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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 15.02.2017

% **Judgment delivered on: 10.04.2017**

+ **BAIL APPLN. 2241/2016**

ANAND CHAUHAN

..... Petitioner

Through: Mr. Vikas Pahwa, Sr. Adv. along with
Mr. Madhur Jain, Mr. Parmatma
Singh, Mr. Mayank Jain, Ms. Kinnori
Ghosh, Mr. Tushar Sharma and
Mr. Zakir Husain, Advocates.

versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr. Amit Mahajan, CGSC and
Mr. Nitya Sharma, Advocate for
ED/UOI.

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

J U D G M E N T

VIPIN SANGHI, J.

1. The petitioner herein, Anand Chauhan has preferred the present bail application seeking regular bail under section 439 of the Code of Criminal

Procedure (Cr.P.C) read with Section 45 of The Prevention of Money Laundering Act,2002(PMLA) in RC No. ECIR/HQ/02/HIU/2015.

2. Case of the prosecution is that on the basis of one preliminary enquiry registered on 17.06.2015, CBI registered FIR No. RC AC 1 2015 A-0004 under Sections 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 and Section 109 IPC against Sh. Virbhadra Singh , Smt. Pratibha Singh, Sh Chunni Lal Chauhan, Sh. Anand Chauhan – the present petitioner, and other unknown persons. The FIR/RC alleges that Shri Virbhadra Singh while serving as Union Minister, Govt of India during the check period from 28.05.2009 to 26.06.2012, invested huge amounts of money in purchasing LIC policies in his own name and in the name of his family members through the present petitioner, who was then an LIC agent. As per prosecution this was done by Shri Virbhadra Singh by claiming to enter into a Memorandum of Understanding (MoU) dated 15.06.2008 with Shri Anand Chauhan for management of his apple orchard called Srikhand Orchard situated at Village Damrali, Rampur Bushar, Distt. Shimla, Himachal Pradesh. In the terms of the said MoU, the petitioner claimed to have sold the apple produce of Srikhand Orchard to one Shri Chunni Lal Chauhan of M/s Universal Apple Associates (UAA), Parwanoo and on that pretext he deposited huge amounts in cash in his bank accounts during the check period, which were used for purchasing LIC policies for Sh. Virbhadra Singh & his family members. It was further alleged that the petitioner, in connivance with Shri Chunni Lal Chauhan, brought the unaccounted money of Shri Virbhadra Singh back into regular books of accounts by utilising the same for buying assets in the name of Shri Virbhadra Singh and his family

members. On the basis of the facts collected during investigation, the CBI claimed that the sale of apples was a sham.

3. On the basis of FIR No. RC AC 1 2015 A 004, respondent registered the case vide ECIR HQ No. ECIR/HQ/02/HIU 2015 dated 27.10.2015 against Shri Virbhadra Singh, the petitioner herein and others under Sections 3 and 4 of the PMLA.

4. The ECIR dated 27.10.2015 recites that Section 13 of PC Act is a Scheduled offence under paragraph 8 of Part A of the Schedule of PMLA(as amended), and that the allegations contained in the FIR/RC dated 23.09.2015 show that the accused (including the petitioner herein) have committed the offence under section 3 PMLA, which is punishable under section 4 of the said Act.

5. The Petitioner was summoned by the respondent on 23.11.2015 and 17.03.2016 for the recording of statement under section 50(2) and (3) of the PMLA, 2002 which were duly recorded. He was further called on 08.07.2016 at Chandigarh Zonal Office for recording his statement and thereafter he was arrested vide arrest order dated 08.07.2016 under section 19 of PMLA Act, 2002. He was produced before Ld. Chief Metropolitan Magistrate, Patiala House Court on 09.07.2016, who remanded him to the custody of Enforcement Directorate for four days. Thereafter he was remanded to judicial custody on 13.07.2016. Since then, the petitioner is in judicial custody.

