

High Court of Judicature at Allahabad

Sitting at Lucknow

RESERVED

Neutral Citation No. - 2023:AHC-LKO:81695

Judgment Reserved on : 11.12.2023

Judgment Pronounced on: 13.12.2023

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION
U/S 438 CR.P.C. No. - 2807 of 2023

Applicant :- Praveen Singh Chauhan

Opposite Party :- Directorate Of Enforcement, Allahabad Sub Zonal
Office

Counsel for Applicant :- Purnendu Chakravarty, Abdul Ahad, Annuj
Taandon, Shashank Singh

Counsel for Opposite Party :- Rohit Tripathi

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri S.C. Mishra Senior Advocate assisted by Sri Purnendu Chakravarty Advocate, the learned counsel for the applicant and Sri Kuldeep Srivastava, 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 ECIR No. ECIR/ALZO/02/2023, under Sections 3/4 of Prevention of Money Laundering Act, 2002, Police Station Enforcement Directorate, Lucknow.
3. On 17.02.2023, officials of the Directorate of Enforcement had conducted a raid at the residence of the applicant and premises of S.S. Institute of Management, Mampur of which the applicant is the Chairman, but no incriminating material was found therefrom.

4. On 30.03.2023, an FIR was lodged by a Senior Sub-Inspector of Police in Police Station Hazratganj, Lucknow Central, Commissionrate Lucknow, against 18 named persons, including the applicant, describing him as Chairman, S.S. Institute of Management, Mampur, and some other persons alleging that during a preliminary investigation conducted by the informant, it was found that embezzlement of amounts meant to be distributed as matriculation scholarship to students was done on the basis of fake documents in 10 colleges including in S.S. Institute of management, Mampur, Lucknow. The FIR stated that the named educational institutions have misappropriated the money under pretext of granting scholarship to their employees and other imaginary persons. Some of the bank accounts had been opened in the names of minors or old persons who are not eligible for scholarship. Several persons do not even have the intimation of the bank accounts having been opened in their names.
5. On 05.04.2023, the Directorate of Enforcement registered ECIR-ALZO-02-2023 and started carrying out investigation.
6. The applicant was called by the officials of Enforcement Directorate on various dates and he claims to have appeared on 18.02.2023, 17.04.2023, 18.04.2023, 19.04.2023, 08.07.2023 and 10.07.2023 and his statement under Section 50(2) of the Prevention of Money Laundering Act was recorded.
7. The applicant's case is that although he was cooperating with the investigation, an apprehension of his arrest arose and, therefore, on 20.08.2023 he filed an application for anticipatory bail before the Special Court. During pendency of the said application, a provisional attachment order was issued on 29.09.2023 whereby three properties - one in the name of the applicant's wife and two in the name of the applicant, have been attached provisionally.

8. The anticipatory bail application came to be rejected by the special judge by means of an order dated 03.10.2023 and thereafter the applicant has approached this Court seeking anticipatory bail.
9. The Directorate of Enforcement has filed a counter affidavit and a supplementary counter affidavit inter alia stating that the analysis of evidences and information gathered during the investigation spells out role of the applicant in unlawful availing the scholarship in the names of several ineligible candidates and misappropriation of the same for his own advantage and thus in commission of the offence of the money laundering.
10. It has further been stated in the counter affidavit that a co-accused Vikram Nag has stated in his statement recorded under Section 50 PMLA that besides Hygia group of colleges, he used to work as an agent for S.S. Institute of Management and Technology and Trivedi College of Management and Technology and he has got about 150 physically handicapped students admitted to S.S. Institute of Management and Technology.
11. It has been stated in the supplementary counter affidavit that the applicant failed to appear before the Directorate in compliance of the summons dated 05.04.2023, 06.04.2023, 21.08.2023, 23.08.2023, 04.10.2023, 16.10.2023 & 17.10.2023 without seeking any adjournment or any plausible explanation. The Special Judge has issued a non-bailable warrant against the applicant by means of an order dated 02.12.2023.
12. Sri S.C. Mishra, the learned Senior Advocate appearing for the applicant has submitted that although the applicant's name was there in the FIR No. 119 of 2023 filed in respect of the scheduled offence but after investigation, a charge sheet dated 23.08.2023 has been submitted in furtherance of the aforesaid FIR, but the applicant or S.S.

Institute of Management or any person connect with the aforesaid institute has not been made an accused in the charge-sheet. The Registrar of S.S. Institute of Management has been mentioned as a witness in the said charge-sheet. This establishes that the Investigating Officer was satisfied that the scheduled offence had not been committed by the applicant or by any other person in S.S. Institute of Management and Technology. Thus the commission of scheduled offence by any person in S.S. Institute has not been established. In absence of the applicant's involvement in commission of the scheduled offence of embezzlement of money in distribution of scholarships in S.S. Institute, he cannot be prosecuted for the offence under Section 3 of the PMLA.

