Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1418 of 2023

Applicant :- Prabhat Chandra
Opposite Party :- Union Of India, Directorate Of Enforcement Thru. Asst. Dir., Allahabad
Counsel for Applicant :- Ayodhya Prasad Mishra A.P. Mishra,Jaylaxmi Upadhyay,Rituraj Mishra
Counsel for Opposite Party :- Kuldeep Srivastava,Rohit Tripathi

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Ayodhya Prasad Mishra, the learned counsel for the applicant and Sri Rohit Tripathi, the learned Counsel for the respondent – Directorate of Enforcement and perused the records.

2. The instant application has been filed by the applicant seeking anticipatory bail in Sessions Case No. 160 of 2023, ECIR No.01/ALSZO/2018, under Section 3/4 Prevention of Money Laundering Act, 2002, registered at Police Station Sub Zonal Office Enforcement of Directorate, Allahabad/Prayagraj.

3. The Central Bureau of Investigation has lodged an F.I.R. No.RC0062016A0009 dated 27.06.2016 against ten accused persons, including the applicant, for commission of offence under Sections 120-B, 420, 409, 467, 468, 471 I.P.C. and Section 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act and Section 65, 66, 66 (C) and 66 (D) of Information and Technology Act, 2000 alleging that the core banking system was launched in the savings bank of Post Office at Varanasi during the year 2014-15. As there were no checks and balances in the system, co-accused Kumar Priyadarshi, who was posted as a Post Master, in connivance other co-accused persons opened fake accounts, made fake deposit entries in the system and

withdrew the amount and parked it into different accounts with the help of his relatives and friends, including the applicant.

4. On the basis of written complaint of Sri R.C. Singh, the then Assistant Director (Investigation), now retired, Chief P.M.G. Office, Hazratganj, Lucknow, C.B.I. registered an F.I.R. on 27.05.2015 for misappropriation of government money to the Tune of Rs.5,92,31,679/-.

5. Regarding the applicant it has been stated that he is the brother in law of co-accused Kumar Priyadarshi, residing in Jaipur and instrumental in purchase of property at Jaipur. He has made fake deposit entries of Rs.1,12,90,000/- in his account with G.P.O. Jaipur on various dates. Subsequently, Rs.42.20 lacs were transferred to the accounts of co-accused Kumar Priyadarshi, Smt. Jayanti and Abhigyan maintained with Axis Bank, M.A. Road, Varanasi. Apart from the above Rs.13,00,000/- and Rs.8,00,000/- were transferred to two accounts of the applicant maintained with UCO Bank, Jaipur and SBI, Patna respectively. Further, Rs.10,00,000/- were transferred to the account of M/s Padma Finlease Co. Pvt. Ltd. Jaipur for purchasing a flat at Jaipur in the name of Smt. Jayanti and Rest amount of Rs.39,70,000/- were withdrawn in cash. He has knowingly assisted the co-accused Kumar Priyadarshi for routing the tainted money through various accounts to project it as untained money and thus actually involved in the process connected with proceeds of crime.

6. On the basis of aforesaid F.I.R. the Directorate of Enforcement had registered ECIR No.01/ALSZO/2018 and after investigation a complaint has been filed on 25.06.2020. Regarding the applicant, the complaint states that in the statement recorded under Section 50 (2) of PMLA on 28.09.2018, the applicant stated that co-accused Kumar Priyadarshi had transferred the total amount deposited on different dates. The CBI Had submitted a charge-sheet on 05.09.2017 against 10 persons, including the applicant.

7. In the affidavit filed in support of the anticipatory bail-application it has been contended that the applicant is innocent, he has falsely been implicated in the present case and besides the scheduled offence, he has no criminal history.

8. The applicant has already been granted bail in the scheduled offence by means of an order dated 25.09.2019 passed by this court in Criminal Misc. Bail Application No. 5486 of 2018.

9. The respondent-Directorate of Enforcement has filed a counter affidavit opposing the anticipatory bail application. The learned counsel for the respondent has submitted that the total amount of proceeds of crime involved in the present case is Rs.6,49,80,371/-

10. The learned counsel for the applicant has submitted that the applicant has no criminal history apart from the scheduled offence and he has already been granted bail in the scheduled offence and a co-accused Sunil Kumar Asthana has been granted anticipatory bail in the present case by means of an order dated 26.09.2023 passed in Criminal Misc. Bail Application No.2106 of 2023, therefore, the applicant is also entitled to be granted anticipatory bail on the ground of parity.

11. The learned counsel for the applicant has relied upon an order dated 20.02.2023 passed by a coordinate Bench of this Court in the case of **Govind Prakash Pandey Vs. Directorate of Enforcement**: Criminal Misc. Bail Application No.1943 of 2023 and the judgment of Hon'ble Supreme Court in the case of **Siddharth Vs. State of U.P.**, (2022) 1 SCC 676

12. In **Govind Prakash Pandey** (Supra), this court has granted bail to a person accused of commission of offence under PMLA on the consideration that his statement had been recorded under Section 50 of the Act and he had not been arrested under Section 19 of the Act.

