IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.12008 of 2017
Date of Decision: 11.05.2017

Vinod Kumar Garg
......Petitioner
Vs

Assistant Director, Enforcement Directorate
....Respondent

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Jagmohan Bansal, Advocate
for the petitioner.

Ms. Ranjana Shahi, Sr. Panel Counsel and
Mr. Suresh Batra, Spl. Public Prosecutor
for the respondent.

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RAJ MOHAN SINGH, J.

[1]. Petitioner prays for anticipatory bail in a Enforcement Case Information Report (for short 'the ECIR) No.06 dated 14.08.2013 registered under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as to 'the PMLA') at Zonal office, Jalandhar.

[2]. Learned counsel for the petitioner submitted that Raman Kumar Garg is the sole proprietor of export firm namely M/s Jaldhara Exports, which is involved in the export of readymade garments. The aforesaid firm claimed refund to the

tune of Rs.1.64 crores, but an amount of Rs.1.56 crores was sanctioned to the firm. During inquiry, the documentation submitted by the said firm viz. the shipping bills etc., were found to be forged and fabricated. Resultantly, FIR No.126 dated 26.07.2013 under Sections 177, 420, 465, 467, 468, 471 IPC was registered at Police Station Division No.5, Civil Lines, Ludhiana.

[3]. Learned counsel further submitted that at a later stage, the petitioner was also nominated as one of the accused in the aforesaid FIR on the ground that an amount of Rs.70,000/- came to the share of the petitioner. Petitioner was arrested in the said FIR and thereafter he was granted regular bail. Thereafter proceedings in terms of ECIR were initiated under Sections 3 and 4 of the PMLA. Petitioner was summoned in the said proceedings. Provisional attachment of the property was ordered by the ECIR Authority on 09.05.2016 and accordingly complaint was filed before the adjudicating authority. Provisional attachment of the properties of Raman Garg and Sheena Garg was made absolute.

[4]. Learned counsel contended that Section 45 of the PMLA, 2002 is not applicable to the offences notified and Part 'B' of the Schedule in view of ratio laid down ***CRWP No.595 of 2016*** titled '***Gorav Kathuria vs. Union of India and others***

(DB) as after the amendment in the year 2013, there is no bar in terms of Section 45(1) of the PMLA as the offences under Part 'A' prior to the year 2013 amendment was relatable to the offences like waging of war, NDPS cases and terrorist activities. The other scheduled offenes like vedging of war, NDPS cases and terrorist activities. The other scheduled offences prior to the amendment of 2013, falling under Part 'B' of the Schedule cannot be equated with such heinous offences which may attract culpability in terms of Section 45(1) of the PMLA. Petitioner was arrested in the year 2015 in FIR No.126 and was released on regular bail. The proceedings in terms of ECIR are the offshoot of the FIR in question, therefore, petitioner is entitled to bail in view of decision rendered in ***Shiv Raj Puri vs. State of Haryana and another, 2015(3) RCR (Criminal) 385*** and order dated 28.01.2014 passed in ***CRM-M No.2674 of 2014*** titled '***Karampal Goyal vs. Gurnam Singh.'***

[5]. Learned counsel further submitted that in the FIR No.126 dated 26.07.2013 the proceedings have been stayed at the instance of Raman Kumar Garg and he has been granted anticipatory bail. Now in the ECIR proceedings, after a lapse of four years, it would not be appropriate to seek custody of the petitioner, particularly when the petitioner has been granted regular bail in the FIR where the trial has been stayed at the

instance of Raman Kumar Garg. The offence is based on record which is already with the respondent and the properties of Raman Kumar Garg and Seema Garg have already been attached.

[6]. Learned counsel also relied upon ***Sunil Gupta vs. Director of Revenue Intelligence, 2009(245) E.L.T. 89 (Del.)*** and contended that the present case is not of the custodial interrogation of the petitioner as the entire case is based on documentary evidence and petitioner is entitled to the anticipatory bail. The controversy with regard to the offence being cognizable or not is still pending before the Hon'ble Apex Court in ***SLP No.993 of 2016*** titled '***Sharad Tikamdas Kabra vs. Union of India and others.'***

[7]. As against this learned counsel for the respondent vehemently submitted that the petitioner was involved along with Raman Kumar Garg in paper transactions and fake documentation in order to cheat the State exchequer, which is an offence against the State. The *modus operandi* of the petitioner can be deprecated in view of the fact that in similar matter involving Rs.1.5 crores, petitioner is the beneficiary where fake companies have been floated. The proceedings in terms of ECIR and the prosecution arising out of the FIR are two distinct mechanism and the fictitious export firm had claimed

VAT refund of Rs.1.56 crores from the Government. An enquiry was held and it was confirmed that all the shipping bills/documents produced by the firm were forged and fabricated. FIR was registered against the proprietor of M/s Jaldhara Exports, Ludhiana i.e. Raman Kumar Garg and challan was presented against him and the petitioner. Raman Kumar Garg had obtained VAT refund of Rs.1,56,76,190/- on the basis of forged and fabricated documents from Excise and Taxation Department, Ludhiana. After deposit of the amount in the account of M/s Jaldhara Exports in State Bank of India, it was transferred through RTGS in the accounts of proprietorship concerns of Smt. Sangeeta Garg, Umesh Kumar, Seema Garg, Saiyarh Garg and Vinod Garg in different accounts maintained with the DCB Bank, Ludhiana.