13. In support of his submissions, the learned counsel for the applicant has relied upon a judgment of the Hon'ble Supreme Court in the case of **Pankaj Bansal v. Union of India**, 2023 SCC OnLine SC 1244.
14. Per contra, Sri Kuldeep Srivastava, the learned counsel for the Enforcement Directorate has submitted that for prosecution under PMLA, it is not necessary that the applicant himself would have committed the scheduled offence. Merely this much is sufficient that a scheduled offence has been committed and the applicant is involved in any manner in the utilization of proceeds of crime. He has submitted that in the provisional attachment order whereby three properties of the applicant and his wife have been attached, it has been mentioned that proceeds of crime have been utilized in acquisition of those properties and, thereafter, the commission of offence under Section 3 PMLA is prima facie established. The provisional attachment order mentions that from the examination of accounts of SS Institute, it has come to light that huge amounts have been withdrawn in cash and the same amounts have been utilized in acquisition of properties in the name of the applicant and his wife.

15. I have considered the facts and circumstances of the case and the submissions made by the learned counsel for the parties.
16. In **Pankaj Bansal v. Union of India**, 2023 SCC OnLine SC 1244, the Hon'ble Supreme Court took into consideration the following facts of the case: -

“20. ... The first ECIR was registered by the ED on 15.06.2021 and Roop Bansal was arrested in connection therewith on 08.06.2023. Neither of the appellants was shown as an accused therein. However, it is the case of the ED that investigation in relation to the first ECIR is still ongoing. In any event, after the arrest of Roop Bansal, both the appellants secured interim protection by way of anticipatory bail on 09.06.2023, albeit till the next day of hearing, viz., 05.07.2023, from the Delhi High Court. However, both the appellants were summoned on 14.06.2023 for interrogation in connection with the first ECIR, in which they had interim protection. Summons in that regard were served upon them on 13.06.2023 at 06.15 pm. Significantly, the second ECIR was recorded only on that day, i.e., on 13.06.2023, in connection with FIR No. 0006 which was registered on 17.04.2023. Therein also, neither of the appellants was shown as an accused and it was only Roop Bansal who stood named as an accused. In compliance with the summons received by them vis-à-vis the first ECIR, both the appellants presented themselves at the ED's office at Rajokri, New Delhi, at 11.00 am on 14.06.2023. While they were there, Pankaj Bansal was served with summons at 04.52 pm, requiring him to appear before another Investigating Officer at 05.00 pm in relation to the second ECIR. As already noted, there is ambiguity as to when Basant Bansal was served with such summons. It is the case of the ED that he refused to receive the summons in relation to the second ECIR and he was arrested at 06.00 pm on 14.06.2023. Pankaj Bansal received the summons and appeared but as he did not divulge relevant information, the Investigating Officer arrested him at 10.30 pm on 14.06.2023.

17. The Hon'ble Supreme Court observed that: -

“21. This chronology of events speaks volumes and reflects rather poorly, if not negatively, on the ED's style of functioning. Being a premier investigating agency, charged with the onerous responsibility of curbing the debilitating economic offence of

money laundering in our country, every action of the ED in the course of such exercise is expected to be transparent, above board and conforming to pristine standards of fair play in action. The ED, mantled with far-reaching powers under the stringent Act of 2002, is not expected to be vindictive in its conduct and must be seen to be acting with utmost probity and with the highest degree of dispassion and fairness. In the case on hand, the facts demonstrate that the ED failed to discharge its functions and exercise its powers as per these parameters.”

18. The Hon’ble Supreme Court held that: -

“25. The way in which the ED recorded the second ECIR immediately after the appellants secured anticipatory bail in relation to the first ECIR, though the foundational FIR dated back to 17.04.2023, and then went about summoning them on one pretext and arresting them on another, within a short span of 24 hours or so, manifests complete and utter lack of bonafides. Significantly, when the appellants were before the Delhi High Court seeking anticipatory bail in connection with the first ECIR, the ED did not even bring it to the notice of the High Court that there was another FIR in relation to which there was an ongoing investigation, wherein the appellants stood implicated. The second ECIR was recorded 4 days after the grant of bail and it is not possible that the ED would have been unaware of the existence of FIR No. 0006 dated 17.04.2023 at that time.”

