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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2957 OF 2017

Chandrakant Narsidas Patel .Applicant

Vs.

Directorate of Enforcement & anr. .Respondents

Mr. Vikram Chaudhari, Senior Counsel a/w Mr. P. D. Jain, Mr. S. Agarwal, Mr. K. Khambete, Ms N. Ahuja i/b. P. D. Jain & Co., for the Applicant
Mr. H. S. Venegaonkar a/w Mr. A. L. Bhise, Advocate, for the Respondent No. 1 – E. D.
Mr. M. G. Patil, APP, for the Respondent No. 2 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 26.04.2018

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with PMLA Case No. 12 of 2017 arising out of ECIR / MBZO-I/ 01 / 17 registered by the Enforcement Directorate, Mumbai Zonal Office – I, for the alleged offences punishable under Section 3 read with Section 4 of the Prevention of Money Laundering Act (hereinafter referred to as 'PMLA').

3. Mr. Chaudhari, learned Senior Counsel for the Applicant submitted that the Applicant has been falsely implicated in the said case and that no case as alleged is disclosed qua the Applicant. Learned Senior Counsel assailed the Applicant's prosecution on several counts; (i) that the Assistant Director of the Enforcement Directorate was not competent to lodge a complaint with the CBI, alleging offences punishable under Sections 120B r/w 420, 465, 468 of the Indian Penal Code and Sections 13(2) r/w 13(1) (d) of the Prevention of Corruption Act; (ii) that there was no material to show the money involved in the present case was generated from 'proceeds of crime' a pre-requisite under the PMLA Act; (iii) that despite the fact, that the Applicant had reported and co-operated with the investigation, the Applicant was arrested in the said case; and (iv) that other co-accused i. e. two Bank officers of the Union Bank of India and the proprietors of M/s. Pihu Gold and M/s. Satnam Jewels were granted bail on the very same day i. e. on 14.02.2018. Learned Senior Counsel further submitted that till date, investigation in the CBI case (lodged at the instance of the Assistant Director of the Enforcement Directorate) is not complete and that no charge-sheet has been filed in the said case, as against any of the accused including the Applicant. Learned Senior Counsel relied on several Judgments in support of his submission, that there was no

impediment to grant of bail, inasmuch as the rigours of Section 45 of the PMLA do not apply.

4. Mr. Venegaonkar, learned counsel for the Enforcement Directorate (hereinafter for the sake of brevity referred to as the 'ED'). Respondent No. 1 opposed the Application. The Affidavit of Mr. Rajesh Ojha, Assistant Director (PMLA), Directorate of Enforcement is on page No. 455 of the Application. Mr. Venegaonkar, learned counsel for the Respondent No. 1 submitted that there is sufficient material to show the Applicant's complicity in the alleged offence. He also relied on Section 24 of the PMLA to oppose the Application. He submitted that the Applicant had earned illegal money through his shell Companies i. e. M/s. Pihu Gold and M/s. Satnam Jewels and thereafter, purchased Gold from the Union Bank of India and thereafter, sold the Gold in the open market. He relied on the statements of Mr. Shantaram Ramchandra Sangade, a boy who carried the money for Rakesh Patel; the statement of the proprietor of M/s. Pihu Gold – (co-accused); the statement of Mr. Amit Yogesh Sampat, Director of M/s. Pushpak Bullions (also a co-accused) and the statement of Mr. Mayur Deepak Chawada, Director of M/s. Satnam Jewels, also a co-accused in the said case. Learned Special Public Prosecutor states that as far as the two entities i. e. M/s.

Akash International Enterprises and M/s. Skyworth Trade Link Pvt. Ltd. are concerned, investigation is still in progress.

5. Perused the papers. The Applicant is the Director of the Company, ' M/s. Pushpak Bullions Pvt. Ltd.' The said Company is in the business of trading of Gold & Silver bullions as well as domestic sales and export of jewellery, since 1999. It appears that the said Company used to purchase gold from various Banks, such as Union Bank of India, HDFC Bank, Axis Bank etc. and sell the same to wholesale traders / jewellers. The Applicant's Company 'M/s. Pushpak Bullions Pvt. Ltd.' has a valid Certificate of Incorporation issued by the Deputy Registrar of Companies. It is alleged by the prosecution that the alleged offence took place soon after demonetization i. e. after November, 2016. It appears that the Applicant's Company had an account amongst other Banks, with the Union Bank of India. According to the prosecution, after demonetization, the Applicant as the Director of M/s. Pushpak Bullions Pvt. Ltd., illegally deposited cash of Rs. 47,45,00,000/- and Rs. 37,15,000,00/- in M/s. Pihu Gold and M/s. Satnam Jewels, respectively and subsequently, transferred the same to his own Company's (M/s. Pushpak Bullions Pvt. Ltd.'s) account and that subsequent thereto, purchased Gold from Union Bank of India & sold it in the open