6. The Petitioner's first bail application dated 13.07.2016 filed before learned Special Judge, Patiala House Courts got rejected vide order dated

20.8.2016. The learned Special Judge considered two factors while deciding the bail application. First, whether substantial evidence against the petitioner is available and, secondly, whether he will be in position to tamper with the evidence or win over the witnesses. Learned Special Judge observed that since evidences against the petitioner are mostly documentary and he is also not arrested in the regular case of disproportionate assets, so it is not likely that the petitioner will tamper with the same and win over the witnesses.

7. The learned Special Judge held that the case is at the stage of investigation, and there is enough material on record which shows how petitioner invested cash monies in LIC policies on behalf of Shri Virbhadra Singh and his family, and was actively involved in laundering of money. The learned Special Judge opined, on the basis of investigation, till that it cannot be said that petitioner is just at the periphery of the offence and, accordingly, the bail application of the petitioner was dismissed by the learned Special Judge, Patiala House Courts.

8. Respondent filed a detailed complaint under Section 45 on 05.09.2016 against the petitioner herein before Special Court (PMLA), Patiala House, New Delhi, alleging that Sh. Anand Chauhan – the petitioner has been actively involved in the offence of money laundering, as he deposited the illegitimate cash money/disproportionate assets of Shri Virbhadra Singh in his bank accounts with PNB, Sanjauli and HDFC Bank, Sanjauli and in other 2 bank accounts of Meghraj Sharma and Kanupriya Rathore. It was further alleged that the amount deposited was utilized for purchase of LIC policies. It was further alleged that in order to revise the return of income and to legitimise the proceeds of crime by projecting the same as

agricultural income, a fabricated MoU was brought into existence which was shown to have been executed on 15.06.2008. It was further alleged that the said MoU is an antedated agreement and was created after July 2011, which is when the petitioner's case came under Income Tax Authorities. Complaint further alleged that the said MoU was not registered before any statutory authority, nor the same was presented before any agency or authority. The complaint details the facts unearthed during investigation which contradicted and belied the claim of the petitioner and the other accused in the RC/FIR registered by the CBI. It is not necessary to narrate them in detail in this order.

9. Cognizance of the offence of abovementioned complaint was taken by the Special Court vide order dated 07.09.2016, and the matter was further kept for scrutiny of documents on 26.09.2016.

10. Petitioner filed a Habeas Corpus writ petition, being W.P.(CrI). No.2823/2016 for his illegal detention by the respondents before this Court. The Division Bench left it open to the petitioner to move his bail application during pendency of the said Writ Petition. Consequently the present bail application has been preferred.

11. The petitioner submits that he is just a victim of political rivalry, and is being harassed and illegally detained by the respondent for no reason. He further submits that the arrest of the petitioner is unconstitutional and illegal, as the mandatory procedure was not followed. The grounds of arrest were not communicated to the petitioner, which is a violation of natural justice and due process of law. He further submits that the main accused, Shri

Virbhadra Singh got protection against arrest in regular case RC AC 1 2015 A-004 under 13(2) r/w 13(1)(e) of the PC Act and Section 109 IPC vide order dated 01.10.2015 passed by the Himachal Pradesh High Court. Petitioner further submits that the complaint dated 05.09.2016 was registered only against the applicant and not against the main accused. He further submits that whilst in the custody of the respondent, he was subjected to physical torture to record statement on various dates.

12. The petitioner further submits that the arrest of the petitioner is premature, as the commissions of the scheduled offence u/s 13(1)(e) r/w 13(2) of PC Act, 1988 is yet to be, *prima facie*, established and charge sheet in the regular case is yet to be filed by the CBI, and the principal accused in aforesaid regular case has also not been arrested till date.

13. The petitioner further submits that custody of applicant is in violation of Article 21 of the Constitution of India, since no trial under section 3 and 4 of PMLA Act can be proceeded without the charge sheet being filed in the case under Section 13(2) r/w Section 13(1)(e) of the PC Act-which is the scheduled offence in question. He further submits that amendment to section 44 PMLA, 2002 contemplates a joint trial by the Special Court of scheduled offence case, and the case relating to the offence under PMLA, to avoid conflicting and multiple opinion of courts, which is not possible as the charge-sheet in scheduled offence case is yet to be filed.

