Neutral Citation No. - 2024:AHC-LKO:39783

Court No. - 12
Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1107 of 2024
Applicant :- Rakshanda Ansari
Opposite Party :- Directorate Of Enforcement Lko
Counsel for Applicant :- Pranshu Agrawal,Mohammed Samar Ansari,Mohd. Yasir Abbasi
Counsel for Opposite Party :- Kuldeep Srivastava

Hon'ble Pankaj Bhatia,J.

1. Counter affidavit and rejoinder affidavit filed today in Court are taken on record.

2. Heard Shri S.C. Mishra, learned Senior Advocate assisted by Shri Pranshu Agrawal, learned counsel for the applicant and Shri Kuldeep Srivastava, learned counsel for the respondent.

3. The instant application has been filed seeking anticipatory bail in Complaint Case No.28 of 2019 arising out of ECIR No. ECIR/11/LKZO/2014, Under Section 3/4 Prevention of Money Laundering Act, 2002, Police Station – Directorate of Enforcement, Zonal Office, District Lucknow.

4. Learned counsel for the applicant argues that the applicant was never arrested at the time of filing of the complaint and after the complaint was filed, the summons were issued. At this stage, the applicant apprehend his arrest and he has to apply for regular bail whereby, the conditions specified under Section 45 of Prevention of Money Laundering Act (hereinafter referred to as ‘the PMLA’) have to be fulfilled prior to the bail being granted or rejected.

5. In view of the aforesaid arguments, the applicant would have to face the onerous conditions specified in Section 45 of the PMLA, despite the fact that the applicant was never apprehended during

investigation and there is no material to suggest that the applicant would not cooperate with the trial.

6. Learned counsel for the opposite party, agrees in respect of the facts as argued by counsel for the applicant.

7. At this stage, the judgment of Hon'ble Supreme Court in the case of ***Tarsem Lal Vs. Directorate of Enforcement Jalandhar Zonal Office (Criminal Appeal No. 2608 of 2024)*** decided on ***16.5.2024*** was placed before this Court wherein the Hon'ble Supreme Court had noticed a similar situation and held in Paragraph Nos.9 and 10 as under:-

> *"9. Section 61 of the CrPC provides for the form of summons. Form No. 1 in the 2nd Schedule is the prescribed form of summons under Section 61 of the CrPC. For the sake of convenience, we are reproducing Form No.1:*
>
> ***FORM 1***
>
> *[See Section 61]*
>
> ***Summons to an accused person***
>
> *To (name of accused) of (address).*
>
> *Whereas your attendance is necessary to answer to a charge of (state shortly the offence charged), you are hereby required to appear in person (or by pleader, as the case may be) before the (Magistrate) of _____, on the _____day of _____Herein fail not.*
>
> *Dated, this day of ,20*
>
> *(Seal of the Court) (Signature)*
>
> _____
>
> *Looking at the form of the summons, it is apparent that it is issued only to secure the presence of the accused before the Court to answer the charge. If the accused appears before the Court, there is sufficient compliance with the summons.* ***Hence, the question of taking him into custody on his appearance before the Court pursuant to the summons does not arise at all.***

10. We fail to understand the basis of the submission of the learned ASG that after an accused appears before a Special Court in compliance with the summons, he shall be deemed to be in custody. The object of issuing a summons is to secure the accused's presence before the Court. It is not issued for taking an accused in custody. An argument is made that once an accused appears before the Special Court, as provided under sub Section (1) of Section 437, he has to apply for bail. For ready reference, we are reproducing sub Section (1) of Section 437, which reads thus:

> ***"437. When bail may be taken in case of nonbailable offence.—*** *(1) When any person accused of, or suspected of, the commission of any nonbailable offence is arrested or detained without warrant by an officer in charge of a police station* ***or appears or is brought before a Court other than the High Court or Court of session,*** *he may be released on bail, but—*
>
> *(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;*
>
> *(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but not less than seven years: Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:*
>
> *Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:*
>
> *Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court:*
>
> *Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this subsection without*

giving an opportunity of hearing to the Public Prosecutor."

(emphasis added)

On its plain reading, sub-Section (1) of Section 437 does not apply when an accused appears or is brought before a High Court or Sessions Court. A Special Court is appointed under Sub Section (1) of Section 43 of the PMLA, which reads thus:

> ***"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 subsection,"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)……"*

Section 44 (1)(d) provides that while trying a scheduled offence or offence under the PMLA, a Special Court shall hold the trial in accordance with the provisions of the CrPC as they apply to trial before a Court of Session. A Special Court is a Court of Session. Therefore, Section 437 will not apply when an accused appears before the Special Court after a summons is issued on a complaint under Section 44 (1)(b) of the PMLA."

