IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2267 OF 2018
WITH
CRIMINAL APPLICATON NO.1338 OF 2018

Kiran Kulkarni .. Applicant
Vs.
The Enforcement Directorate & Anr. .. Respondents

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Mr.Rizwan Merchant i/b. M/s.Rizwan Merchant & Associates, Advocate for the Applicant.

Mrs.G.P. Mulekar, APP for the Respondent – State.

Mr.Pranav Badheka a/w. Shubhabrata Chakraborti and Mr.Vaibhav Wali i/b. M/s. Juris Corp., Advocate for the Intervener.

Ms.Nitee Punde, Spl. P.P., E.D.

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CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 22, 2018.

<u>P.C.</u> :

This is an application for bail under Section 439 of Code of Criminal Procedure in connection with ECIR No.2 of 2016. Applicant has been arrested in this case on 18th June, 2018.

2 The case of the prosecution is that MIDC Police Station has registered First Information Report No.760 of 2015 dated 18th December, 2015, invoking Section 409, 420, 477(A), 120-B read with 34 of Indian Penal Code (“IPC”, for short), against applicant, Prashant Mulekar, Pankaj Shrivastav and

Dinesh Jajodia. Subsequently, case was taken over by Economic Offence Wing, Mumbai (EOW) Unit–V. In pursuant to the order dated 22nd December, 2015, passed by the High Court, the Directorate recorded a Enforcement Case Information Report ("ECIR" for short) No.ECIR/02/MBZ0/2016, dated 12th January, 2016, to investigate the offence of money laundering in terms of Prevention of Money Laundering Act, 2002 ("PMLA", for short), as the offences under Sections 420 and 120-B of IPC fall under scheduled offences covered in Part-A of paragraph (1) of Schedule to the PMLA Act, 2002. During the course of investigation, statements of several persons were recorded. In pursuant to that complaint has been filed before the competent Court.

3 Applicant was granted bail in connection with the case investigated by EOW on 10th May, 2016. On completing investigation, charge–sheet is filed in this case on 16th April, 2016. Applicant continued to be on bail in connection with said case. However, on 18th June, 2018, the applicant was arrested in the present case.

4 Applicant had preferred an application for bail before the Special Court, which has been rejected.

5 Learned counsel for the applicant submitted that the applicant was arrested in case investigated by EOW and investigation in that case is already completed and charge–sheet has been filed, and, subsequently, he was granted bail. In the present case, he was arrested after period of 25 months from the date of his release on bail in predicate offence. Applicant is not involved in the alleged transaction. In any case, the investigation is completed and complaint has been filed. The present case has been merged with the case investigated by EOW and on the application of respondent, both the cases are assigned to the PMLA Court. It is further submitted that while he was on bail in the case investigated by EOW, it was not alleged that there was any tampering of evidence. It is the case of the prosecution that after receipt of the amount in the account of M/s.GTSL, where the applicant is not the director or member of GTSL, instead of utilizing the same for acquisition of overseas companies and invested its holding Part of the FCCB was utilized for the investment in EEMF, where applicant is not director or member. It is submitted that he is not connected with the company YIL in any manner. It is the case of the prosecution that out of the US$ 82.02 Million invested in EEMF, where the applicant is not the director or member. An amount of 57.52 Million US$ was

