

Court No. - 15

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 7 of 2024

Applicant :- Dr. Vijay Kumar Sharma

Opposite Party :- Ashish Rawat Asst. Director (Pmla) Directorate Of
Enforcement Lko.

Counsel for Applicant :- Purnendu Chakravarty, Mukut Bihari Tripathi

Counsel for Opposite Party :- Rohit Tripathi

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Purnendu Chakravarty, learned counsel for the applicant as well as Shri Rohit Tripathi, learned counsel appearing for Enforcement Directorate, only on the question of maintainability of the instant anticipatory bail application at Lucknow.

2. The instant application has been moved by the applicant- **Dr. Vijay Kumar Sharma**, in Complaint Case No. 42 of 2022 in ECIR/05/LKZO/2019/AD(SJ), P.S.- Directorate of Enforcement, Lucknow registered under Section 3 of the PMLA and punishable under Section 4 of PMLA Act, 2002, pending before the Special Judge, Anti-Corruption, C.B.I. Court, Ghaziabad, under Special Sessions Case No. 1923/2023 (Transferred Session Case No. 1485 of 2023), with the prayer to enlarge him on anticipatory bail, as he is apprehending arrest in the above-mentioned case.

3. A preliminary objection has been raised by Shri Rohit Tripathi, learned counsel appearing for Enforcement Directorate with regard to the maintainability of the instant anticipatory bail application at Lucknow.

4. Shri Rohit Tripathi submits that the instant anticipatory bail application has been filed with reference to the Complaint Case No. 7441 of 2023 "Ashish Rawat, Assistant Director (PMLA) Directorate of

Enforcement vs. Shri Sanjay Bhati & others" and the said case is now pending in Special Judge, Anti-Corruption C.B.I., at Ghaziabad.

5. It is further submitted that the applicant had earlier moved an anticipatory bail application before the Special Court at Ghaziabad, which has been rejected vide order dated 27.11.2023 and under the rules of the Court and having regard to the provisions of the United Provinces High Court (Amalgamation Order), 1948, the territorial jurisdiction of this Bench does not extend to the Special Court situated at Ghaziabad, which is conferred at principal seat of the Court at Allahabad and, thus, the instant anticipatory bail application moved on behalf of the applicant is not maintainable at Lucknow.

6. Shri Rohit Tripathi in this regard has relied on the law laid down by the Hon'ble Supreme Court in *(1975) 2 SCC 671 Nasiruddin vs. State Transport Appellate Tribunal* as well as in *1999 SCC OnLine All 1435, Mukhtar Ansari Vs. CBI and another, 2012 SCC OnLine ALL 255, Mohd. Yasir vs. State of U.P. and another, 2016 SCC OnLine ALL 2813, Mahendra Pratap Bhatt vs. Saroj Mahana* and in *Transfer Application (Civil) No. 57 of 2019, 'Vivek Raj Singh vs. Civil Judge Junior Division Tilhar, Shahjahanpur and anoter'*.

7. It is also submitted that the offence with regard to the predicate offences has admittedly been committed at Ghaziabad/Gautam Buddha Nagar and notwithstanding the fact that the ECIR was registered by the Lucknow Zonal Office and the complaint earlier was filed at Lucknow, which has now been transferred to the Special Court at Ghaziabad. The jurisdiction keeping in view the gazette notification dated 03.11.2021 with regard to the present case lies with the Special Court situated at Ghaziabad and in turn the applicant should have approached the principal seat of this Court at Allahabad, moreso when he has chosen the jurisdiction at Ghaziabad for moving an application under Section 438 Cr.P.C.

8. Shri Purnendu Chakravarty, learned counsel for the applicant vehemently submits that initially the complaint of the instant case was

lodged by the Enforcement Directorate at Special Court situated at Lucknow and the cognizance was also taken by the Special Court situated at Lucknow and thereafter a supplementary complaint was also filed in the Court of Special Judge, Lucknow. However, by passing subsequent order, the case was transferred by the Sessions Judge, Lucknow to Ghaziabad without any authority.

