

Court No. - 15

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 296 of 2024

Applicant :- Smt. Rita Tiwari

Opposite Party :- Directorate Of Enforcement Lko. Zonal
Officer Lko.

Counsel for Applicant :- Anuuj Taandon, Ashish
Chaturvedi, Purnendu Chakravarty

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 appearing for Enforcement Directorate and perused the record.

2. The present anticipatory bail application has been moved by the accused/applicant - **Smt. Rita Tiwari** in ECIR/LKZO/01/2021, under Sections 3 and 4 PMLA 2002, P.S. Enforcement Directorate, Lucknow, with the prayer to grant her anticipatory bail as she is apprehending arrest in the above-mentioned case.

3. Learned counsel for the applicant submits that it is a case of false implication and the allegations against the applicant appears to be that M/s Gangotri Enterprises Ltd. availed credit limits under consortium of banks led by Bank of India and divert these funds in violation of statutory guidelines and have also submitted forged / fabricated financial statements and thereby has caused wrongful loss to the banks of a huge amount and also that the loans taken from the banks have been used for other purposes than for which the loans were availed.

4. Highlighting above, it is vehemently submitted that in this case the predicate offence was registered by the Central Bureau of Investigation and the charge sheet in that case was filed on 30.6.2022 under Sections 120-B & 420 IPC against the applicant and other co-accused persons, however, during the course of investigation allegations regarding the criminal breach of trust, forgery and corruption were not found substantiated and the charge sheet could only be filed under Sections 120-B and 420 IPC, which are punishable with upto 7 years of imprisonment.

5. It is further submitted that after taking of cognizance the

summons were issued by the Special Court in the predicate offences and anticipatory bail application was moved by the applicant and the same was granted by the Special Judge Ante-Corruption CBI, on 20.5.2023.

6. It is further submitted that thereafter Enforcement Directorate has registered an ECIR/LKZO/01/2021 and started investigation and statements of various witnesses were recorded under Section 50 of PMLA and various documentary evidences were also taken by the Enforcement Directorate and the entire investigation of the Enforcement Directorate revolves around the investigation done by the CBI earlier and the applicant was also summoned by the Enforcement Directorate for the purpose of recording of her statement and her statement was recorded on 25.3.2021. Thus the applicant is cooperating in the investigation.

7. It is vehemently submitted that the loans which have been taken by the applicant and other companies of which the applicant was a Director were secured loans and the properties were mortgaged with the banks while taking the loan. Learned counsel for the applicant in this regard has highlighted the properties mortgaged with the banks, the list of which has been mentioned by the Enforcement Directorate in its provisional attachment order of date 17.11.2023.

8. It is further submitted that the applicant is a lady and was not having active role in the management of companies and was not having any power to take any financial decision and apart from the predicate offence she is not having any other criminal case pending against her.

9. It is also submitted that even if the case of the Enforcement Directorate is taken on its face the applicant has not earned any proceeds of crime. The applicant has cooperated in the investigation and would continue to do so and would remain present before the Investigating Officer as and when his presence would be required. She is a lady, thus, protection from arrest be granted to her during the course of investigation/trial.

10. Shri Rohit Tripathi, learned counsel for the Enforcement Directorate while drawing attention of this Court towards the counter affidavit filed by the Directorate submits that the magnitude of the crime is very vast and it is a case where the amount of proceeds of crime is running into hundreds of crores i.e. about Rs. 7542439244/- have been misappropriated by the applicant and other co-accused persons by diverting the same illegally.

11. It is also submitted that the investigation is now going on and the applicant is not cooperating in the investigation as after recording of her statement on 25.3.2021, summons were issued for her appearance on 30.11.2023 and she was again directed to appear on 20.12.2023 with the request to tender the evidence in connection with on going investigation but she failed to turn up.

12. It is further submitted that keeping in view the twin conditions as enumerated under Section 45 of P.M.L.A. the applicant is not entitled for anticipatory bail having regard to the magnitude of crime and necessity of custodial interrogation.

13. Hon'ble Supreme Court in the case of **Saumya Chaurasia Vs Directorate of Enforcement** reported in **2023 SCC OnLine SC 1674** held as under:-

"18. The object of the PMLA hardly needs to be delineated. The said Act has been enacted to prevent money laundering and to provide for confiscation of property derived from, or involved in, money laundering and for the matters connected therewith and incidental thereto. As per Section 2(1)(p), "Money Laundering" has the meaning assigned to it in Section 3. The offence of Money Laundering has been defined in Section 3, which is punishable under Section 4 of the said Act. Section 45 makes the offences under the PMLA to be cognizable and non bailable. As regards the twin conditions for the grant of bail contained in Section 45(1), it has been held by the Three-Judge Bench in Vijay Madanlal (supra) that the underlying principles and rigours of Section 45 of the Act must come into play and without exception ought to be reckoned to uphold the objectives of the Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money laundering.