transferred into the account of M/s.YIL UAE, where the applicant was not director. It is submitted that the applicant has unnecessarily incarcerated in custody although he has been undergone detention in predicate offences. He was not party to the transaction and was unaware about all the transactions. The case of the prosecution is that the applicant is being managing director of M/s.GEL as well as incharge of the department handling products such as Mundu etc., has projected the receipt of US$ 31.79 Million into the account of M/s.GTSL from the account of M/s.YIL, to which the applicant was not party. He was not aware about the sales/collections of M/s.GTSL. Applicant has not committed any offence under the PMLA Act. He is not connected in any of the entities, who have allegedly committed the crime alleged by the prosecution. Learned Magistrate while granting bail to the applicant in the predicate offence has taken into consideration the nature of the involvement of the applicant in the crime and was pleased to grant him bail. Applicant could not be subjected to detention again in respect to the present case. The entire case relates to the documents. He was already arrested and was in custody for substantial time, and, was subsequently released on bail. There is no new evidence presented by the prosecution. He had cooperated with the investigation prior to his arrest and thereafter. The fact that he was not arrested for long period of time after granting bail, would indicate that his custody was not required. There are no complaints from any of the Authorities that the applicant had been tampering with the investigation at any point of time. It is further submitted that the present case was under investigation since 2016, and, during the investigation it was not noticed that the applicant was involved in laundering the proceeds of any crime. It is, therefore, prayed that the applicant be granted bail. It is further submitted that the custody was sought for finding out trail of money, however, the complaint filed by the complainant, itself reflects the trail. The custody of applicant, is, therefore, not necessary for any purpose. In the order dated 28th April, 2017, passed by this Court in Company Petition No.514 of 2013, it was observed that from papers proceeded by ED, it is established that Mr.Mulekar and Mr.Jajodia have made false statements before Court. Learned counsel pointed out letter dated 6th November, 2015, sent by RBI to EOW, stating that they have not come across any contravention of FEMA guidelines in respect of FCCB's issued by company. Learned advocate also pointed out summary of transaction on saving account No.5155893003.

6 Learned counsel for the respondent, however, submitted that the applicant was arrested in the present case on the basis of evidence collected in connection with the offence under PLMA Act. There is substantial evidence against the applicant showing his involvement in the crime. The crime is serious, which affects the economy of the country. It is submitted that M/s.Geodesic Information System Private Limited (Now M/s.Geodesic Limited) was engaged into the software and hardware manufacturing business, having its registered office at MIDC Andheri, Shri Prashant Mulekar, is one of the director of M/s.Geodesic Limited. In 2008, M/s.GL raised 125 Million US$ by issuing Foreign Currency Convertible Bonds (FCCB), for which Citi Bank London acted as Trustee and the company has raised said FCCB amount to 125 Million US$ (equivalent to Rs.493 crores, as per prevailing exchange rate) for investment in its overseas subsidiaries or acquisition of new overseas subsidiaries and M/s.GL was not allowed to use said funds for local bill and the FCCB were also listed on Singapore Stock Exchange. The maturity date for the FCCB was January 2013, and the maturity value was approximately 165 Million US$. However, M/s.GL defaulted on maturity. Respondent has filed affidavit-in-reply opposing the application for bail. It is contended that M/s.GL has

two direct overseas subsidiaries viz. M/s.Geodesic Technologies Solution Limited (M/s.GTSL), Hong Kong and M/s.Geodesic Holding Limited ("M/s. GHL"), Mauritius. M/s.GL thorough GHL, Mauritius had acquired two step-down subsidiaries viz. M/s.Zomo Technologies and M/s.Emiloto Associates based in tax haven countries and these two companies were not reputed and were merely shell companies having no established software business with consistent revenue income or prestigious clientèle. M/s.Geodesic Limited had made investment through these two companies. It is further submitted that the investigation under PMLA had revealed that the amount of FCCB raised by M/s.GL was received in the bank accounts of M/s.GTSL and M/s.GHL. Part of the amount received in the account of M/s.GTSL was transferred in the accounts of M/s. Zomo Technologies Ltd. And M/s.Emiloto Associates Inc. After receipt of the funds in those companies, those funds were not utilized for the intended purpose of acquisition of new companies. Mr.Dinesh Jajodia is the director and authorized signatory in the aforesaid companies. It is further stated that during the investigation, Bank Statement being account number 710902319001 of M/s.Yvette Investment Ltd. with Abu-Dhabi Commercial Bank was obtained. The scrutiny of the same had revealed that an USD 31799750 was transferred from the account of M/s.Yvette into the accounts of M/s.GTSL. Out of the amount of 82.02 Million USD invested in EEMF, as mentioned in the affidavit filed in the Court, an amount of USD 57.52 Million USD was transferred into the accounts of M/s.YIL, UAE, wherein Mr.Dinesh Jajodia is the director. Out of USD 57.52 Million, which was transferred in the accounts of M/s.YIL from EEMF, an amount of USD 23.8 Million was transferred from M/s.YIL into the accounts of M/s.GTSL, wherein Mr.Prashant Mulekar is the director. It is submitted that the applicant being the managing director of M/s.GL as well as incharge of the department handling the products, such as Mundu etc., has projected receipt of 31.72 Million USD into the account of M/s.GTSL from the account of M/s.YIL, as untainted, which was also included in the annual report of M/s.GL. M/s.GL being the listed company, it was duty of the Managing Director to present correct and true figure and facts in the annual report of M/s.GL, as the public money was involved. It is, therefore, submitted that the applicant is involved in serious offence. Further investigations under PMLA conducted so far revealed tht M/s.GL had recovered the expenses under the guise of bogus purchase of software. Out of 608.64 crores on account of bogus purchase of software of M/s.GL an amount of Rs.5.29 crores had gone to M/s.Unsound

