IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CRM-M-30826-2016

Date of Decision: 07.10.2016

Ajay Jain

...Petitioner

VERSUS

Directorate of Enforcement

....Respondent

CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present:- Mr. Dharmender Bhan, Advocate for the petitioner.

Ms. Ranjana Shahi, Advocate for the respondent.

SUDIP AHLUWALIA, J.

This is a petition for anticipatory bail u/s 438 Cr.PC in third supplementary complaint No.1 of 22.01.2016 in case ECIR No.02/JLZO/2013, Police Station Directorate of Enforcement, under section 4 read with Section 45(1) of the Prevention of Money Laundering (PML) Act, 2002 titled as 'Assistant Director, Directorate of Enforcement Vs. Davinder Singh Nirwal & Ors'.

2. The petitioner claims to have been falsely implicated by the officials of the Punjab Police in two different NDPS cases i.e. (i) FIR No.241 dated 07.12.2013, Police Station Sadar, Patiala, u/ss 21, 22, 25-A of the Narcotic Drugs & Psychotropic Substances (NDPS) Act, 1985 and Sections 379, 411, 420, 465, 468, 471 and 120-B IPC and (ii) FIR No.50 dated 03.04.2013, Police Station Urban Estate, Patiala, under Sections 18, 21 and 22 of the NDPS Act and Section 25 of the Arms Act. He was granted bail in both those cases earlier by this Court in CRM-M-24317 of 2014 and

CRM-M-3593 of 2015, vide orders dated 6.10.2014 and 23.2.2015 respectively. Now, he claims to have been falsely implicated in the present complaint case for the alleged offence u/s 4 read with Section 45(1) of the PML Act. He further claims to have already been subjected to interrogation on 5.8.2014, while in judicial custody in the previous two NDPS cases, on which date, he was allegedly coerced to give a self implicating confessional statement under illegal and undue pressure exerted on behalf of the complainant/Enforcement Directorate.

3. The bail petition has been opposed on behalf of the complainant/respondent, who has filed its reply, in which, it has been mentioned inter-alia -

> *"Investigation conducted has revealed that Ajay Jain was involved in drug trafficking along with Chunni Lal Gaba, Gurjit Kumar Gaba, Suresh Kumar @ Mehnga Ram and Varinder Singh @ Raja and acquired/generated proceeds of crime totaling to Rs.70,00,000/-. He purchased pseudoephedrine worth Rs.68,00,000/- in 2012 and sold this consignment to Suresh Kumar @ Mehnga Ram for an amount of Rs.70,00,000/- and thus acquired proceeds of crime to the tune of Rs.70,00,000/-. Police Authorities had seized 2 kg. Pseudoephedrine and 300 gms. Intoxicant powder from him. He owns flat No.C-35, Plot No.27/1, Ahimsa Vihar, Sector-9, Rohini, Delhi and proceeds of crime of Rs.70,00,000/- (Rs.2,00,000/- received as profit and an amount of Rs.68,00,000/- which was involved in purchasing the consignment of pseudoephedrine weighing 100 kgs.) have been attached from the aforesaid immovable property of Shri Ajay Jain of value to the extent of Rs.70,00,000/- in view of the provisions of Section 2(u) of PMLA, 2002.*
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> *It is pertinent to mention here that the value of the property to the extent of Rs.70,00,000/- which are proceeds of crime have been attached under Section 5 of the PML Act, 2002 vide Provisional Attachment Order No.04/2015 dated 17.12.2015 and subsequently Original Complaint No.542/2016 dated 11.01.2016 has been filed before the Adjudicating Authority, PMLA, New Delhi for confirmation of the same. The Adjudicating Authority (PMLA), New Delhi has confirmed the Provisional*

Attachment Order vide order dated 10.06.2016 in Original Complaint No.542/2016."

4. Besides, the complainant has asserted that the petitioner is the owner of Flat No. C-35, Plot No. 27/1, Ahinsa Vihar, Sector 9, Rohini, Delhi, the present value of which is in the range of ₹ 1.5 Crore to 1.75 Crores. The complainant/respondent has also in its reply drawn attention to various bank transactions of petitioner's business concern by the name of 'M/s Ajay Trading Company' and has also referred to the income disclosed by the petitioner in his Income Tax Returns for the various years between 2009-2010 to 2014-2015. In fine, the assertion of the respondent is that the income generated/assets possessed by the petitioner, were derived from 'Proceeds of Crimes' , as a consequence of his having been involved in the offences under the NDPS Act.

5. We have carefully considered the submissions advanced on behalf of both the sides. It may be mentioned that the total amount of cash entries credited in the business account of petitioner during the year 2012, as numerated in Para 4 of the respondent's reply, comes to ₹ 1,89,000/- only. Again, the declaration of his income in his ITRs for the period 2009-2010 to 2014-2015 is between a minimum of ₹ 2,21,500/- in the first year to the highest of ₹ 3,05,000/- in 2013-2014, which thereafter marginally declined to ₹ 3,04,000/- in 2014-2015. By no stretch of imagination, can these figures indicate any exorbitant cash credits or income as imputed to the petitioner. Further more, in Para 3 of the reply, the respondent has himself mentioned that the petitioner's flat in Ahinsa Vihar, Sector 9, Rohini, Delhi was purchased by him for an amount of ₹ 1,60,000/- only (more than 20 years ago) on 14.6.1995. So, there is nothing unusual or

objectionable if the market value of such property over the two decades has appreciated, and so, on these grounds alone, it would be preposterous to conclude that the petitioner has generated any money in the form of 'Proceeds of Crime'.

6. Regarding the specific allegations of his having purchased Pseudoephedrine worth ₹ 68 lacs in 2012, and of having sold it subsequently to one Suresh Kumar alias Mehnga Ram for ₹ 70 lacs, first of all, there is no document to support the allegations of such transactions, and more importantly, there is no explanation or indication by the complainant/respondent whatsoever to show as to in what manner, the petitioner had been engaged in projecting or claiming the aforesaid 'Proceeds of Crimes' as '***untainted property***', which is an essential ingredient to constitute the offence of Money Laundering as defined u/s 3 of the PML Act.

7. For the reasons recorded above, and also in view of the fact that the principal assets of the petitioner in the form of his flat, is already stated to have been attached by the Authorities, we find no justification to deny him bail, as prayed for. His petition is, therefore, allowed. He shall surrender before the Ld. Designated Court below either before the next date fixed, or within a fortnight from the date of this Order, whichever is earlier, after which, he may be granted bail on such terms and conditions, as deemed fit and proper by the Ld. Designated Court.

(Surya Kant)
Judge

(Sudip Ahluwalia)
Judge

October 07 , 2016
AS

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No