8. The Hon'ble Supreme Court thereafter summarized the law in Paragraph No.23 to the following effect:

*"**OPERATIVE CONCLUSIONS***

23. Now, we summarise our conclusions as under:

a) Once a complaint under Section 44 (1)(b) of the PMLA is filed, it will be governed by Sections 200 to 205 of the CrPC as none of the said provisions are inconsistent with any of the provisions of the PMLA;

b) If the accused was not arrested by the ED till filing of the complaint, while taking cognizance on a complaint under Section 44(1)(b), as a normal rule, the Court should issue a summons to the accused and not a warrant. Even in a case where the accused is on bail, a summons must be issued;

c) After a summons is issued under Section 204 of the CrPC on taking cognizance of the offence punishable under Section 4 of the PMLA on a complaint, if the accused appears before the Special Court pursuant to the summons, he shall not be treated as if he is in custody. Therefore, it is not necessary for him to apply for bail. However, the Special Court can direct the accused to furnish bond in terms of Section 88 of the CrPC;

d) In a case where the accused appears pursuant to a summons before the Special Court, on a sufficient cause being shown, the Special Court can grant exemption from personal appearance to the accused by exercising power under Section 205 of the CrPC;

e) If the accused does not appear after a summons is served or does not appear on a subsequent date, the Special Court will be well within its powers to issue a warrant in terms of Section 70 of the CrPC. Initially, the Special Court should issue a bailable warrant. If it is not possible to effect service of the bailable warrant, then the recourse can be taken to issue a non bailable warrant;

f) A bond furnished according to Section 88 is only an undertaking by an accused who is not in custody to appear before the Court on the date fixed. Thus, an order accepting bonds under Section 88 from the accused does not amount to a grant of bail;

g) In a case where the accused has furnished bonds under Section 88 of the CrPC, if he fails to appear on subsequent dates, the Special Court has the powers under Section 89 read with Sections 70 of the CrPC to issue a warrant directing that the accused shall be arrested and produced before the Special Court; If such a warrant is issued, it will always be open for the accused to apply for cancellation of the warrant by giving an undertaking to the Special Court to appear before the said Court on all the dates fixed by it. While cancelling the warrant, the Court can always take an undertaking from the accused to appear before the Court on every date unless appearance is specifically exempted. When the ED has not taken the custody of the accused during the investigation, usually, the Special Court will exercise the power of cancellation of the warrant without insisting on taking the accused in custody provided an undertaking is furnished by the accused to appear regularly before the Court. When the Special Court deals with an application for cancellation of a warrant, the Special Court is not dealing with an application for bail. Hence, Section 45(1) will have no application to such an application;

h) When an accused appears pursuant to a summons, the Special Court is empowered to take bonds under Section 88 of the CrPC in a given case. However, it is not mandatory in every case to direct furnishing of bonds. However, if a

> *warrant of arrest has been issued on account of nonappearance or proceedings under Section 82 and/or Section 83 of the CrPC have been issued against an accused, he cannot be let off by taking a bond under Section 88 of the CrPC, and the accused will have to apply for cancellation of the warrant;*
>
> *i) After cognizance is taken of the offence punishable under Section 4 of the PMLA based on a complaint under Section 44 (1)(b), the ED and its officers are powerless to exercise power under Section 19 to arrest a person shown as an accused in the complaint; and*
>
> *j) If the ED wants custody of the accused who appears after service of summons for conducting further investigation in the same offence, the ED will have to seek custody of the accused by applying to the Special Court. After hearing the accused, the Special Court must pass an order on the application by recording brief reasons. While hearing such an application, the Court may permit custody only if it is satisfied that custodial interrogation at that stage is required, even though the accused was never arrested under Section 19. However, when the ED wants to conduct a further investigation concerning the same offence, it may arrest a person not shown as an accused in the complaint already filed under Section 44(1)(b), provided the requirements of Section 19 are fulfilled."*

9. In view of the law as explained, particularly in Paragraph No.23(c) of the said judgment, there is no reason for the applicant to apprehend that he would be arrested. The law as explained by Hon'ble Supreme Court is very clear and the applicant would not even have to apply for bail in the facts and circumstances of the present case.

10. In the light of above, no case for grant of anticipatory bail is made out. It is expected that trial court shall proceed in accordance with the directions given in Paragraph No.23(c) of the aforesaid judgment.

11. With the aforesaid observations/directions, the present application for anticipatory bail is ***disposed off.***

Order Date :- 24.5.2024
nishant

Digitally signed by :-
NISHANT MOHAN
High Court of Judicature at Allahabad,
Lucknow Bench