9. It is vehemently submitted that since the complaint was filed earlier before the Special Court at Ghaziabad and the notification issued in this regard of date 03.11.2021 clearly reveals that this notification of date 03.11.2021 has been issued in addition to the earlier notification dated 05.02.2016 wherein the territorial jurisdiction for trial of cases pertaining to PMLA was with the Court of Sessions at Lucknow pertaining to the predicate offences committed at Ghaziabad or Gautam Buddha Nagar, thus, the instant anticipatory bail application is maintainable in this Court, as the notification dated 03.11.2021 has been issued in addition to the notification dated 05.02.2016 and by issuing notification of date 03.11.2021 the notification dated 05.02.2016 has not been suppressed. Thus, the instant anticipatory bail application is maintainable before this Court.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that at first the notification dated 01.06.2006 was issued whereby the territorial jurisdiction for the whole of the State of Uttar Pradesh for the purpose of trial of PMLA cases was conferred on the District and Sessions Judge, Gautam Buddh Nagar (Noida). However, thereafter a notification dated 05.02.2016 was issued in suppression of the notification dated 1.06.2006 whereby the Court of Session, Lucknow and Court of Session, Allahabad were conferred with territorial jurisdiction to try the cases pertaining to PMLA with regard to the districts shown against their names in the notification. However, a notification has now been issued by the Central Government in consultation with Hon'ble The Chief Justice of this Court of date 03.11.2021, apparently in addition to the earlier notification dated 05.02.2016 whereby the territorial jurisdiction to try the cases pertaining

to PMLA has been conferred on six special courts situated at Lucknow and four special courts at Ghaziabad pertaining to the districts shown against their name. Admittedly District Ghaziabad and Gautam Buddha Nagar are shown against the Special Court Anti Corruption, C.B.I., Ghaziabad.

11. Learned counsel for the applicant is of the view that when the subsequent notification of date 03.11.2021 has been issued in addition to the earlier notification dated 05.02.2016 wherein the territorial jurisdiction was available to the Court of Sessions at Lucknow, the Courts at Lucknow and Ghaziabad are having territorial jurisdiction and District and Sessions Judge, Lucknow has wrongly transferred the case to Ghaziabad and the instant anticipatory bail application is maintainable before this Court. While Shri Rohit Tripathi, learned counsel appearing for Enforcement Directorate is of the view that when the case is pending before the Special Court at Ghaziabad and the applicant has chosen to move an application under Section 438 Cr.P.C. before the same Court, which has been rejected, he may now approach only the seat at Allahabad where in normal circumstances the jurisdiction of Ghaziabad lies.

12. At this juncture, It is fruitful to recall that pertaining to the F.I.R.s lodged in this case with regard to the predicate offences against them, the accused persons, had approached Hon'ble Supreme Court and the Supreme Court vide order dated 12.05.2022 passed in Writ Petition (Criminal) No. 197 of 2021 and with regard to the other writ petitions the leading Writ Petition being No. 292 of 2021 merged the charge-sheets filed in other criminal cases in the criminal case arising out of F.I.R. No. 206 of 2019 of date 12.02.2019 registered at Police Station Dadri, District Gautam Buddha Nagar (Noida), Uttar Pradesh and also directed the transfer of the connected cases to Ghaziabad if the cognizance has already been taken with regard to the other charge-sheets filed in this matter. Thus, the trial of the cases with regard to the predicate offence was transferred to Ghaziabad and leading F.I.R. was made F.I.R. bearing No. 206 of 2019, P.S. Dadri, Gautam Buddha Nagar.

13. It appears to be admitted to the parties that earlier the complaint as well as the supplementary complaint was filed by the Enforcement Directorate in Special Court at Lucknow and cognizance was also taken by the Special Court at Lucknow. However, subsequently the Sessions Judge has transferred the case to Ghaziabad apparently on the basis of the notification issued on 03.11.2021, wherein the territorial jurisdiction of this case appears to be at Ghaziabad.

14. Section 43 of the PMLA appears to be relevant at this stage and reads as follows:

"43. Special Courts.--(1) The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable Under Section 4, by notification, designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

Explanation.--In this Sub-section, "High Court" means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.

(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in Sub-section (1), with which the Accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial."

Thus Section 43(1) of the PMLAct provides for the constitution of Special Courts, by the Central Government, in consultation with the Chief Justice of the High Court. Sub-section (2) of Section 43 empowers a Special Court constituted Under Section 43(1), also to try an offence other than the offence punishable Under Section 4 of the PMLA, with which the Accused may be charged at the same trial under the Code of Criminal Procedure. In other words, a Special Court is constituted Under Section 43(1) primarily for the purpose of trying an offence punishable Under Section 4. But Sub- section (2) of Section 43 confers an additional

jurisdiction upon such a Special Court to try any other offence with which the Accused may be charged at the same trial.

