



\$~113

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2234/2023**

DINESH SINGH KUSHWAHA

..... Petitioner

Through: Mr. Anant Malik, Ms. Akankshy
Mishra and Ms. Riya Swarnika,
Advocates.

versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr. Zoheb Hossain, Special Counsel
with Mr. Vivek Gurnani, Mr. Kanishk
Maurya and Ms. Abhipriya,
Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

%

20.03.2024

1. By way of present bail application filed under Section 439 Cr.P.C. read with Section 45 of Prevention of Money Laundering Act, 2002 ('PMLA'), the petitioner/applicant seeks regular bail in ECIR No. ECIR/20/HIU/2021.

2. Facts, as apparent from the material placed on record, are that FIR No.141/2021 came to be registered by Special Cell against unknown person for commission of offences punishable under Sections 419/420/468/471/34/120B IPC and Section 66D of the IT Act, in the context of cheating and fraud committed against the public at large for an amount totalling Rs.250-300 crores approximately. During the preliminary investigation, it surfaced that large amounts of public money were siphoned off through Apps namely 'Power Bank App', 'Tesla Power Bank App' and

BAIL APPLN. 2234/2023

Page 1 of 9



‘Ezplan App’ etc. under the guise of doubling the money deposits in a short period of time and thereby alluring people to deposit the said amounts. In light of the subject FIR, respondent registered the present ECIR. During the pendency of investigation in the ECIR, a complaint dated 29.11.2022 was received from one *Saurin Shah*, an accused in the scheduled offence, alleging that he had received messages from the present applicant, who claimed himself to be an ED Officer. The applicant promised to help *Saurin Shah* in the release of his mobile phone that was seized as well as in getting him relief in the said case. On this pretext, the applicant as well as the other co-accused persons induced *Saurin Shah* to pay a sum of Rs.2.60 crores.

3. Learned counsel for the applicant contends that the applicant is not an accused in the scheduled offence. Further, the respondent has filed the prosecution complaint dated 25.04.2023 and cited nearly 105 witnesses. The complaint is statedly at the stage of supply of documents under Section 207 Cr.P.C. The applicant has been in custody since 25.02.2023 and in the present ECIR, all the accused persons except the present applicant have already been released on regular bail. Emphasis is laid upon the fact that co-accused *Jitendra Prasad*, against whom similar allegations have been attributed, has already been released on regular bail vide order dated 27.03.2023 passed by learned ASJ. It is further contended that as per the allegations in the complaint, out of the total alleged payment of Rs.2.60 crores, a sum of Rs.9 lacs was traced to the present applicant, Rs.47.50 lacs were recovered from the residence of co-accused *Jitendra Prasad* and Rs.1.27 crores were recovered from the bank accounts of his family members. It is also submitted that twin requirement of Section 45 of the PMLA are fully satisfied in the present case and further the applicant is not a



flight risk. Lastly, it is submitted that applicant is not involved in any other case.

4. Mr. Zoheb Hossain, learned Special Counsel for the respondent, on the other hand, has opposed the bail application. He submits that the case involves multi layering of proceeds of crime. From the applicant's phone, the data extracted at Cyber lab established WhatsApp chats between the applicant and co-accused *Jitendra Prasad*. Further the applicant has also used fake and forged letter of the Directorate. Besides this, the statement under Section 50 of the PMLA also points to the active involvement of the present applicant.

5. I have heard learned counsels for the parties and have gone through the material placed on record.

6. Before adverting to the facts of the present case, it is deemed apposite to undertake a discussion surrounding the relevant provision i.e. Section 45 of the PMLA. The said section reads as under:-

“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 when on bail...”

A reading of the aforementioned provision, especially clause (ii) of Section 45(1) shows that before the grant of bail in matters concerning



PMLA, the ‘twin conditions’ i.e. “he is not guilty of such offence” and “he is unlikely to commit any offence when on bail” need to be satisfied. In Ranjitsingh Brahmajeetsing Sharma v. State of Maharashtra & Anr.¹, the Supreme Court in relation to a similar condition imposed under Section 21(4) of Maharashtra Control of Organised Crime Act, 1999 (MCOCA) has explained the approach to be adopted by the Court in arriving at the satisfaction as to whether the accused is “*not guilty of such offence*” and that the accused is “*not likely to commit any offence while on bail*”, has observed that:-

“xxx

35. Presumption of innocence is a human right. [See Narendra Singh and Another vs. State of M.P., (2004) 10 SCC 699, para 31] Article 21 in view of its expansive meaning not only protects life and liberty but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. Sub-Section (4) of Section 21 must be interpreted keeping in view the aforementioned salutary principles. Giving an opportunity to the public prosecutor to oppose an application for release of an accused appears to be reasonable restriction but Clause (b) of Sub-section (4) of Section 21 must be given a proper meaning.

36. Does this statute require that before a person is released on bail, the court, albeit prima facie, must come to the conclusion that he is not guilty of such offence? Is it necessary for the Court to record such a finding? Would there be any machinery available to the Court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever?

37. Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on records only for grant of bail and for no other

¹ (2005) 5 SCC 294



purpose.

38. We are furthermore of the opinion that the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed...

xxx

44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the Court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the Legislature...

xxx”

7. The above observation has been reiterated by the Supreme Court in Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.².

8. It is trite law that at the stage of consideration of bail application, the Court is not required to hold a mini trial or arrive at a conclusion that the applicant is guilty of offence or not. The court only has to form a prima facie opinion as to the involvement of the accused in the alleged offence. Admissibility and relevancy of material placed on record is something which has to be valued at the stage of evidence.

9. In the present case, it is alleged that the scheduled offence relates to multi-layered money transfer whereby large sums of money were deposited into the bank accounts of *M/s Diyabati Technology Pvt. Ltd., M/s Maojaza*

² 2022 SCC OnLine SC 929



Technologies Pvt. Ltd. and *M/s Sumyth Technologies Pvt. Ltd.* (first layer entities). The said amounts were subsequently transferred to various bank accounts including those of *M/s Akash Corporation* and *M/s Haresh Corporation* (second layer entities). The said funds were further transferred to *M/s Sagar Diamonds Ltd.* (third layer entity), which transferred the said amount into its own SBI bank account for making outward remittance in the guise of import or to the bank account of *M/s RHC Global Exports Pvt. Ltd.* (fourth layer entity).

10. Concededly, the applicant is not found involved in any of the above-mentioned layers and is therefore, not an accused in the scheduled offence. Rather he has been accused of impersonating himself to be an ED Officer and approaching one of the accused persons to help him in ED case, and in lieu of the same an amount of Rs. 9 lacs has been received, which has also been traced in his account. The respondent has sought to bring the present applicant within the fold of PMLA by alleging that co-accused *Jitendra Prasad* alongwith present applicant collected proceeds of crime amounting to Rs.2.60 crores in cash from co-accused *Vaibhav Dipak Shah* and *Saurin Shah*. The said latter individuals are statedly the Directors of *M/s Sagar Diamonds Ltd.* and consequently, it is argued that the applicant and co-accused were well aware of the fact that the funds received by them were 'proceeds of crime'. Mr. Hossain, learned counsel, on instructions, states that out of the aforesaid amount, approximately a sum of Rs.20 lacs is alleged to have gone to the present applicant, out of which Rs.9.70 lacs has been found to be deposited in his bank account. As noted above, insofar as co-accused *Jitendra Prasad* is concerned, a sum of Rs.47.50 lacs was recovered from his residence and Rs.1.27 crores was lying deposited in the



bank account of his family members.

11. So far as the issue of the applicant being aware that the amount paid is from the 'proceeds of crimes', is concerned, I am of the considered prima facie opinion that at the present stage, considering the evidence and factual situation as existing, the said fact is not clearly established. As regards the scheduled offence itself, the mere transfer of money from one layer to another does not ipso facto mean that the subsequent layer was aware of the money being proceeds of crime. For establishing the factum of awareness of money being 'proceeds of crime' within the various layers, certain connecting evidence is required and mere accusations cannot be the sole basis for confirming the same. It holds all the more true in the case of the applicant inasmuch as although it is true that the applicant alongwith his co-accused were aware of the individuals/accused being involved in the scheduled offence and while representing himself as an ED officer, the applicant offered to help them in the said case, the said fact itself cannot be the basis for considering that the applicant could have possibly considered that the money he received was 'proceeds of crime'.

12. Considering the abovementioned factual matrix, it can be seen that in the absence of any material evidence showing the link of the applicant with the scheduled offence, the mere fact that he has received money from one of the individuals accused in the scheduled offence does not of itself fulfil the requirement that the same were 'proceeds of crime' or that the applicant was aware that the same might be so. Further, all other co-accused have already been released on bail. Consequently, on a prima facie consideration of the facts, no link has been established between the applicant and the scheduled crime. Further, no evidence has been placed on record to show that the



applicant is likely to commit any offence while being released on bail or that he was previously involved in any other case.

13. Considering the totality of the facts and circumstances, it is directed that the applicant be released on regular bail subject to his furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/ concerned Court/Duty M.M. and subject to the following further conditions:-

- i) The applicant shall not leave the NCR without prior permission of the concerned Court.
- ii) The applicant shall provide his mobile number to the Investigating Officer on which he will remain available during the pendency of the trial.
- iii) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.
- iv) The applicant shall not directly/indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.
- v) The applicant shall regularly appear before the concerned Court during the pendency of the trial.

14. The bail application is disposed of in the above terms.

15. Copy of the order be communicated to the concerned Jail Superintendent electronically for information.

16. Copy of the order be uploaded on the website forthwith.

17. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the



trial of the case as the same has been expressed only for the purpose of the disposal of the present bail application.

MARCH 20, 2024

ga

MANOJ KUMAR OHRI, J