101

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.30266 of 2018
Date of Decision: 19.07.2018

Vinod Garg

......Petitioner

Vs

Assistant Director, Enforcement Directorate

....Respondent

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Jagmohan Bansal, Advocate
for the petitioner.

Mr. Lokesh Narang, Sr. Panel Counsel
for Union of India/respondent.

****

RAJ MOHAN SINGH, J.

[1]. Petitioner is in his 3rd attempt for seeking anticipatory bail in case bearing Complaint No.COMA-15-2017 in ECIR No.06 dated 14/08/2013 registered under Sections 3 and 4 of the Prevention of the Money Laundering Act, 2002 (hereinafter to be referred as 'the PMLA Act') at Zonal Office, Jalandhar.

[2]. Earlier prayer was declined by this Court vide order dated 11.05.2017 passed in CRM-M No.12008 of 2017. Thereafter CRM-M No.12385 of 2018 was filed and the same was also dismissed by this Court on 23.03.2018. Thereafter,

petitioner filed SLP (Crl.) No.3023 of 2018 in the Hon'ble Apex Court and the same was got withdrawn with liberty to file fresh petition before the High Court.

[3]. Learned counsel for the petitioner submitted that due to changed circumstances the present petition has been filed. He referred to the order dated 07.05.2018 passed in CRM-M No.2210 of 2018 titled *'Raman Kumar Garg vs. Enforcement Directorate, The Mirage, 556-B, Cool Road, Jalandhar',* wherein regular bail was granted to Raman Kumar Garg in ECIR No.06 dated 14.08.2013. On the aforesaid plea the case was got withdrawn from the Hon'ble Apex Court with liberty to file fresh petition before this Court.

[4]. Learned counsel also relied upon interim order dated 18.07.2018 passed in CRM-M No.12383 of 2018 titled *'Umesh Garg vs. Asstt. Director'*, to seek parity with the aforesaid co-accused.

[5]. I have considered the submissions made by learned counsel for the parties.

[6]. Raman Kumar Garg is the sole proprietor of export firm namely M/s Jaldhara Exports. The said firm claimed VAT refund to the tune of Rs.1.64 crores, but an amount of Rs.1.56 crores was sanctioned to the firm. During enquiry, the documents of the

firm were found to be forged. Resultant FIR No.126 dated 26.07.2013 was registered for the offences under Sections 177, 420, 465, 467, 468, 471 IPC at Police Station Division No.5, Civil Lines Ludhiana.

[7]. In the aforesaid FIR, petitioner was also nominated as an co-accused on the ground that an amount of Rs.70,000/- came to his share. Petitioner was arrested in the said FIR and was granted regular bail. Thereafter proceedings in terms of ECIR were initiated under Sections 3 and 4 of the PMLA Act. Petitioner was summoned. Provisional assessment of the property was ordered by the ECIR Authority on 09.05.2016 and complaint was filed before the adjudicating authority. The provisional assessment of the properties of Raman Kumar Garg and Sheena Garg was made absolute. Raman Kumar Garg was allowed anticipatory bail in the FIR case.

[8]. As per prosecution case, petitioner and Raman Kumar Garg were involved in paper transactions and fake documentation in order to cheat State exchequer. Petitioner is the beneficiary of the act of fake companies. ECIR proceedings and the prosecution in FIR are two distinct mechanism. Fictitious export firm had claimed VAT refund of Rs.1.56 crores from the Government. In the enquiry, it was confirmed that all the shipping bills and documents produced by the said firm were

forged and fabricated. VAT refund of Rs.1,56,76,190/- on the basis of forged and fabricated documents from the Excise and Taxation Department, Ludhiana was transferred through RTGS in different accounts of the proprietors. Petitioner is one of the proprietors along with Smt. Sangeeta Garg, Umesh Garg, Seema Garg and Saiyarh Garg.

[9]. CWP No.3314 of 2015 was filed by the petitioner. The said writ petition was dismissed on 20.12.2015 with a direction to videograph the proceedings of interrogation. Thereafter petitioner was summoned on various occasions for making necessary arrangement for videography. Petitioner did not appear on any of the occasion intentionally and he did not comply with the directions. Petitioner deliberately avoided the investigation in order to escape from the proceedings. Summons were issued to the petitioner on nine occasions, but he did not turn up. All these facts were noticed in the earlier petition i.e. CRM-M No.12008 of 2017 while declining the prayer for grant of anticipatory bail vide order dated 11.05.2017. Those proceedings were conspicuously concealed in the earlier petition as the rigor of non-appearance in the investigation would definitely go against the petitioner. Only a reference was made in para no.5 of aforesaid petition that a civil writ petition No.3314 of 2015 was filed by the petition which was disposed

on 22.12.2015. A review petition is pending. Owing to the conduct of the petitioner, this Court did not grant any indulgence in the earlier petition.

[10]. Petitioner is a beneficiary of the amount which was deposited through RTGS in different accounts. Remaining part of proceeds are still to be identified and attached. Petitioner did not co-operate for so long. Raman Kumar Garg has been granted regular bail in CRM-M No.2210 of 2018. Grant of regular bail cannot be equated with the anticipatory bail as claimed by the petitioner.

[11]. The case of Umesh Garg cannot be considered to be on parity with that of the petitioner, as the conduct of petitioner was earlier deprecated with reference to his conduct in not joining the investigation despite directions issued by the High Court for doing videography of the proceedings of the investigation. The petitioner was summoned on various occasions for making necessary arrangement for the videography, but he intentionally did not appear. The summons were issued to the petitioner on nine occasions, but despite service he did not turn up. Those proceedings were concealed in the earlier petition i.e. CRM-M No.12008 of 2017 in a very conspicuous manner so as to avoid rigor of non-appearance in the investigation. No such overt act was attributed to co-

accused Umesh, therefore, the case of petitioner stands on different footings where his complicity was noticed in the petition with reference to facts on record.

[12]. For the reasons recorded hereinabove, extra-ordinary relief of anticipatory bail cannot be granted to the petitioner. However, petitioner would be at liberty to seek regular bail in accordance with law. Consequently, this petition is dismissed.

[13]. Nothing expressed hereinabove would be construed to be an opinion on merits of the case.

July 19, 2018 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No