Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 2126 of 2023
Applicant :- Sadhna Kothari
Opposite Party :- Union Of India Thru. Directorate Of Enforcement
Counsel for Applicant :- Pranjal Krishna
Counsel for Opposite Party :- Rohit Tripathi

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Pranjal Krishna, the learned counsel for the applicant and Sri Rohit Tripathi, the learned counsel for the respondent - Enforcement of Directorate.

2. A rejoinder affidavit has been filed on behalf of the applicant to the counter affidavit filed on behalf of the respondent which is taken on record.

3. On 27.09.2023 the following order was passed granting interim anticipatory bail to the applicant.
"1. Heard Sri S.C. Mishra, learned Senior Advocate assisted by Sri Pranjal Krishna, the learned counsel for the applicant as well as Sri Rohit Tripathi, the learned counsel appearing on behalf of the Directorate of Enforcement and perused the records.
2. The instant application has been filed by the applicant seeking anticipatory bail in Complaint Case No.111 of 2018 (E.D. vs M/S Rotomac Global Pvt. Ltd. & Ors) ECIR/01/DLZO-I/2018 registered at Directorate of Enforcement, New Delhi under Section 3 and 4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA').

3. The C.B.I. has registered RC BDI/2018/E/0001 on 18.02.2018 against four named persons, including the applicant, and an unknown bank official and private persons, alleging commission of a bank fraud with Bank of Baroda to the tune of Rs.466.63 crores.

4. The C.B.I. submitted a charge-sheet on 21.05.2018 for commission of the offence under Sections 420, 467, 471, 120B IPC, 13(2)/13(1)(d) of the Prevention of Corruption Act. Treating the aforesaid offences as scheduled offences, Directorate of Enforcement filed a complaint on 29.10.2019 against M/s Rotomac Global Private Ltd., Vikram Kothari, Rahul Kothari and the applicant, three natural persons arrayed as accused were directors of the accused No.1, Rotomac Global Private Ltd. Only place apart from the array of the parties in the complaint, where the applicant's name finds place in the entire complaint is at one place in para 7.2, where it is stated that in the statements of co-accused, Rahul Kothari he had stated that his mother (the applicant) was only a sleeping director in the company and she had no role in day today affairs

of the company.

5. In the affidavit filed in support of the anticipatory bail-application, it has been contended that the applicant is 70 years old innocent lady suffering from Hypothyroid, High Blood Pressure, Cardiac problems, severe Arthritis and Depression as also serious respiratory issues and she has been advised surgery for knee joint replacement. It has been further stated that the applicant has no criminal history and she has falsely been implicated in the present case.

6. Learned counsel for the applicant has stated that the applicant' name was not included in the charge-sheet submitted by the C.B.I.

7. Sri Rohit Tripathi, learned counsel appearing for the E.D. has vehemently opposed the application and he has submitted that being a director of the Company, the applicant is required to be prosecuted for the offence committed by the company in view of the provisions contained in Section 70 of the PMLA.

8. Section 70 of the PMLA provides as follows:-

70. Offences by companies.

(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. Explanation.For the purposes of this section,

(i) company means any body corporate and includes a firm or other association of individuals; and

(ii) director in relation to a firm, means a partner in the firm.

9. Section 70 of the PMLA imposes liability of the acts of a company upon persons who were in-charge of and were responsible to the company for the conduct of the business of the company. There is no such averment in the entire

complaint that the applicant was in-charge of the conduct of business of the company. On the contrary, the complainant makes a mention of the applicant's name only by referring to the statement of co-accused Rahul Kotahri that the applicant was merely a sleeping director and she has no role in day today affairs of the Company.

10. The matter requires consideration.

11. Learned counsel for the respondent may file a counter affidavit within a period of two weeks. One week's time thereafter shall be available to file rejoinder affidavit, if any.

12. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that the applicant is a 70 years old woman having several ailments and she has no criminal history and her name has been dropped even in the scheduled offences by the C.B.I., and without making any observations which may affect the outcome of the case, I am of the view that the aforesaid facts are sufficient for making out a case for grant of interim anticipatory bail to the applicant.

13. Till the next date of listing of the case, as an interim measure, it is provided that in the event of arrest/ appearance of applicant-Sadhna Kothari before the learned Trial Court in the aforesaid case crime, she shall be released on interim anticipatory bail on her furnishing personal bond and two solvent sureties, each in the like amount, to the satisfaction of S.H.O./Court concerned on the following conditions and subject to any other conditions that may be fixed by the Trial Court:

(i). That the applicant shall appear before the trial court on each date fixed, unless personal presence is exempted;

(ii). That the applicant shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence;

(iii). That the applicant shall not pressurize/ intimidate the prosecution witness;

14. List this case in the week commencing 30.10.2023. "

4. Although a counter affidavit has been filed in this case, but nothing has come to light which may persuade this court to take a view, other than the view taken at the time of granting interim anticipatory bail to the applicant.

5. The learned A.G.A. could not point out any violation of the conditions of interim anticipatory bail committed by the applicant

6. The learned counsel for the applicant has submitted that the bail bonds have already been furnished in compliance of the aforesaid interim order.

7. In view of above, the interim order dated 27.09.2023 is made absolute and the anticipatory bail application is **allowed.**

(Subhash Vidyarthi,J.)

Order Date :- 5.12.2023
Preeti.

Digitally signed by :-
PREETI GAUTAM
High Court of Judicature at Allahabad,
Lucknow Bench