19. Though it is true that the Court while considering an application seeking bail is not required to weigh the evidence collected by the investigating agency meticulously, nonetheless the Court should keep in mind the nature of accusation, the nature of evidence collected in support thereof, the severity of the punishment prescribed for the alleged offences, the character of the accused, the circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the time of trial, reasonable apprehension of the witness being tempered with, the large interest of the public/ state etc. Though the findings recorded by the Court while granting or refusing to grant bail would be tentative in nature, nonetheless the Court is expected to express prima facie opinion while granting or refusing to grant bail which would demonstrate an application of mind, particularly dealing with the serious economic offences.

22. The next question that falls for consideration before the Court is whether the appellant being a woman should be granted the benefit of the first proviso to Section 45 of the PMLA, which reads as under: -

"45. Offences to be cognizable and non-bailable. - (1)
.....

Provided that a person who is under the age of sixteen years or is a woman or is sick or infirm [or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees], may be released on bail, if the special court so directs:

(2)"

23. Recently, a Three-Judge Bench of this Court in [Enforcement Directorate vs. Preeti Chandra](#) observed in the order dated 04.08.2023 in SLP (Crl.) No. 7409 of 2023 as under: -

"The proviso to [Section 45](#) of the Prevention of Money Laundering Act, 2002 confers a discretion on the Court to grant bail where the accused is a woman. Similar provisions of [Section 437](#) of the Code of Criminal Procedure, 1973 have been interpreted by this Court to mean that the statutory provision does not mean that person specified in the first proviso to sub-section (1) of Section 437 should necessarily be released on bail. (See [Prahlaad Singh Bhati vs. NCT, Delhi and Another](#) (2001) 4 SCC 280)."

24. The use of the expression "may be" in the first proviso to [Section 45](#) clearly indicates that the benefit of the said proviso to the category of persons mentioned therein may be extended at the discretion of the Court considering the facts and circumstances of each case, and could not be construed as a mandatory or obligatory on the part of the Court to release them. Similar benevolent provision for granting bail to the category of persons below the age of sixteen years, women, sick or infirm has been made in [Section 437](#) Cr.P.C. and many other special enactments also, however by no stretch of imagination could such provision be construed as obligatory or mandatory in nature, otherwise all serious offences under such special Acts would be committed involving women and persons of tender age below 16 years. No doubt the courts need to be more sensitive and sympathetic towards the category of persons included in the first proviso to [Section 45](#) and similar provisions in the other Acts, as the persons of tender age and women who are likely to be more vulnerable, may sometimes be misused by the unscrupulous elements and made scapegoats for committing such Crimes, nonetheless, the courts also should not be oblivious to the fact that nowadays the educated and well placed women in the society engage themselves in the commercial ventures and enterprises, and advertently or inadvertently engage themselves in the illegal activities. In essence, the courts should exercise the discretion judiciously using their prudence, while granting the benefit of the first proviso to [Section 45](#) PMLA to the category of persons mentioned therein. The extent of involvement of the persons falling in such category in the alleged offences, the nature of evidence collected by the investigating agency etc., would be material considerations."

14. Hon'ble Supreme Court in the case of **Tarun Kumar Vs Assistant Director Directorate Of Enforcement** reported in **MANU/SC/1243/2023** has also held as under:-

"11. As regards the twin conditions for the grant of bail contained in Section 45(1) of the said Act, it has been held in the said decision of Vijay Madanlal (supra) as under

412. As a result, we have no hesitation in observing that in whatever form the -relief is couched including the nature of proceedings, be it Under Section 438 of the 1973 Code or for that matter, by invoking the jurisdiction of the Constitutional Court, the underlying principles and rigors of Section 45 of the 2002 must come into play and without exception ought to be reckoned to uphold the objectives of the 2002 Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money-laundering.

12. In *Gautam Kundu v. Directorate of Enforcement (Prevention of Money-Laundering Act)*, Government of India Through Manoj Kumar, Assistant Director, Eastern Region MANU/SC/1453/2015 : (2015) 16 SCC 1, it was observed as under:

30. The conditions specified Under Section 45 of PMLA are mandatory and need to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PMLA. Section 65 requires that the provisions of Code of Criminal Procedure shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of Code of Criminal Procedure would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made Under Section 439 Code of Criminal Procedure. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money-laundering and the burden to prove that the proceeds of crime are not involved, lies on the Appellant.

