

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(i) CRM No.M-21760 of 2017 (O&M)

Satpal Bansal

...Petitioner

VERSUS

State of Punjab and another

...Respondents

(ii) CRM No.M-22581 of 2017 (O&M)

Jagjit Singh

...Petitioner

VERSUS

State of Punjab and another

...Respondents

(iii) CRM No.M-22585 of 2017 (O&M)

Sukhwinder

...Petitioner

VERSUS

State of Punjab and another

...Respondents

Date of Decision: September 20, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Mohd. Yousuf, Advocate
for the petitioner (in CRM No.M-21760 of 2017).

Mr.Vishal Aggarwal, Advocate
for the petitioners (in CRM Nos.M-22581 and 22585 of 2017).

Mr.A.P.S.Gill, Deputy Advocate General, Punjab
for the respondent-State.

Ms.Ranjana Shahi, Advocate
for respondent No.2.

INDERJIT SINGH, J.

All the above-mentioned cases are taken up together as the same have arisen from same FIR.

Petitioners have filed these petitions under Section 438 Cr.P.C. for grant of anticipatory bail in complaint case bearing complaint No.1 of 18.01.2017 in ECIR/02/JLZO2014 dated 17.01.2017 under Section 45(1) of Prevention of Money Laundering Act, 2002 (for brevity 'PMLA' for offences of Money Laundering under Section 3 and Punishable under Section 4 of PMLA Act.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petitions.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

Section 45 of the PMLA, 2002, provides as under:-

“45. Offences to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person who is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the special court so directs”

Learned counsel for respondent No.2 argued that bail cannot be

granted to the petitioners and in support of her contention, she cited judgment passed by the Hon'ble Supreme Court in ***Gautam Kundu vs. Manoj Kumar, Assistant Director, Easter Region, Directorate of Enforcement (Prevention of Money Laundering Act), Govt. of India, in Criminal Appeal No.1706 of 2015 decided on 16.12.2015***, in which it is held as under:-

“33. With regard to the questions raised by Mr. Gopal Subramaniam, learned senior counsel appearing on behalf of the appellant, at this stage, we do not think that we should answer or deal with the same in view of the fact that the matter is pending before a Division Bench of the High Court in writ jurisdiction, as has been pointed out before us. Hence, any observation or remarks made by us may cause prejudice to the case of both the sides. Therefore, we feel that it would be proper for us only to deal with the matter concerning bail. We note that admittedly the complaint is filed against the appellant on the allegations of committing the offence punishable under Section 4 of the PMLA. The contention raised on behalf of the appellant that no offence under Section 24 of the SEBI Act is made out against the appellant, which is a scheduled offence under the PMLA, needs to be considered from the materials collected during the investigation by the respondents. There is no order as yet passed by a competent court of law, holding that no offence is made out against the appellant under Section 24 of the SEBI Act and it would be noteworthy that a criminal revision praying for quashing the proceedings initiated against the appellant under Section 24 of SEBI Act is still pending for hearing before the High Court. We have noted that Section 45 of the PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. As mentioned earlier, Section 45 of the PMLA imposes two conditions for grant of bail, specified under the said Act. We have not missed the proviso to Section 5 of the said Act which indicates that the legislature has carved out an exception for grant of bail by a Special Court when any person is under the age of 16 years or is a woman or is a sick or infirm. Therefore, there is no doubt that the conditions laid down under Section 45A of the PMLA, would bind the High Court as the provisions of special law having overriding effect on the provisions of Section 439 of the Code of Criminal Procedure for grant of bail to any person accused of committing offence punishable under Section 4 of the PMLA, even when the application for bail is considered under Section 439 of the Code of Criminal Procedure.”

In view of the laid down by the Hon'ble Apex Court, provisions of Section 45 of the PMLA, 2002, are mandatory in nature.

From the perusal of the record, I do not find that no offence is made out. The grant of bail to accused is barred under Section 45 of the PMLA for the commission of offence under Section 4 of the said Act.

In view of the above discussion and law laid down by the Hon'ble Supreme Court, no ground is made out for granting anticipatory bail to the petitioners. Therefore, finding no merit in all the petitions, the same are dismissed.

September 20, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No