15. Section 44(1) deals with the question of territorial jurisdiction of the Special Court, constituted Under Section 43(1) and the same reads as follows:

"44. Offences triable by Special Courts.--(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--

(a) an offence punishable Under Section 4 and any scheduled offence connected to the offence under that Section shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or;

(b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of offence Under Section 3, without the Accused being committed to it for trial;

Provided that after conclusion of investigation, if no offence of money-laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering Under Sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as it applies to a trial before a Court of Session.

Explanation.--For the removal of doubts, it is clarified that,--

(i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;

(ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any Accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not."

So Section 44(1) of the PMLA takes note of two different contingencies, namely, (i) cases where the scheduled offence as well as the offence of money-laundering are committed within the territorial jurisdiction of the same Special Court constituted Under Section 43(1); and (ii) cases where the Court which has taken cognizance of the scheduled offence, is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering.

16. Hon'ble Supreme Court in ***Rana Ayyub Vs. Respondent: Directorate of Enforcement through its Assistant Director, MANU/SC/0096/2023***, while considering the question of territorial jurisdiction of cases pertaining to PMLA cases opined as under :-

"16. From the rival contentions, it appears that two questions arise for consideration before us. They are

(i) whether the trial of the offence of money-laundering should follow the trial of the scheduled/predicate offence or vice versa; and (ii) whether the Court of the Special Judge, Anti-Corruption, CBI Court No. 1, Ghaziabad, can be said to have exercised extra-territorial jurisdiction, even though the offence alleged, was not committed within the jurisdiction of the said Court.

23. What is dealt with by Section 44(1)(a) is a situation where there is no complication. Section 44(1)(a) lays down the most fundamental Rule relating to territorial jurisdiction, by providing that an offence punishable Under Section 4 of the PMLA and any scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which the offence has been committed. It is relevant to note that Section 44(1)(a) uses the expression "offence" in three places in contradistinction to the expression "scheduled offence" used only once. This usage is not without significance. In all three places where the word "offence" alone is used, it connotes the offence of money-laundering. The place where the expression "scheduled offence" is used, it connotes the predicate offence. By prescribing that an offence punishable Under Section 4 of the PMLA and any scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which "the offence" has been committed, Section 44(1)(a) makes it crystal clear that it is the Special Court constituted Under Section 43(1), which will be empowered to try even the scheduled offence connected to the same.

24. After mapping out/laying down such a general but fundamental rule, the Act then proceeds to deal with a more complicated situation in Section 44(1)(c). The question as to what happens if the Court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the offence of money-laundering, is what is sought to be answered by Clause (c) of Sub-section (1) of Section 44. If the Court which has taken cognizance of the scheduled offence is different from the Special Court which has taken cognizance of the offence of money- laundering, then the authority authorised to file a complaint under PMLA should make an application to the Court which has taken cognizance of the scheduled offence. On the application so filed, the Court which has taken cognizance of the scheduled offence, should commit the case relating to the scheduled offence to the Special Court which has taken cognizance of the complaint of money-laundering.

25. Therefore, it is clear that the trial of the scheduled offence should take place in the Special Court which has taken cognizance of the offence of money-laundering. In other words, the trial of the scheduled offence, insofar as the question of territorial jurisdiction is concerned, should follow the trial of the offence of money-laundering and not vice versa.

26. Since the Act contemplates the trial of the scheduled offence and the trial of the offence of money-laundering to take place only before the Special Court constituted Under Section 43(1), a doubt is prone to arise as to whether all the offences are to be tried together. This doubt is sought to be removed by Explanation (i) to Section 44(1). Explanation (i) clarifies that the trial of both sets of offences by the same Court shall not be construed as joint trial.

27. A careful dissection of Clauses (a) and (c) of Sub-section (1) of Section 44 shows that they confer primacy upon the Special Court constituted Under Section 43(1) of the PMLA. These two clauses contain two Rules, namely, (i) that the offence punishable under the PMLA as well as a scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which the offence of money-laundering has been committed; and (ii) that if cognizance has been taken by one Court, in respect of the scheduled offence and cognizance has been taken in respect of the offence of money-laundering by the Special Court, the Court trying the scheduled offence shall commit it to the Special Court trying the offence of money-laundering.

28. It is only because of the Special Court constituted Under Section 43(1) being conferred primacy that Section 44(1) begins with the words "notwithstanding anything contained in the Code of Criminal Procedure". Though the PMLA contains a non-obstante Clause in relation to the Code of Criminal Procedure, both in Section 44(1) and in Section 45(1), there are two other provisions where the Code of Criminal Procedure is specifically declared to apply to the proceedings before a Special Court. Section 46(1) specifically makes the provisions

of the Code of Criminal Procedure applicable to proceedings before a Special Court. Similarly, Section 65 of the PMLA makes the provisions of Code of Criminal Procedure apply to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under the Act.