14. The petitioner further challenges the invocation of section 45 of PMLA in the present case. He submits that the said section is not applicable in the petitioner's case, as it applies only if a person is accused of an offence

punishable for a term of imprisonment of more than 3 years under part A of the schedule. Petitioner submits that Sections 13(2) and 13(1)(e) of PC Act are only applicable to public servants and not to others, and the abettor of the said offence can only be prosecuted under section 109 IPC, which is punishable only in the context of other offences. Thus, section 45 of the PMLA would not be applicable to the petitioner's case.

15. The petitioner further relies upon a Division Bench judgment of this Court in ***Gurucharan Singh vs. Union of India***, 2016 SCC OnLine Del 2493, wherein the accused was released on bail by the Court in view of the amendment of section 45 PMLA – making it a non-cognizable offence. The Division Bench in ***Gurucharan Singh*** (supra) observed that it is mandatory to follow the provisions of Section 155, 177(1) and 172 of the Code of Criminal Procedure in case the offence is non-cognizable. It was further observed that without reaching the conclusion that the offence under PMLA is cognizable, the respondent was bound to follow and comply with the said provision of the Code of Criminal Procedure. It was further observed that in the absence of the procedure having been followed, the rights of the petitioner under Article 21 of the Constitution stand violated.

16. Respondent has contested the petition. Mr. Mahajan, the Ld. ASC submits that the petitioner's arrest was duly made under section 19 of PMLA as the petitioner has committed offence of money laundering. Learned counsel submits that Section 19 of PMLA, 2002 provides that if, on the basis of material in his possession, the authorised officer has reason to believe that a person is guilty of offence punishable under PMLA, he may arrest such person. Learned Counsel relies on the observation made in the

order dated 20.08.2016 by the learned Special Judge that the petitioner is, prima facie, guilty of committing an offence under Section 3 of the Act.

17. Learned counsel pressed into service the mandatory provision of Section 45 of the PMLA, which puts stringent conditions for the release of an accused charged under Part A of the schedule on bail. He submits that the conditions laid down in section 45 have overriding effect over the general provisions of CrPC. Therefore the mandatory conditions for grant of bail to accused under PMLA have to be complied with, even while considering an application under section 439 CrPC.

18. Respondent further submits that section 109 of IPC cannot be read in isolation and the same is not a standalone offence. In the present case Section 109 is invoked along with section 13(1)(e), 13(2) of PC Act in the RC/FIR in question. There cannot be any conviction of an accused under section 109 of IPC for abatement alone. Respondent relies upon the judgment of the Supreme Court in *Gautam Kundu Vs. Directorate of Enforcement*, (2015) 16 SCC 1 and *Union of India v Hassan Ali*, (2011) 10 SCC 235.

19. In his rejoinder, learned senior counsel for petitioner further submits that the judgment relied by the respondent in *Gautam Kundu (supra)* is not applicable in the present case, as the complaint under PMLA in said case was an ECIR alleging commission of offence punishable under section 24 of the SEBI Act which, by itself, is a scheduled offence punishable under PMLA vide amendment Act 2009 - unlike in the petitioner's case, wherein

the offence alleged against petitioner is only under section 109 IPC which, admittedly is not a scheduled offence under the Act

20. At this stage, while considering the present bail application this Court is, therefore, not expected to delve into the merits of the defence that are available to the petitioner.

21. The petitioner submits that his arrest under section 19(1) PMLA is premature and in violation of Article 21 of Constitution of India. He submits that Section 45 is not applicable to the case of petitioner. On the other hand, the respondent submits that petitioner is an accused of an offence under PMLA and his bail application is governed by the stipulations laid down by Section 45 of the Act. Section 45 of PMLA reads as follows:

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:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—

(i) the Director; or

(ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.