Venture.com India Private Limited (UVIPL) and this receipt of amount of Rs.5.29 crores was projected as untainted wherein applicant is the director. Reliance is placed on eh decision of the Supreme Court of India in the case of ***State Vs. Jaspal Singh Gill***[1], and decision of Supreme Court in Criminal Appeal No.492 jof 2014.

7 Learned counsel for the intervener also reiterated the submissions advanced by the respondent. It is submitted that the offence committed by the applicant–accused is of high magnitude in terms of money involved in the said transaction and that the alleged crime is on the economy of the country. Foreign investors, who have invested huge amounts are now wary of investing of further amount. The applicant is involved in money laundering. The company issued a bond as accepted Trust Deed dated 17th January, 2008, in respect of bonds with Citi Bank. Under the Trust deed, the said bank was appointed as a trustee for and on behalf of the bond holders who are the actual and beneficial owners of the money due under the bonds. The investigating authority despite all efforts, has not been successful in recovering the money, due under the bonds which was siphoned off by the

1 1984 AIR 1503

applicant and other accused. He, therefore, submitted that the application be rejected. The bondholders being the actual and the beneficial owners of the bounds and being the actual victim of perpetuated crime seeks intervention to oppose bail. Reliance is placed on the decision of the Supreme Court in the case of ***State of Bhiar & Anr. Vs. Amit Kumar Alias Bachcha Rai***[2]. He also pointed order passed by this Court in Company Petition No.514 of 2013 on 14th July, 2016, referring to affidavit filed by Joint Commissioner of Police, EOW, stating that three Directors of Geodesic Ltd., hatched conspiracy with Dinesh Jajodia to cause wrongful gain to themselves and wrongful loss to shareholders and FCCB holders, siphoned off funds of shareholders to the tune of Rs.250 crores by showing bogus purchases of software and failed to redeem foreign currency convertible bonds worth USD 125 Million to FCCB holders by creating a web of shell companies in various countries with malafide intention to siphon off the money through fictitious dealings.

