

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 2904 of 2023

Applicant :- Nand Lal Sonkar

Opposite Party :- Directorate Of Enforcement (Sub Zonal
Office Allahabad) Prayagraj

Counsel for Applicant :- Purnendu Chakravarty, Anuuj
Taandon, Shivanshu Goswami

Counsel for Opposite Party :- Rohit Tripathi

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Purnendu Chakravarty along with Anuuj Taandon,, the learned counsels for the applicant as well as Sri Rohit Tripathi, the learned counsel appearing on behalf of the Directorate Of Enforcement.

2. The instant application has been filed by the applicant seeking anticipatory bail in in Complaint Case No. 678 of 2023, ECIR No. ECIR/ALSZO/09/2014, under Sections 3/4 P.M.L.A., 2002, registered at Police Station Directorate of Enforcement, Prayagraj (Allahabad), District Prayagraj (Allahabad).

3. The aforesaid case was initiated by a complaint filed by the Directorate of Enforcement on 12.12.2022 against 14 persons, including the applicant, stating that an FIR No. RC 4(S)/2014/CBI/SCB/Lucknow was registered on 25.2.2014, under Sections 120B read with 409,420,468,471 IPC and section 13(2) read with 13(1)(d) of P.C. Act, 1988 regarding alleged large scale financial bungling, gross irregularities and misappropriation of funds in MNREGA in District- Mirzapur during the period 2007-2010.

4. The investigations under the provision of Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA, 2002') revealed that the proceeds of the crime to the tune of Rs. 7,30,620/- were generated through commission of criminal activities. The applicant Nand Lal Sonkar was working as an Additional Development Officer during the relevant period and he was involved in committing the offence. The complaint states that prior to 15.8.2008, the cheques were issued in the name of of work in-charge for cash payments to labourers and suppliers, but after 15.8.2008, the payments were made directly through cheques. As per the Directorate of Enforcement, in his statement recorded under Section 50 of the PMLA, 2002, the

applicant admitted that the funds allotted for a particular work were used for another work for which no approval was accorded and the applicant failed to give particulars of the work in which the funds had been utilized.

5. The complaint narrates particulars of payments made and four cheques have been issued in the name of the applicant on 23.4.2008, 6.5.2008, 17.5.2008 and 19.5.2008 and all the aforesaid cheques have been made prior to 15.8.2008, when the system was altered providing that the payments will be made to the beneficiaries through cheques directly. A total amount of Rs. 1,89,500/- had been credited to the applicant's bank account through four cheques.

6. In the affidavit filed in support of the anticipatory bail-application, it has been stated that the applicant is 68 years old and innocent person having no criminal history except for the scheduled offence in which has already been granted bail by means of an order dated 10.10.2022 passed by a Coordinate Bench of this Court in Criminal Misc. Anticipatory Bail Application No. 46 of 2022.

7. The learned counsel for the applicant has submitted that the total proceeds of the crime alleged in the present case is Rs. 7,30,620/-, out of which Rs. 1,89,500/- only is said to have been credited to the applicant's bank account. Section 2(y)(ii) of PMLA, 2002 prior to its amendment, provided that the Scheduled offence means the offences specified in Part B of the Schedule, if the total value involved in such offences is 30 lakh rupees or more and after being amended in the year, 2015, it provides that the Scheduled offence means the offences specified in Part B of the schedule, if the total value involved in such offences is one crore rupees or more. Even as per the allegations levelled in the complaint, the total amount involved in the present case is Rs. 7,30,620/-.

8. Replying to the aforesaid submissions, the learned counsel appearing for Directorate of Enforcement has submitted that the Explanation appended to Section 3(ii) provides that the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

9. The Explanation merely explains the provision of Section 3, which defines the offence of money laundering, but for an offence of money laundering being committed, the proceeds of

the crime should be derived or obtained, directly or indirectly, by any person as a result of a criminal activity relating to a scheduled offence. The Scheduled offence, at the relevant point of time, meant an offence specified in Part B of the Schedule, if the total value exceeded Rs. 30 lakhs. In the present case, the total value involved in commission of the offence is Rs. 7,30,620/- only, which is far below the threshold of Rs. 30 lakhs provided under Section 2(y)(ii) of PMLA, 2002. In absence of any Scheduled offence as defined in the Section aforesaid having been committed, there can be no occasion or generation or any other proceeds of the crime or any other related activity and no offence under Section 3 of PMLA, 2002 can be said to have been committed.

10. The learned counsel for the respondent-Directorate of Enforcement has sought a liberty to file a counter affidavit for further elaborating this point. But as this point is purely legal in nature, there is absolutely no necessity of any counter affidavit as affidavits are required to be filed on questions of fact only. The fact that the total amount generated by the alleged offence was Rs. 7,30,620/- only, is asserted by the Directorate of Enforcement itself and, therefore, there is no requirement of any counter affidavit for rebutting the aforesaid claim of the Directorate of Enforcement itself.

11. A co-accused Shesh Nath Chauhan, who was working as Block Development Officer, has already been granted anticipatory bail by means of an order dated 5.12.2023 passed by this Court in Criminal Misc. Anticipatory Bail Application No. 2777 of 2023.

12. The complaint states that the applicant was working as a Junior Engineer, he has already retired. Presently, the applicant is aged about 68 years and besides the alleged Scheduled offence, he is not involved in any other case. He has already been granted anticipatory bail in the Scheduled offence and a co-accused person has been granted anticipatory bail in the present case. Therefore, I am of the view that the applicant is also entitled for anticipatory bail in the present case.

13. In view of the above, the anticipatory bail application of the applicant is **allowed**. In the event of arrest/ appearance of applicant- **Nand Lal Sonkar** before the learned Trial Court in the aforesaid case crime, he shall be released on anticipatory bail on his 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. In default of any of the conditions mentioned above or it is found that applicant has obtained this order concealing any material facts, the Investigating Officer shall be at liberty to file appropriate application for vacation of this order.

Order Date :- 16.12.2023

Shravan