[8]. Learned counsel further submitted that as per the investigation, it came to fore that an amount of Rs.70,000/- came in the account of the petitioner and the same was withdrawn on 26.03.2013 in cash by the petitioner. A Civil Writ Petition No.3314 of 2015 titled '*Vinod Kumar vs. Union of India & Anr*' was filed by the petitioner before this Court. Vide order dated 20.12.2015, the same was dismissed with some direction to videograph the proceedings of interrogation. Thereafter petitioner was summoned on various occasions for making

necessary arrangements for videography, but the petitioner did not appear on any of the occasion intentionally and even did not comply with the direction given by this Court. Petitioner deliberately avoided to join the investigation in order to escape from the proceedings. Summons were issued to the petitioner on nine occasions, but he did not turn up. While filing the present petition, the pleadings are conspicuously silent with regard to the rigor of non-appearance in the investigation, rather a reference was made in the para No.5 of the petition that a civil writ petition No.3314 of 2015 was filed by the petitioner, which was disposed of on 22.12.2015 and a review petition is pending before this Court.

[9]. Learned counsel also stressed that a person, who has not come to the Court with clean hands, does not deserve any equitable relief. In the present case complicity of the petitioner is writ large by way of documented evidence. Petitioner is also beneficiary of the account which has been routed through RTGS in different accounts. The remaining part of the proceeds of the crime are still to be identified and attached, but for want of co-operation by the petitioner, the needful could not be done for so long. Petitioner had helped his son Raman Kumar Garg in generating, concealing and projecting the proceeds of crime as untainted. The role of the petitioner viz-a-viz. in the share

process is yet to be confirmed for want of joining in the investigation despite the decision by this Court in the aforesaid civil writ petition. Major portion of the proceeds of the crime is still to be traced out. In the event of non co-operation by the petitioner and by not responding to the summons, the petitioner has made himself disentitled to any equitable and extra ordinary relief. In the civil writ petition, the prayer of the petitioner was rejected with a direction to examine him under videography. The said order was not complied with.

[10]. Learned counsel on the strength of decision dated 16.12.2013 by the Orissa High Court in ***Janata Jha vs. Assistant Director, Manu/OR/0469/2013***, contended that the initiation of proceedings under ECIR is not on account of double jeopardy as both the fields are distinct in nature. The procedure and nature of proof are totally different from a criminal proceedings under the Indian Penal Code. Further in the light of observations made by the Hon'ble Apex Court in ***Dukhishyam Benupani, Asstt. Director, Enforcement Directoate vs. Arun Kumar Bajoria, MANU/SC/0872/1998***, learned counsel submitted that any supervision made by the Court during inquiry or investigation under a Special Statute is uncalled for as the interference would impede the even course of inquiry and investigation into the serious allegations as in the present case,

where huge amount has been swallowed by the petitioner and his son by illegal means.

[11]. Both the parties have tried to highlight the number of issues by referring to the documents.

[12]. At this stage, this Court is not in a position to form any opinion on merits of the case, lest it may prejudice the case of either side at the time of trial. The aforesaid facts have been noted only for the sake of appreciating the controversy on *prima facie* view of the matter.

[13]. Looking to the controversy in question, I am of the view that the allegations made against the petitioner and his son are serious in nature. Proceedings in terms of ECIR and IPC are distinct in nature and operate in different fields. Even though the offence falls under Part 'A' after the amendment and before the Amendment of 2013, it was under Part 'B' of the Schedule, still *prima facie* nature of the case can be looked into while deciding the anticipatory bail.

[14]. Petitioner was directed to join the proceedings by this Court vide order dated 22.12.2015 passed in Civil Writ Petition No.3314 of 2015. Thereafter on nine occasions, summons were issued to him, but he did not turn up and did not comply with the aforesaid order. The pleadings made in the present petition are

conspicuously silent about the rigor of non-appearance in view of aforesaid order except a meagre recital in para No.5 of the petition that the aforesaid writ petition was disposed of and a review application is pending consideration.

[15]. In view of above, the conduct of the petitioner is not such which entitles him the extra ordinary relief of anticipatory bail. Consequently, the petition is dismissed.

[16]. Nothing expressed hereinabove would be construed to be an opinion on merits of the case in any manner.

May 11, 2017 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No