

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13571 of 2023

Applicant :- Vijay Kumar But Actual Name Is Bijay Kumar

Opposite Party :- Directorate Of Enforcement Thru. Assit, Director Allahabad

Counsel for Applicant :- Pranshu Agrawal

Counsel for Opposite Party :- Rohit Tripathi

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Pranshu Agrawal, the learned counsel for the applicant as well as Sri Rohit Tripathi, the learned counsel for the respondent-Directorate of Enforcement and perused the record.

2. The instant application has been filed seeking release of the applicant on bail in Session Case No. 126/2023, ECIR/01/ALSZO/2014, under Section 3/4 of Prevention of Money Laundering Act, 2002, registered at Police Station Directorate of Enforcement, District Sub-Zonal Office, Prayagraj.

3. The C.B.I had registered RC No.0006/2014A009 dated 11.06.2014 against eight accused persons, not including the applicant, alleging financial irregularities and misappropriation of funds allotted for works related to Mahatma Gandhi Rural Employment Guarantee Scheme.

4. In furtherance of the aforesaid F.I.R, the Directorate of Enforcement has registered ECIR 01/ALSZO/2014 on 11.08.2014 against seven persons, including the applicant. The complaint states that co-accused Umesh Chand Rai was Village Panchayat Development Officer/Secretary of entire four subject village panchayats. One Dwijendra Prasad Chauhan (since dead) was working as Technical Assistant and the applicant also looked after the work of Technical Assistant. The Measurement Books (hereinafter referred as 'MBs') were written in the hand writing of Dwijendra Prasad Chauhan (since dead) and were signed by the applicant also. Measurement Books contains false entries and showed used of standard building of material whereas physical verification disclosed use of sub standard material. The complaint filed by the Directorate of Enforcement states that the MBs entries in respect of all the aforesaid works were made by

the applicant, although the case of the C.B.I. is that MBs entries were made by Dwijendra Prasad Chauhan (since dead).

5. The complaint states that in his statement recorded under Section 50 of Prevention Of Money-Laundering Act, 2002 (hereinafter referred as PMLA, 2002), the applicant stated that he was working as Technical Assistant on contractual basis since the year 2006 and he earns Rs. 1 lakh per annum. The applicant does not have any immovable properties in his name and he had purchased an agricultural plot having an area of 21 decimal in the year 2014 for a sale consideration of Rs. 2.5 lakhs, the value whereof as per the rates fixed by the government comes to Rs. 3.12 lakhs. The complaint alleges that the applicant had received Rs. 2.5 to 3.0 lakhs from Dwijendra Prasad Chauhan (since dead) for making wrong entries.

6. In the affidavit filed in support of the bail application, it has been stated that besides the scheduled offence, applicant has no other criminal history. The applicant has been granted bail in the scheduled offence dated 08.06.2016 passed by this Court in Criminal Misc. Bail Application No. 4613 of 2016.

7. The Directorate of Enforcement has filed a short counter affidavit opposing the bail application, inter alia stating that the flight risk of the co-accused cannot be denied. The counter affidavit refers to the judgments of the Hon'ble Supreme Court in the case of **P. Chidambaram Vs. Directorate of Enforcement: 2019 9 SCC 24** and the judgments of the Hon'ble Supreme Court clarifying that while granting of bail, regors of Section 45 of PMLA Act, 2002, should be observed and in the present case, the twin conditions have contemplated under Section 45 of the Act are not satisfied.

8. Having considered the aforesaid facts and circumstances of the case, what prima facie appears from the material available before this court at this stage is that the date of dispute constructions is nowhere mentioned either in the F.I.R. filed by the C.B.I or in the complaint filed by the Directorate of Enforcement but a report regarding the construction was submitted on 12.12.2010. The C.B.I had lodged the F.I.R on 11.06.2014. The applicant was not named as an accused in

the F.I.R. The Directorate of Enforcement had registered the ECIR on 11.08.2014 and the compliant has been filed on 30.03.2018. The applicant has already got his statement recorded under Section 50 of PMLA, 2002, and he was not arrested during investigation. The applicant has no immovable property in his name and he had purchased 21 decimal land in the name of his wife for Rs. 2.5 lakhs. Although the Assistant Director of the Directorate of Enforcement has filed a counter affidavit stating that the applicant is not entitled to be release on bail keeping in view the rigors of Section 45 of PMLA, 2002, the proviso appended to Section 45(1) of PMLA, 2002, states that a person is accused of money laundering a sum less than Rs. 1 Cr may released on bail even by the special court. Prior to amendment in the year 2018 this figure was Rs. 30 lakhs. In Ramji Singh Vs. Directorate of Enforcement, this court has held that the rigors of section 45 of PMLA, 2002, do not affect the powers of the High Court under Section 439 Cr.P.C. The C.B.I. claims that disputed measurement books were prepared by Dwijendra Prasad Chauhan (since dead) and the applicant had singed some of the MBs whereas the Directorate of Enforcement claims that all the measurement books prepared by the applicant. The applicant has already been granted bail in the scheduled offence.

9. Keeping in view the aforesaid facts and circumstances of the case and without making any observations which may affect the merits of the case, I am of the view that the aforesaid facts are sufficient for making out a case for enlargement of the applicant on bail.

10. Accordingly, this bail application stands **allowed**.

11. Let the **applicant- Vijay Kumar But Actual Name Is Bijay Kumar** be released on bail in the aforesaid case, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of Magistrate/Court concerned, subject to the following conditions: -

- (i) the applicant shall not tamper with the prosecution evidence;
- (ii) the applicant shall not pressurize the prosecution witnesses;

(iii) the applicant shall appear on each and every date fixed by the trial court.

(Subhash Vidyarthi,J.)

Order Date :- 22.11.2023

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