[(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]

(2) The limitation on granting of bail specified in subsection (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail. (emphasis supplied)

22. The submission of the petitioner, that main accused Shri Virbhadra Singh has been granted protection in the FIR/RC filed by the CBI by Himachal Pradesh High Court vide order dated 01.10.2015, and that there is no case against Shri Virbhadra Singh registered by the respondent under the PMLA, does not hold good as on date. This is so, because, the writ petition preferred by Shri Virbhadra Singh (which had been transferred to this Court by the Supreme Court and registered as W.P. (Crl.) No. 2757/2015) has been dismissed by this Court on 31.03.2017 and the interim orders passed therein stand vacated. Cognizance can be taken of the fact that the charge-sheet also stands filed – as widely reported in the press. Thus, it cannot be said as on

date, that the main accused Shri Virbhadra Singh is being protected, while the petitioner herein has been arrested under the PMLA.

23. In support of his submission that the offence under section 109 IPC is punishable only in the context of other offences, and merely because the petitioner is charged with abetment under Section 109 IPC, he cannot be said to be guilty of the offence under Section 13(2) r/w section 13(1)(e) of the PC Act, learned counsel for the petitioner, adverted to ***Wakil Yadav and Another v State of Bihar***, (2000) 10 SCC 500, wherein the Supreme Court observed :

*"2. Out of the two appellants before us, Guru Charan Yadav, the main accused has since died. His appeal therefore abates and is disposed of as such. The other, Wakil Yadav was originally charged along with 6 others for offence under Sections 302/149 IPC and or some lesser offences as part of the same constructive liability. The Court of Session convicted all the 7 accused for the offences charged. The High Court in appeal acquitted 5 persons, convicting Guru Charan Yadav substantively for offence under Section 302 IPC, sentencing him to life imprisonment (whose appeal has abated) and convicting Wakil Yadav, the appellant, for offence under Section 302 read with Section 109 IPC is a distinct offence. The afore-extracted statement of law is clear on the point. **The appellant having faced trial for being a member of an unlawful assembly which achieved the common object of killing the deceased, could in no event be substitutedly convicted for offence under Section 302 IPC with the aid of section 109 IPC.** There was obviously thus not only a legal flaw but also a great prejudice to the appellant in projecting his defence. He, on such error committed by the High Court, has rightly earned his acquittal....." (emphasis supplied)*

24. At this stage, I cannot accept the submission of the petitioner that as he has been charged with abatement of the scheduled offence, the PMLA cannot be invoked against him, or that the rigours of Section 45(1)(ii) would not apply to him. Pertinently, the offence of “criminal misconduct” is defined in Section 13 of the P.C. Act to mean, inter alia, the possession of the public servant “*or any person on his behalf at any time during the period of his office of pecuniary resources or property disproportionate*” to the known sources of income of the public servant, which the public servant cannot specifically account for. Thus, even a person who is not a public servant has been noticed in the said definition of “criminal misconduct” as defined in Section 13(1)(e) of the PC Act. No doubt, the offence of criminal misconduct is committed by the public servant, but the offence under Section 13(1)(e) of the PC Act may also rope in-as an abettor, any person who is in possession of such unexplained pecuniary resources and property disproportionate to the known sources of income of the public servant, i.e. who holds the said pecuniary resources or property on behalf of the public servant.

25. Section 3 of the PMLA defines the offence of money laundering as, “*Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering*”.

26. The expression “proceeds of crime” is defined in Section 2(u) of the PMLA to mean “*any property derived or obtained, directly or indirectly, by*

any person as result of criminal activity relating to a scheduled offence”. As noticed hereinabove, the offence alleged against Sh. Vir Bhadra Singh in the FIR/ RC registered by the CBI under Section 13(2) read with Section 13(1)(e) of the PC Act is a scheduled offence and thus, the allegation against the petitioner is that the proceeds of crime of Sh. Vir Bhadra Singh have been laundered by him.

27. A reading of Section 3 shows that the person who commits the offence of money laundering need not necessarily be a one who may have been involved in the acquisition of the proceeds of crime. Thus, even if the petitioner herein is assumed to be not guilty of the offence under Section 13(2) read with Section 13(1)(e) of the PC Act, nevertheless, he is a person charged with abetting the said offence and with the laundering of the proceeds of the crime of Sh. Vir Bhadra Singh.