29. Therefore, it is clear that the provisions of the Code of Criminal Procedure are applicable to all proceedings under the Act including proceedings before the Special Court, except to the extent they are specifically excluded. Hence, Section 71 of the PMLA providing an overriding effect, has to be construed in tune with Section 46(1) and Section 65."

17. Hon'ble Apex Court after taking into consideration relevant provisions of the PMLA, which are having bearing upon the territorial jurisdiction of the Special Court turn its attention to the provisions of the Code of Criminal Procedure, which deal with the question of territorial jurisdiction and held as under;

"34. It may be seen from the principles culled out from Sections 177 to 184 of the Code of Criminal Procedure that almost all contingencies that are likely to arise have been carefully thought out and laid down in these provisions.

35. The only contingency that could not have been provided in the above provisions of the Code of Criminal Procedure, is perhaps where the offence of money-laundering is committed. This is why Section 44(1) begins with a non-obstante clause. The whole picture is thus complete with a combined reading of Section 44 of the PMLA and the provisions of Sections 177 to 184 of the Code of Criminal Procedure.

36. Once this combined scheme is understood, it will be clear that in view of the specific mandate of Clauses (a) and (c) of Sub-section (1) of Section 44, it is the Special Court constituted under the PMLA that would have jurisdiction to try even the scheduled offence. Even if the scheduled offence is taken cognizance of by any other Court, that Court shall commit the same, on an application by the concerned authority, to the

Special Court which has taken cognizance of the offence of money-laundering. This answers the first question posed before us.

37. Coming to the second question arising for our consideration, Clause (a) of Sub-section (1) of Section 44 leaves no semblance of any doubt that the offence of money-laundering is triable only by the Special Court constituted for the area in which the offence of money-laundering has been committed. To find out the area in which the offence of money-laundering has been committed, we may have to go back to the definition in Section 3 of the PMLA.

38. As we have pointed out earlier, the involvement of a person in any one or more of certain processes or activities connected with the proceeds of crime, constitutes the offence of money-laundering. These processes or activities include, (i) concealment; (ii) possession; (iii) acquisition; (iv) use; (v) projecting as untainted property; or (vi) claiming as untainted property.

39. In other words, a person may (i) acquire proceeds of crime in one place, (ii) keep the same in his possession in another place, (iii) conceal the same in a third place, and (iv) use the same in a fourth place. The area in which each one of these places is located, will be the area in which the offence of money-laundering has been committed. To put it differently, the area in which the place of acquisition of the proceeds of crime is located or the place of keeping it in possession is located or the place in which it is concealed is located or the place in which it is used is located, will be the area in which the offence has been committed.

40. In addition, the definition of the words "proceeds of crime" focuses on "deriving or obtaining a property" as a result of criminal activity relating to a scheduled offence. Therefore, the area in which the property is derived or obtained or even held or concealed, will be the area in which the offence of money-laundering is committed."

18. In *Vijay Madanlal Choudhary and Ors. v. Union of India and Ors.*; MANU/SC/0924/2022 also It was held in para 356 and 357 that the trial of the offence of money-laundering should proceed before the Special

Court constituted for the area in which the offence of money-laundering has been committed.

19. The controversy at hand is covered by the law laid down by the Apex court in the above mentioned cases and an offence punishable Under Section 4 of the PMLA and any scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which the offence has been committed. The schedule offences and offences under PMLA in this case are committed within the territorial jurisdiction of NOIDA or Ghaziabad which are triable at special Court constituted at Ghaziabad and jurisdiction with regard to Ghaziabad lies at principal seat of this Court at Allahabad and not at Lucknow. Moreover the Anticipatory bail application of the applicant has also been rejected by the special Court at Ghaziabad and in normal course any party aggrieved by the same must file any proceeding at Allahabad.

20. For the reasons mentioned herein before, the instant application moved under section 438 Cr.P.C. appears to be not maintainable at Lucknow Bench and is **dismissed** as such.

21. The record of Application U/s 482 Cr.P.C. No. 5897 of 2023 which was procured only for the purpose of perusing be immediately returned back for being placed before appropriate Bench.

22. Since the instant anticipatory bail application moved on behalf of the applicant has not been found maintainable before this Bench, the certified copies of the documents, which have been enclosed by the applicant be returned to learned counsel for the applicant while retaining a photostat copy of the same on record.

Order Date: 23.01.2024

Praveen