictum of the Apex Court in re; **Vijay Madanlal Choudhary** (supra) inasmuch as the law has been settled that even if any person is not named in the predicate offence(s), even then if his complicity comes into notice during investigation relating to the offence of E.D., he may very well be implicated.

18. Heard learned counsel for the parties and perused the material available on record.

19. At the very outset, it would be appropriate to indicate Sections 2 (u), 3 & 4 of the PMLA, which reads as under:-

“2 (u). “proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a

result of criminal activity relating to a scheduled offence or the value of any such property.

3. Offence of money-laundering.—*Whosoever 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.*

4. Punishment for money-laundering.—*Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine which may extend to five lakh rupees:*

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words “which may extend to seven years”, the words “which may extend to ten years” had been substituted.”

20. The aforesaid provisions of law have been aptly interpreted by the High Court of Bombay in re; **Babulal Verma and Another Vs. Enforcement Directorate and Another, 2021 SCC OnLine Bom 392**, from paragraphs 29 to 34, which are being reproduced hereunder:-

“29. The language of Sections 3 and 4 of PMLA, makes it absolutely clear that, the investigation of an offence under Section 3, which is punishable under Section 4, is not dependent upon the ultimate result of the Predicate/Scheduled Offence. In other words, it is a totally independent investigation as defined and contemplated under Section 2(na), of an offence committed under Section 3 of the said Act.

30. PMLA is a special statute enacted with a specific object i.e. to track and investigate cases of money-laundering. Therefore, after lodgment of Predicate/Scheduled Offence, its ultimate result will not have any bearing on the lodgment/investigation of a crime under the PMLA and the offence under the PMLA will survive and stand alone on its own. A Predicate/Scheduled Offence is necessary only for registration of crime/launching prosecution under PMLA and once a crime is registered under the PMLA, then the

ED has to take it to its logical end, as contemplated under Section 44 of the Act.

31. The PMLA itself, does not provide for any contingency like the case in hand and argued by the learned counsel for the Applicants. Section 44(b) only provides for filing of a complaint or submission of a closure report by the Investigating Agency under PMLA and none else.

32. If the contention of the learned counsel for the Applicants that, once the foundation is removed, the structure/work thereon falls is accepted, then it will have frustrating effect on the intention of Legislature in enacting the PMLA. The observations of the Hon'ble Supreme Court in the case of State of Punjab v. Davinder Pal Singh Bhullar, (supra) in paragraph No. 107 and Sanjaysingh Ramrao Chavan (Supra) in para No. 17 are in context of the facts of the said case and pertaining to the offences under the provisions of IPC and P.C. Act and therefore, the same cannot be applied to the case in hand which arises out of a special statute namely PMLA enacted by the Legislature with an avowed object.

33. Hypothetically, 'an accused' in a Predicate/Scheduled Offence is highly influential either monetarily or by muscle power and by use of his influence gets the base offence, compromised or compounded to avoid further investigation by ED i.e. money laundering or the trail of proceeds of crime by him, either in the Predicate/Scheduled Offence or any of the activities revealed therefrom. And, if the aforesaid contention of the learned counsel for the Applicants is accepted, it will put to an end to the independent investigation of ED i.e. certainly not the intention of Legislature in enacting the PMLA. Therefore, if the contention of the learned counsel for the Applicants is accepted, in that event, it would be easiest mode for the accused in a case under PMLA to scuttle and/or put an end to the investigation under the PMLA. Therefore, the said contention needs to be rejected.

34. In view of the aforesaid discussion, it is clear that, even if the Investigating Agency investigating a Scheduled Offence has filed closure report in it and the Court of competent jurisdiction has accepted it, it will not wipe out or cease to continue the investigation of Respondent No. 1 (ED) in the offence of money-laundering being investigated by it. The investigation of Respondent No. 1 will continue on its own till it reaches the stage as contemplated under Section 44 of the PMLA."

21. It is clear that a person may not be involved in original criminal

activity that had resulted in generation of proceed of crime but he can join the main accused either as abettor or conspirator for committing the offence of money laundering by helping him in laundering the proceed of crime. Therefore, just because the applicant was not named or not prosecuted for the predicate offence, his prosecution for money laundering cannot be said to be illegal. Para-271 in re; **Vijay Madanlal Choudhary** (supra) is being reproduced herein below:-

“271. As mentioned earlier, the rudimentary understanding of ‘money-laundering’ is that there are three generally accepted stages to money-laundering, they are:

(a) Placement : which is to move the funds from direct association of the crime.

(b) Layering : which is disguising the trail to foil pursuit.

(c) Integration : which is making the money available to the criminal from what seem to be legitimate sources.”

22. Notably, the Apex Court in re; **Vijay Madanlal Choudhary** (supra) has held that provision in the form of Section 45 of PMLA, as applicable post amendment of 2018, is reasonable and has direct nexus with the purposes and objects sought to be achieved by the PMLA to combat the menace of money laundering having transnational consequences including impacting the financial systems and sovereignty and integrity of the country. While granting bail of an accused person, twin conditions of Section 45 of the PMLA will have to be adhered to.

23. For the convenience, Section 45 of the PMLA is being reproduced hereunder:-

“45. Offences to be cognizable and non-bailable.—(1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] 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 [or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees], 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 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 [***] of 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.”*

24. Considering the facts and circumstances of the issue in question, the bail application of the present applicant does not qualify the twin conditions of Section 45 of the PMLA inasmuch as at this stage it cannot be observed that the present applicant has not committed the offence for which the complaint has been filed against him. The proceed of crime is also in crores. The applicant is based at Abu Dhabi. The factum of guilt can be proved or disproved before the learned trial court. Learned counsel for the E.D. has informed that the trial in the present case is going on with good pace and the same may likely be concluded very soon, therefore, I am not inclined to grant bail to the present applicant, rather I would like to issue direction to

the learned trial court to conclude the trial with expedition.

25. So far as claim of parity with co-accused Sidhique Kappan is concerned, the role assigned to Sidhique Kappan is in respect of hatching criminal conspiracy with K.A. Rauf Sherif. Except the allegation that Rs.5,000/- were transferred in the Bank account of co-accused Atikur Rahman, there is no other transaction either in the Bank account of Sidhique Kappan or in the Bank account of co-accused whereas the role of the present applicant is altogether different from that of co-accused Sidhique Kappan as the present applicant is based at Abu Dhabi and the proceed of crime is in crores, therefore, the present applicant cannot claim parity with co-accused Sidhique Kappan.

26. Accordingly, the bail application is **rejected**.

27. Learned trial court is directed to conclude the trial with expedition, preferably within a period of six months by fixing short date and no unnecessary adjournment shall be given to any of the parties. If any of the parties do not cooperate in the trial proceedings, the learned trial court may take any appropriate coercive steps in accordance with law.

28. Liberty is given to the applicant to file another bail application, if the trial is not concluded within the aforesaid stipulated time.

29. It is made clear that I have not entered into merits of the issue, therefore, learned trial court shall conduct and conclude the trial without being influenced from any observation or finding of this order as the observations are only confined to the disposal of this bail application.

[Rajesh Singh Chauhan,J.]

Order Date :- 14.02.2023
RBS/-