

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M No.34855 of 2017

Date of decision : 10.07.2018

Kamal Kumar Bakshi

.....Petitioner

Versus

Directorate of Enforcement, Chandigarh Zonal Office, Chandigarh

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Pratham Sethi, Advocate for the petitioner.

Mr. Sukant Gupta, Addl. P.P., U.T., Chandigarh.

Ms. Ranjana Shahi, Senior Panel counsel for E.D.

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DAYA CHAUDHARY, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short – 'Cr.P.C.') read with Section 65 of the Prevention of Money Laundering Act, 2002 (for short – 'PMLA, 2002') for grant of regular bail to the petitioner in case bearing No.ECIR/01/CHD/2002 dated 07.03.2012 under Sections 3 and 4 of the PMLA, 2002 registered by the Directorate of Enforcement, Chandigarh Zonal Office, Chandigarh.

Learned Senior counsel for the petitioner submits that learned Sessions Judge, Chandigarh has not taken into consideration this fact that no role has been attributed to the petitioner in the commission of offence as alleged in the complaint. Neither the petitioner is beneficiary nor having any

share in the business of the company. The petitioner is a victim of wrong investigation conducted by the officers of respondent-department and mandatory provisions of PMLA, 2002 have not been followed. Learned Senior counsel also submits that no incriminating material was recovered from the petitioner or from his family members. The petitioner was having a good business of security system and he has nothing to do with the day to day affairs of the company. At the most, the petitioner can be termed as commission agent, who has worked for the company. Learned Senior counsel further submits that the order of dismissing the bail application has been passed by learned Sessions Judge, Chandigarh without any application of mind as the bail application has been dismissed on the ground that mandatory provisions of Section 45 of PMLA, 2002 have not been followed. However, nothing has been said on merits. The provisions of Section 45 of PMLA, 2002 are not mandatory as has been held by Hon'ble Apex Court in case ***Nikesh Tarachand Shah Vs. Union of India and another*** 2017 SCC Online SC 1355.

Ms. Ranjana Shahi, learned Senior Panel counsel for E.D. has opposed the submissions made by learned Senior counsel for the petitioner and submits that it was found in the investigation that several FIRs were registered at different places against several agents relating to similar offences who were small investors. Thousands of investors were cheated on account of large scale cyber fraud committed by the company in the name and style of M/s Unipay 2U Marketing Pvt. Ltd. and M/s Unigateway 2U Trading Pvt. Ltd. The present petitioner was one of such agents and same

has been admitted in the bail application itself. However, learned Senior Panel counsel submits that accused persons have absconded and are not available. The investigation in the case is still continuing and is at the initial stage. The petitioner is not entitled to be released on bail. The accused has to comply with the mandatory provisions of Section 45 of the PMLA, 2002. At the end, learned Senior Panel counsel submits that a complaint under Section 45 (1) of PMLA, 2002 has been filed against the accused-petitioner and others and same is still pending. The present application is liable to be dismissed on this ground.

Heard arguments of learned counsel for the petitioner as well as learned counsel for the E.D. and have also perused the documents available on the file.

The Hon'ble Apex Court has declared Section 45(1) of the PMLA, 2002 to be unconstitutional, to the extent it imposes two further conditions for release on bail, as it violates Articles 14 and 21 of the Constitution of India. The bail petition was dismissed by the Hon'ble Apex Court on the ground that because of imposition of twin conditions as contained in Section 45, the matter will go back to the respective Courts, which has denied the bail. All the orders were set aside and cases were remanded to the respective Courts to be heard on merits, without application of twin conditions contained in Section 45 of the PMLA, 2002. A direction was also issued that as the persons are languishing in jail and the matter being of personal liberty, was required to be taken up at the earliest by the respective courts for fresh decision. The writ petitions and appeals were disposed of

accordingly.

In the present case also, nothing has been said on merits and bail application filed by the petitioner was dismissed on the ground that mandatory provisions of Section 45 of the PMLA, 2002 have not been complied with. Meaning thereby, the controversy involved in the present case is squarely covered by the decision of Hon'ble Apex Court in **Nikesh Tarachand Shah's** case (supra). The relevant portion of said judgment is reproduced as under:-

“56. The complaint of the learned Attorney General is that this was done at the very threshold without hearing the Union of India. Be that as it may, we are of the opinion that, even though the Punjab High Court judgment appears to be correct, it is unnecessary for us to go into this aspect any further, in view of the fact that we have struck down Section 45 of the 2002 Act as a whole.

57. Regard being had to the above, we declare Section 45(1) of the Prevention of Money Laundering Act, 2002, insofar as it imposes two further conditions for release on bail, to be unconstitutional as it violates Articles 14 and 21 of the Constitution of India. All the matters before us in which bail has been denied, because of the presence of the twin conditions contained in Section 45, will now go back to the respective Courts which denied bail. All such orders are set aside, and the cases remanded to the respective Courts to be heard on merits, without application of the twin conditions contained in Section 45 of the 2002 Act. Considering that persons are languishing in jail and that personal liberty is involved, all these matters are to be taken up at the earliest by the respective Courts for fresh decision. The writ petitions and the appeals are disposed of accordingly.”

In view of above, the present case is remitted to the learned Sessions Judge, Chandigarh for deciding the case on merits in view of ratio of judgment of ***Nikesh Tarachand Shah's*** case (supra). The necessary exercise be done within a period of four weeks from the date of receipt of certified copy of this order, after hearing the parties concerned.

10.07.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No