19. In the aforesaid factual premise the Hon’ble Supreme Court had held that the Magistrate can direct detention in custody only after applying his mind to all relevant matters and if the arrest suffered on the ground of valuation of Article 22(1) of the Constitution of India, the order of remand would not cure the constitutional infirmities attaching to the arrest. The Hon’ble Supreme Court allowed the appeal and set aside the order on the ground that the learned Judge had not even recorded a finding that he had perused the grounds of arrest to ascertain whether the ED had recorded the reasons to believe that the applicants were guilty of an offence under PMLA and that there was proper compliance with the mandate of Section 19 of PMLA. The aforesaid case was decided in view of the peculiar facts and circumstances of

the case, which are in no way similar to the facts of the present case. It is well settled that the precedents cannot be applied universally as statutes and the difference of a few words in the facts of the cases can make a world of a differences in their outcome.

20. What prima facie appears from the record that an FIR was lodged on 30.03.2023 against 18 named persons, including the applicant, alleging embezzlement of money meant to be distributed amongst 10 colleges as scholarship, including S.S. Institute of Management, of which the applicant is the Chairman. The FIR states that some bank accounts had been opened in the name of minors and old persons, who are ineligible for getting scholarship and who had no knowledge about the bank accounts having been opened in their names. The FIR states that it has been found during inquiry that the persons responsible for management of colleges have committed embezzlement in connivance with an agent of Fino Bank. About 300 fake bank accounts of students were opened, about 1,200 fake SIM cards and debit cards were arranged which were kept by the institutes themselves. The institutes embezzled the amounts of various post matriculation scholarships meant for persons belonging to weaker sections of the society on the basis of forged documents, fake bank accounts in the name of imaginary persons were opened.
21. The charge sheet dated 30.08.2023 submitted in furtherance of the aforesaid FIR No. 119 of 2023 has been submitted against six accused persons and it states that the investigation regarding the other accused persons is still continuing. Therefore, it is not that the applicant has been exonerated of the scheduled offence.
22. The provisional attachment order dated 29.09.2023 inter alia states that as per data shared by various departments like Minority Welfare Department, Social Welfare Department, Backward Class Welfare Department and Divyangjan Department, Lucknow, U.P., it is evident

that during financial year 2014-15 to 2021-22, a total amount of Rs. 7,40,99,432/- was transferred to bank accounts of various students as scholarship. The scholarship fund for persons with disability was directly credited to institutes' accounts from the account of beneficiaries / students, who are availing scholarship. From financial year 2019-20 to 2021-22 Rs. 6.20 crores was credited to the account of the institute, which was used for personal expenses of the appellant, who withdrew huge sums in cash and the appellant utilized the amount in purchase of immovable properties in his own name as well as in the name of his wife Smt. Hema Singh. The sale deed in favour of Smt. Hema Singh mentions a total amount of Rs. 24 lakh having been paid from the year 2020-21, without mentioning the mode of payment, from which it appears that the money has not been paid out of genuine sources of income and the property appears to have been purchased by the applicant in the name of his wife out of proceeds of crime so that it can be projected as untainted.

23. One Vikram Nag has stated in his statement recorded under Section 50 of PMLA that he used to bring fake students from various parts of the State to some colleges including SS Institute of Management and he was paid commission therefor. He further stated that he was engaged in the business of mobile repair; he got admission in Hygia group of colleges in the year 2017-18 for PGDM course, after admission when he went to the college he saw that there were no arrangements for the classes and he stopped going to the college and he did not know as to which account the amount of Rs. 1,60,700/- paid to him as scholarship was received as the account had been opened and documents had retained by the management of the college. Thereafter he started working as a counselor in Hygia group of institutions since 2021, where he gets physically handicapped students enrolled and he used to get Rs. 10-20 thousand commission per students. He also worked as an agent for S.S. Institute of Management of Technology and he had

got about 150 students admitted in the said institute, for which he used to get Rs. 10,000/- per student. He stated that he has earned about Rs. 10-12 lakh from S.S. Institute of Management and Technology.

24. Although the applicant claims to have cooperated with the investigation and to have appeared and got his statements recorded on 18.02.2023, 17.04.2023, 18.04.2023, 19.04.2023, 08.07.2023 and 10.07.2023, it is stated in the counter affidavit that after the statement of Vikram Nag was recorded, the applicant stopped responding to the summons and he did not appear thereafter for getting his statement recorded.
25. Without making any observations which may affect the merits of the case, I am of the view that the aforesaid facts prima facie indicate that the applicant is an accused in scheduled offence involving commission of embezzlement of money meant to be distributed as scholarship to the students belonging to deprived sections of the society, in which the investigation is still pending; his properties have been provisionally attached on the ground that the same have been acquired from proceeds of crime; that he is not cooperating with the investigations since a co-accused Vikram Nag gave statement under Section 50 PMLA regarding the applicant's involvement in commission of the offence, and he has not cooperated with the investigation and the aforesaid facts do not warrant exercise of discretion of this court by granting pre arrest bail to him.
26. The anticipatory bail application is accordingly *rejected*.

(Subhash Vidyarthi, J.)

Order Date :- 13.12.2023

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