13. Keeping in view of the aforestated legal position let us consider the submissions made by the learned Counsels for the parties. It is trite that the court while considering an application seeking bail, is not required to weigh the evidence collected by the investigating agency meticulously, nonetheless, the court should keep in mind the nature of accusation, the nature of evidence collected in support thereof, the severity of the punishment prescribed for the alleged offences, the character of the Accused, circumstances which are peculiar to the Accused, reasonable possibility of securing the presence of the Accused at the trial, reasonable apprehension of the witness being tampered with, the larger interests of the public/State etc. Though, the findings recorded by the Court while granting or refusing bail would be tentative in nature, nonetheless the Court is expected to express prima facie opinion for granting or refusing to grant bail which would demonstrate an application of mind, particularly dealing with the economic offences.

22. Lastly, it may be noted that as held in catena of decisions, the economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Undoubtedly, economic offences have serious repercussions on the development of the country as a whole. To cite a few judgments in this regard are *Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation* MANU/SC/0487/2013 : (2013) 7 SCC 439, *Nimmagadda Prasad v. Central Bureau of Investigation*

MANU/SC/0485/2013 : (2013) 7 SCC 466, *Gautam Kundu v. Directorate of Enforcement (supra)*, *State of Bihar and Anr. v. Amit Kumar alias Bachcha Rai* MANU/SC/0515/2017 : (2017) 13 SCC 751. This Court taking a serious note with regard to the economic offences had observed as back as in 1987 in case of *State of Gujarat v. Mohanlal Jitmalji Porwal and Anr.* MANU/SC/0288/1987 : (1987) 2 SCC 364 as under:

5... The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest...

23. With the advancement of technology and Artificial Intelligence, the economic offences like money laundering have become a real threat to the functioning of the financial system of the country and have become a great challenge for the investigating agencies to detect and comprehend the intricate nature of transactions, as also the role of the persons involved therein. Lot of minute exercise is expected to be undertaken by the Investigating Agency to see that no innocent person is wrongly booked and that no culprit escapes from the clutches of the law. When the detention of the Accused is continued by the Court, the courts are also expected to conclude the trials within a reasonable time, further ensuring the right of speedy trial guaranteed by Article 21 of the Constitution."

15. Having heard learned counsel for the parties and having perused the record in the background of above legal position, it is reflected that initially an FIR was lodged by the CBI against the applicant and other co-accused persons under Sections 120-B, 420, 468, 471 IPC and Section 13(2) read with Section 13(1) (d) of Prevention of Corruption Act with the allegations that the applicant is a promoter and Director of M/s Gangotri Enterprises which is indulged in various constructions activities and while being a promoter/ director of the said company from 2012 to 2016, crores of rupees were taken as loan and a loan amount of Rs. 7542439244/- was not paid, has also been declared as N.P.A. It is also alleged that this amount of loan was not used for the purpose it was taken and has been misutilized and has been diverted whereby the consortium of banks has suffered heavy financial losses. The charge sheet has been filed by the CBI and the applicant appears to have been enlarged on anticipatory bail by the special court an ECIR was registered by the Enforcement Directorate in the matter and investigation started.

16. The case of the applicant appears to be that she appeared before the Investigating Officer of the Enforcement Directorate

as and when she was called, while the case of the Directorate is that the applicant is not cooperating in the investigation and after her first appearance in the year 2021 she did not appear before the Enforcement Directorate in response to the summons issued by the Directorate. It is apprehended by the applicant that the intention of the Directorate is to arrest her while she is cooperating in the investigation and also that the properties which has been provisionally attached may not come within the definition of proceeds of crime. Learned counsel for the Enforcement Directorate has highlighted the twin conditions as enumerated under Section 45 of the PMLA in order to show that a satisfaction with regard to these two conditions is required to be drawn before any relief may be granted to the applicant. It is also highlighted that during the course of investigation the release of applicant on anticipatory bail would hamper the progress of the investigation as the applicant is not providing necessary documents and is not appearing for interrogation.

17. It appears to be an admitted fact that the applicant did not appear before the Investigating Officer after 25.3.2021, when her statement was recorded under Section 50 of the PMLA. It is to be recalled that a difference is required to be carved out in the cases pertaining to Money Laundering wherein the investigation is going on vis-a-vis the cases wherein the investigation has completed and the complaint has been filed. Having regard to the magnitude of alleged proceeds of crime involved in this case and keeping in view the twin conditions as enshrined under Section 45 of the P.M.L.A and also the necessity of custodial interrogation of the applicant and also keeping in view that applicant has not appeared before Investigating Officer after 25.3.2024, I do not find any good ground on the basis of which this anticipatory bail application of the applicant may be allowed.

16. In result the instant anticipatory bail application moved on behalf of the applicant - **Smt. Rita Tiwari** is **rejected**.

Order Date :- 29.2.2024

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