8 I have gone through the documents on record.

9 Applicant was arrested in predicate offence, and,

2 (2017) 13 SCC 751

subsequently, he was granted bail. Investigation in respect to PMLA, had been assigned to respondents before the applicant was granted bail. It appears that the respondents have continued with investigation and collected evidence against the applicant. The complaint gives filed by the respondents alleges that applicant had played a major role in money laundering. The complaint details as to how the applicant and other accused are involved in the present case. The contention of the applicant is that he is not concerned with the companies allegedly involved in the transactions. It is also contended by the applicant that overt-acts are attributed to Dinesh Jajodia and others and not the applicant. According to the prosecution, the applicant is the managing director of M/s.GL and incharge of department, which handles the product, such as Mundu etc. He is also director of M/s.UVIPL. M/s.GL had received the amount of Rs.125 Million USD on account of FCCB, which was transferred into the account of M/s.GHL and M/s.GTSL, after receipt of the amount to the tune of 31.2 Million USD in the account of M/s.GTSL, instead of utilising the same for acquisition of overseas company and the investment in wholly owned subsidiary companies, the part of the FCCB was utilized for the investment in EEMF of 82.02 Million USD, in ADG Fund of 87.07 Million USD and for the purpose of loan of 29.03 Million USD to M/s.Audrain Commercial, which is not a subsidiary of M/s.GL, M/s.GHL and M/s.GTSL. According to the prosecution these investments, part of which was source from FCCB funds were admitted in the affidavit filed before this Court by M/s.GL through Mr.Prashant Mulekar. Out of 82.02 Million USD invested in EEMF, an amount of 57.52 Million USD was transferred into the accounts of M/s.YIL fro EEMF, UAE, wherein Dinesh Jajodia is a director. M/s.YIL, out of USD 57.52 Million which was transferred in the accounts of M/s.YIL.

10 It is alleged in the affidavit filed by Prashant Mulekar, Executive Director of M/s.GL dated 6th April, 2014, in this Court in Company Petition No.471 of 2014, he had claimed the investments in M/s.Emiloto Associates, M/s.Zomo Technologies and M/s.GTSL. The investigation reveals that the amount of FCCB raised by M/s.GL was received in the Bank account of M/s.GTSL and M/s.GHL. Part of the amount is received in the account of M/s.GTSL was transferred in the account of M/s.Zomo Technologies and M/s.Emiloto Associates. After receipt of the funds in those companies, the same were not utilized for the intended purpose of acquisition of companies. It is the case of the prosecution that though the amount totalling to USD 31.79

Million was transferred from the account of M/s.YIL into account of M/s.GTSL, M/s.GTSL has not disclosed the transaction with M/s.YIL in their books of accounts. M/s.GTSL has projected the transaction of 31.79 Million USD, as untainted under guise of income from sales receivable of the goods viz. Mundu etc., purportedly sold by M/s.GL under the directions of Mr.Prashant Mulekar. Applicant is being incharge of the department of holding the product viz. Mundu, is aware of the fact that the product is purportedly sold by M/s.GL, as untainted in the account of M/s.GTSL. The investigation under the PMLA has revealed that M/s.GL had recorded the expenses under the guise of bogus purchase of software. Out of Rs.608.64 crores on account of bogus purchase of software of M/s.GL an amount of 5.29 crores had gone to M/s.UVIPL and others receipt of amount of Rs.5.29 crores was projected as untainted wherein the applicant is the director. It is, thus, the case of the prosecution that the applicant is *prima facie* guilty for the offence of money laundering. The evidence collected during the course of investigation, thus, indicate involvement of the applicant in the said crime. The applicant being managing director of M/s.GL had projected the receipt of 31.79 Million USD into the account of M/s.GTSL from the account of M/s.YIL as untainted which was also included in the annual report of M/s.GL. M/s.G.L. being listed company, it is the duty of M.D. to present the correct figures in annual report. The application preferred by the applicant was rejected by the Sessions Court vide order dated 21st July, 2018. While rejecting the said application, it was observed that there is sufficient evidence showing involvement of the applicant in the crime. There is *prima facie* material to show the involvement of the applicant in siphoning off the proceeds of crime showing tainted amount, as untainted. It is also observed that this is a serious matter having international ramifications. The offence is economic offence is involving public money and the applicant has played vital role in laundering money. In the light of the evidence, I do not find that applicant is made out any case for grant of bail.

11 Hence, I pass the following order:

:: <u>O R D E R</u> ::

(i) Bail Application No.2267 of 2018, is rejected;

(ii) Criminal Application No.1338 of 2018, stands disposed of.

(iii) It is clarified that the observations made in the order are *prima facie* for considering grant of bail and the trial Court shall not be influenced by the same at the time of trial.

(**PRAKASH D. NAIK, J.)**