IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1297 OF 2018

Mohammed Farooq Mohd. Hanif Shaikh ...Applicant.
vs.
Directorate of Enforcement, Mumbai and anr. ...Respondents.

Mr. Vikram Choudhary with Mr. Prashant Mishra for the Applicant.
Mr. H. S. Venegaonkar with Mr. D.P. Singh and Ms. Priyamvada Singhania for Respondent No.1.
Mr. Amit Palkar, APP. for the State.

CORAM : A.S.GADKARI, J.
Reserved on : 6th August, 2018
Pronounced on : 10th August , 2018.

P.C.

1. This is an application under Section 439 of the Code of Criminal Procedure for bail in PMLA Special Case No.6 of 2018 arising out of ECIR No. ECIR/MBZO/I/03/2017 dated 18.9.2017 under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (" PMLA Act" for short).

The applicant is accused No.1 in the aforesaid case.

2. The record indicates that, predicate offence bearing CR No. RC0682017E0004 dated 13.5.2017 has been registered by CBI/EOW, Mumbai for the offence punishable under Section 420 read with 120-B

of the Indian penal Code and under Sections 12(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 against the accused persons therein. ECCR No. ECIR/MBZO-I/-3/2017 dated 18.9.2017 has been registered by respondent No.1 and after completion of investigation the Respondent No.1 has filed present complaint on 22.6.2018 which has been numbered as PMLA Special Case No.6 of 2018.

3. The Respondent No.1 had commenced the investigation into suspected commission of money laundering against M/s. Stelkon Infratel Pvt. Ltd. (SIPL), M/s. Apolla Enterprises, M/s.Kundan Trading, M/s. Disney International, M/s. Anek Trading Pvt. Ltd., M/s. Lubeez Enterprises, M/s. Pawan Enterprises, M/s. Lemon Trading Company, M/s. Padilite Traders, M/s. Fine Touch Impex, M/s. Azure Enterprises, M/s. Seabird Enterprises and M/s. Iconic Enterprises, based on the crime registered by the CBI/EOW, Mumbai dated 13.5.2017 as mentioned earlier against the said firms under Section 120-B read with 420 of the Indian Penal Code and Section 13(1)(d) and 13(2) of the Prevention of Corruption Act which are scheduled offences under Part-A of the PMLA Act. The case had been taken out for investigation under the PMLA Act for suspected commission of money laundering

of proceeds of crime as contemplated under Section 3 and 4 of the PMLA Act. Union Bank of India vide its letter dated 14.10.2015 informed the respondent No.1 about huge foreign remittance against purportedly forged import documents being made from Kalbadevi and Santacruz (W) Branches belonging to M/s. Lemon Trading Company, M/s. Apolla Enterprises, M/s. Kundan Trading, M/s. Dolly Trade and M/s. Dingdong Impex. The said firms mentioned by the Union Bank of India in its letter dated 14.2.2015 were the said firms enumerated as accused in CBI/EOW Crime. In view of CBI/EOW Crime ECIR/MBZO-1/03/2017 was registered by respondent No.1 under PMLA Act. That, another 149 accounts were found to be linked to three common mobile numbers which during the course of investigation revealed to be, were being used by the applicant herein. That, the applicant is directly associated with Apollo Enterprises, Kundan Trading, Allianz Industries, Allianz Traders, Dolly Trade, Lemon Trading, Little International and Dingdong Impex and the said firms found to have had suspicion of foreign remittance to the tune of Rs.3733.02 lakhs. It is the case of the prosecution that, the applicant and his brother Mohammed Gous Mohd. Hanif Shaikh by luring the people of small means of financial resources induced them to part with their personal details such as Pan card, Aadhar Card, Electricity Bill, Ration Card etc. and on the basis of the said documents Import Export Code (IEC) was obtained from the Director General of Foreign Trade (DGFT) Ministry of Commerce and by using the said details opened 13 shell companies being M/s. Stelkon Infratel Pvt. Ltd. (SIPL), for remitting out of India the money M/s. Apolla Enterprises, M/s.Kundan Trading, M/s. Disney International, M/s. Anek Trading Pvt. Ltd., M/s. Lubeez Enterprises, M/s. Pawan Enterprises, M/s. Lemon Trading Company, M/s. Padilite Traders, M/s. Fine Touch Impex, M/s. Azure Enterprises, M/s. Seabird Enterprises and M/s. Iconic Enterprises and in fact remitted money out of India. Out of the 13 entitles 11 are proprietary concerns and two are private limited companies. It is the precise case of the prosecution that, by effecting international remittance through shell companies, the applicant remitted huge funds overseas by using, bogus bill of entry, submitting same set of documents against multiple outward remittances under the veil of imports which was never made and has committed offence of money laundering under Section 3 of the PMLA Act, by generating the proceeds of crime, committing scheduled offences to the tune of Rs.2252.80 Crores followed by layering, using the bank accounts of his other shell companies and integrating the same either abroad or in India and thus, the applicant has committed an offence punishable under Section 4 of the PMLA Act. In the premise, the complaint is lodged against the applicant and other accused persons.