13. In **Siddharth v. State of U.P.**, (2022) 1 SCC 676, the charge-sheet was stated to be ready to be filed but the trial court took a view

that unless the person is taken into custody the charge-sheet will not be taken on record in view of Section 170 CrPC., which provides that:-

> *"**170. Cases to be sent to Magistrate, when evidence is sufficient**.—(1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day-to-day before such Magistrate until otherwise directed."*

14. The Hon'ble Supreme Court held that Section 170 Cr.P.C. does not impose an obligation on the officer-in-charge to arrest each and every accused at the time of filing of the charge-sheet. The word "custody" appearing in Section 170 CrPC does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the investigating officer before the court while filing the charge-sheet. **Siddharth** (Supra) addresses the issue of need of arrest even after completion of investigation, but before submission of the charge-sheet and the Hon'ble Supreme Court observed that *"Merely because an arrest can be made because it is lawful does not mandate that arrest must be made."* However, no such issue is involved in the present case.

15. In **P. Chidambaram v. Directorate of Enforcement**, (2020) 13 SCC 791, the Hon'ble Supreme Court explained the principles for considering the claim of release on bail regarding persons accused of economic offences and held that: -

> ***"23.** ... the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. **However, while considering the same the gravity of the offence is***

> ***an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused.*** *One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore,* ***the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein*** *and securing the presence of the accused to stand trial.*

16. In the case of ***Satender Kumar Antil vs Central Bureau Of Investigation: (2022) 10 SCC 51***, the Hon'ble Supreme court has categorize the offences in four categories. The Category C is "the offences punishable under the special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 45-D (5)], Companies Act (Section 212 (6) etc." and Category D "economic offences not covered by special acts". Regarding Category C & D the guidelines says that the bail application has to be decided on merits on appearance of the accused in the Court.

17. Regarding the economic offence falling in Category D the Hon'ble Supreme Court has merely stated that this issue has already been dealt in P. Chidambaram (Supra). The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence.

18. The learned Counsel for the applicant has submitted that the applicant is entitled to be granted anticipatory bail on the ground of parity with co-accused Sunil Kumar Asthana. The aforesaid co-accused has been granted interim anticipatory bail while giving an opportunity of the respondent to file a counter affidavit. In the present case the respondent has already filed a counter affidavit. Moreover, the learned counsel for the respondent has pointed out that the co-accused Sunil Kumar Asthana has been granted interim anticipatory bail after noting that he was working as a Postal Assistant in DLW Post Office and fraudulent transactions were made by the co-accused Kumar Priyadarshi after misusing the user id of Sunil Kumar Asthana and another co-accused who was also working as a Postal Assistant. While granting interim anticipatory bail to Sunil Kumar Asthana, this fact was not placed before the Court that a huge amount was transferred to his bank account and was withdrawn therefrom, whereas it is apparent from a copy of complaint filed along with the affidavit filed in support of application that Rs.1,11,86,000/- were illegally transferred to two savings bank accounts, in one of which the co-accused Sunil Kumar Asthana was a joint account holder.

19. The learned counsel for the applicant has submitted that the applicant is a relative of co-accused Kumar Priyadarshi and the co-accused had transferred the amount to his bank account and he had withdrawn the amount without any knowledge of the source of money deposited by Kumar Priyardarshi.

20. Per-contra, the learned counsel for the respondent-E.D. has submitted that the applicant has disclosed his qualification to be a graduate. Being a close relative of Kumar Priyadarshi, he knew that

he was a government employee. It cannot be expected that a graduate person did not know that a government employee cannot deposit such a huge amount of Rs.1,12,90,000/- earned from legitimate sources and get Rs.39,70,000/- withdrawn in cash through the applicant for valid purposes and a huge amount was spent by the applicant himself for various purposes. It is also relevant to mention here that co-accused Kumar Priyadarshi has made fraudulent deposit Rs.88.10 lacs to the joint account of co-accused Ashutosh Chandra and Soni Kumari and fake deposit entry of Rs.26,50,000/- to the account of co-accused Sanjay Kumar Jha and all the aforesaid persons are closely related to each other.

21. From the aforesaid facts, prima facie it appears that the applicant has knowingly assisted in an activity connected with the proceeds of crime and he is guilty of the offence of money-laundering.

22. Without making any observations which may affect the merits of the case, I am of the view that the aforesaid facts do not warrant exercise of discretion of this court by granting pre-arrest bail to the applicant.

23. The application for anticipatory bail stands ***rejected***.

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(Subhash Vidyarthi, J.)

Order Date :- 28.11.2023
Ram.

Digitally signed by :-
RAM SINGH
High Court of Judicature at Allahabad,
Lucknow Bench