28. I cannot agree with the submission of the petitioner that for the purpose of Sections 3 and 4 of the PMLA, the person accused of the commission of the offence under the PMLA should have committed the scheduled offence and acquired the proceeds of crime. The proceeds of crime may be acquired by another person who commits one of the scheduled offences, and the person charged with money laundering may have only, directly or indirectly, assisted or knowingly become a party, or may be actually involved in the process or activity of, inter alia, concealing, possessing, acquiring or using and projecting or claiming the said proceeds of crime as untainted property. The purpose of scheduling the offences under the PMLA appears to be to enlist the various crimes through which the proceeds of crime may be generated. Thus, the submission of the

petitioner that he cannot be charged under the PMLA, does not appear to have any merit.

29. The learned Special Judge has opined that it cannot be said that there are reasonable grounds for believing that the petitioner is not guilty of the scheduled offence. This prima-facie finding of the learned Special Judge on a reading of the allegations made against the petitioner herein in the FIR/RC registered by the CBI, as well as on a perusal of the complaint preferred under the PMLA, appears to be justified and there is no reason to take a different view of the matter at this stage.

30. In *Gautam Kundu* (supra), the Supreme Court has categorically held that the conditions specified in Section 45 of the PMLA are mandatory and needs to be complied with. In this regard, the Supreme Court places reliance on Sections 65 and 71 of PMLA. Section 65 provides that the provisions of the Code shall apply insofar as they are not inconsistent with the provisions of the PMLA and Section 71 provides that the provisions of PMLA shall have over-riding effect, notwithstanding anything inconsistent therewith contained in other law for the time being in force. Thus, PMLA has an over-riding effect and the provisions of the Code would apply only if they are not inconsistent with the provisions of the PMLA. The Supreme Court has held that the compliance of the provisions of Section 45 of the PMLA should be insisted upon by the High Court as well, while considering an application under Section 439 Cr.P.C. In the present case, the prima facie finding returned by the trial court with regard to the petitioner's involvement in the scheduled offence is unexceptionable.

31. Reliance placed by learned senior counsel for the petitioner on ***Gurucharan Singh*** (supra) is not apposite in the facts of the present case. Firstly, the Division Bench in ***Gurucharan Singh*** (supra) was dealing with an application in writ proceedings whereas, in the present case, this Court is only concerned with an application seeking bail under Section 439 Cr.P.C. Thus, this Court is considering the present application within the boundaries of Section 45 of the PMLA as laid down in ***Gautam Kundu*** (supra). Secondly, in ***Gurucharan Singh*** (supra), the petitioner was not an accused in the scheduled offence. However, in the present case, the petitioner is an accused in the FIR/RC registered by the CBI under Section 13(2) read with Section 13(1)(e) of the PC Act and Section 109 IPC.

32. Reliance placed by the learned senior counsel for the petitioner on various decisions which deal with the considerations that the Court dealing with a bail application should keep in mind, cannot be pressed into service in view of the expression language of Section 45 of the PMLA and decision of the Supreme Court in ***Gautam Kundu*** (supra).

33. No doubt, the Division Bench in writ petition being WP(Crl.) No. 2823/2016 observed that the pendency of the writ petition shall not prevent the petitioner from moving an application to seek bail under the Code, and the said direction was continued vide order dated 07.10.2016, but, the same does not mean that this Court while dealing with the bail application under Section 439 Cr.P.C. can take into consideration aspects which fall within the realm of writ jurisdiction, and in respect whereof the petitioner's writ petition is pending. This Court is clearly bound by the decision of the Supreme Court in ***Gautam Kundu*** (supra).

34. For the aforesaid reasons, I find no merit in the present petition and dismiss the same. The observations made in this order shall not prejudice the case of the petitioner in any manner before the trial court and the said observations shall not influence the mind of the trial court while dealing with the merits of the case.

(VIPIN SANGHI)
JUDGE

APRIL 10, 2017