During the course of investigation of the present complaint the applicant came to be arrested on 24.4.2018 and after completion of investigation the police have filed complaint before the Special Court.

4. Mr. Choudhary, the learned Senior counsel appearing for the applicant submitted that, there is practically no material available on record to indicate the role, if any, played by the applicant in the present crime. He submitted that, the Directors of the alleged shell companies through whom it is alleged that, the applicant has laundered huge money abroad are not made accused and in fact have been made as witnesses which shows the malafide at the instance of the investigating agency. He further submitted that, the present Investigating agency was earlier investigating alleged crime under the provision of FEMA Act and when they could not succeed in the same the present case is instituted against the applicant. He further submitted that, the applicant has been arrested in violation of Section 19 of the PMLA Act. That, in the crime registered by CBI/EOW charge

sheet has not been filed till today and therefore even if the respondent No.1 has filed complaint before the Special Court the same cannot be tried as of today in view of Section 44(1)(a) of the PMLA Act. He further submitted that, the statement recorded under Section 50 of the PMLA Act of an accused cannot be used against the co-accused. He lastly submitted that, there is no material available on record against the applicant which can be termed as of sterling quality and therefore, the applicant deserves to be released on bail.

5. Mr. Venegaonkar, the learned Special PP. appearing for respondent No.1 vehemently opposed the application and submitted that, the applicant has been arrested after following due process of law and in compliance of Section 19 of the PMLA Act. He further submitted that, the statements of witnesses in the present case have been recorded under Section 50 of the PMLA Act and which can be used against the applicant/accused in the present crime as the said statements are of witnesses and not of co-accused. He further submitted that, the applicant is king pin of the entire crime which has resulted into money laundering of approximately 2250.80 Crore from India to abroad by using modus operandi of international remittances as noted in the foregoing paragraphs. He further submitted that, the

further investigation of the present case is in progress and some of the witnesses in their statements which are recorded after filing of the complaint have expressed threats to their life at the instance of the applicant. He therefore, prayed that the application may be rejected.

6. The facts giving rise for filing of the present complaint have been briefly recorded in the foregoing paragraph No.3 of the present order and the same are facts mentioned in the complaint and the remand reports submitted by respondent No.1 before the Special Court. The record indicates that, the applicant is directly associated with the afore stated eight firms mentioned in paragraph 3 herein above. That the 13- companies which have indulged into international remittance on the basis of using bogus bill of entry, submitting the same set of documents against multiple outward remittances under the veil of imports which were never made, are the shell companies opened at the instance of the applicant by luring people of small means or financial resources by inducing them to part with their personal details and the said persons have been made Proprietors of the said commercial entities or the Directors of the companies by making paltry payment to them. The statements of witnesses recorded by the investigating agency clearly indicates that, it

is the applicant who was not only associated with the said 13- firms but was also intermeddling in its operations. The record indicates that, the Owners /Directors of the afore-stated 13 Companies were either semi literate or with minimal qualification and in their real life are doing odd jobs for their survival and despite the said fact in the companies they have been shown as Proprietors/Directors, turn over of hundreds of Crores of rupees have been effected without their actual knowledge. The evidence on record which is in the form of statements of witnesses clearly indicates that, it is the applicant who was controlling the said firms for the purpose of money laundering under the guise of international remittance.

The record further indicates that, in a statement of witness recorded on 31.7.2018 by the investigating agency the concerned witness has stated that, the applicant paid him Rs.10,000/ for appearing before higher bank officers for impressing them as he being the Director of a company. That the applicant has further threatened the concerned witness that, if he discloses the real facts to anybody, the said witness will be made to vanish in air and nobody will come to know about the same. This shows that, the propensity of the applicant of tampering with the evidence and threatening the witnesses with dire consequences.

7. The Supreme Court in the Case of Nimmagadda Prasad vs. Central Bureau of Investigation reported in (2013) 7 SCC 466 in Para No.25 has held as under:-

"Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country".

8. Undoubtedly the present crime lodged against the applicant is an economic offence and there is sufficient material available on record to show the clear complicity of the applicant in it.

9. In view of the above and after taking into consideration the serious allegations against the applicant and the gravity of the offence, this Court is of the considered view that the applicant does not deserve to be released on bail.

10. Application is accordingly rejected.

(A.S. GADKARI, J.)