market. It is alleged by the prosecution, that despite the account, being an NPA account, the Union Bank of India allowed the Applicant to operate the said account. It is further alleged by the prosecution that M/s. Pihu Gold and M/s. Satnam Jewels are the shell Companies of the Applicant's Company - 'M/s. Pushpak Bullions Pvt. Ltd.'; that Gold was purchased from the illegal money deposited by the shell companies in M/s. Pushpak's account and thereafter, the Applicant purchased gold from the said Bank i. e. Union Bank of India and sold it in the open market to M/s. Akash International Enterprises and M/s. Skyworth Trade Link Pvt. Ltd.. According to the prosecution, M/s. Pihu Gold also sold Gold to six entities, out of which two entities i. e. M/s. Jugraaj Kantilal & Co. and J. K. Enterprises have set off the outstanding debt, which M/s. Pushpak Bullions Pvt. Ltd. owed them and the other remaining entities i. e. M/s. Akash International Enterprises and M/s. Skyworth Trade Link Pvt. Ltd., the Gold was given to them on credit. According to Mr. Venegaonkar, the said transaction constitutes 'proceeds of crime'. It appears that as there was no schedule offence registered as against the Applicant, the Assistant Directorate of Enforcement Directorate lodged a complaint with the CBI, ACB, Mumbai on 16.02.2017, alleging offences punishable under Sections 120B r/w 420, 465, 468 of the Indian Penal Code and Sections 13(2) r/w 13(1) (d) of the Prevention of Corruption Act. After the registration of the said FIR, the aforesaid complaint i. e. ECIR / MBZO-I / 01 /17 was lodged by the ED as against the Applicant and others under the PMLA Act, on 06.03.2017. It appears that all the accused i. e. the Bank officials of the Union Bank of India as well as the proprietors of M/s. Pihu Gold and M/s. Satnam Jewels, including the Applicant were summoned by the ED on several occasions. On 18.11.2017, a complaint was lodged by the ED and cognizance of the said complaint was taken on 22.11.2017. On 14.02.2018, all the other accused in the said case were enlarged on bail. As far as the Applicant is concerned, he was arrested on 22.09.2017.

6. As far as questions raised by the learned senior counsel for the Applicant i. e. with regard to applicability of the PMLA, maintainability of the complaint, that there is no material to show that the cash deposited in M/s. Pihu Gold and M/s. Satnam Jewels were 'proceeds of crime' or whether the Assistant Directorate of Enforcement Directorate could have filed a complaint as against the Applicant and other accused, the same will be decided by the trial Court at the appropriate stage and as such, it is not necessary to consider the same in this bail Application. The Applicant is in custody since 22.09.2017. All documents have been seized. Admittedly, till date charge-sheet has not

been filed in the case registered by the CBI, at the instance of the Assistant Director of the Enforcement Directorate, as against the Applicant and others. All other co-accused have been enlarged on bail in this case. In the facts, further detention of the Applicant is not warranted. Having regard to the aforesaid, the Application is allowed and the Applicant is enlarged on bail on the following terms & conditions :-

O R D E R

(i) The Applicant be enlarged on **cash bail** in the sum of **Rs. 2,00,000/-**, for a period of six weeks from today;

(ii) The Applicant shall within the said period of six weeks, furnish P. R. Bond in the sum of Rs. 2,00,000/- with one or more solvent sureties in the like amount;

(iii) The Applicant shall report to the concerned officer of the Enforcement Directorate on the **2nd & 4th Monday of every month** between **10:00 a. m. and 05:00 p. m.** until further orders;

(iv) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(v) The Applicant shall deposit his passport before his release with the Enforcement Directorate;

(vi) The Applicant <u>shall not leave India without prior permission of the trial Court;</u>

(vii) The Application is allowed & disposed of in the aforesaid terms;

(viii) It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)