*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%   Reserved on: 1st August, 2018
                                                     Decided on: 6th August, 2018

+   **BAIL APPLN. 1061/2018**

ANUP PRAKASH GARG   ... Petitioner

Represented by: Mr.Vikas Pahwa, Sr.Advocate with Mr.Amarjeet Singh Bedi, Mr.P.S.Singhal, Mr.Vijay Shankar and Mr.Tushar Aggarwal, Advocates

versus

ENFORCEMENT DIRECTORATE
THR. ASSISTANT DIRE CTOR (PMLA)   ... Respondent

Represented by: Mr.Amit Mahajan, CGSC/UOI with Mr.Nitesh Rana, SPP and Mr.Anand Negi, Advocate

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition, the petitioner seeks bail in case ECIR/HQ/17/2017 recorded by the respondent under the Prevention of Money Laundering Act, 2002 (in short 'PMLA'). CBI registered FIR bearing No.CRBD1/2017/ E/0007 on 25th October, 2017 under Sections 13(2)(1)(d) of the Prevention of Corruption Act, 1988 (in short 'PC Act') read with Sections 420/467/468/471 IPC wherein the applicant was named as an accused on the ground that the directors, M/s.Sterling Biotech Limited (in short 'SBL') were supplying regular money to the applicant.

2. Pursuant to the registration of FIR by CBI, Enforcement

Directorate i.e. the respondent herein, recorded the above noted ECIR on 3rd November, 2017 and on the same day, raided the premises of the petitioner. Thereafter, the respondent summoned the petitioner to join the investigation, which he joined on several dates. After the investigation, a complaint was filed by the respondent on 23rd December, 2017 and after arrest of the petitioner on 12th January, 2018, subsequently, qua him complaint was filed on 9th March, 2018 wherein learned Trial Judge took cognizance. Though the precursor to the ECIR as noted above is the FIR registered by the CBI, neither the petitioner has been arrested in the said FIR registered by the CBI nor charge-sheet has been filed thereon.

3. In the supplementary complaint filed by the respondent, petitioner and his company M/s. RAG Buildtech Pvt. Ltd. (in short 'RAG Buildtech') have been arrayed as accused. The allegations against the petitioner in the complaint based on the investigation carried out are that the petitioner was a Director in Andhra Bank from October, 2006 to October, 2009. During the petitioner's tenure as Director of Andhra Bank, SBL group availed credit facilities of ₹23,50,00,000/- from Andhra Bank. Further, the petitioner received cash payments to the tune of ₹1,52,50,000/- on the direction of the promoter of SBL between 2008 and 2009 which was withdrawn from various accounts of SBL group of companies in the form of cash, funded out of the credit facilities availed by SBL group causing wrongful loss to the banks. Statement of Ashok Chotalal Gandhi, an employee of SBL group, was recorded that as per the instructions of Chetan Jayantilal Sandesara, promoter of SBL group payments were made to the petitioner. These facts were revealed after documents were recovered during the search and survey by Income Tax authorities against SBL group of companies on 28th June,

2011. Ashok Chotalal Gandhi gave the break-up of the amount of cash paid to the petitioner on various dates at Mumbai and Delhi amounting to a total sum of ₹1,52,00,000/-.

4. As per the investigation further carried out and also on the basis of statement of the petitioner recorded under Section 50(2) and (3) of PMLA, it was found that money was diverted in purchasing shares in a company named M/s.RAG Buildtech Pvt. Ltd. managed by Anil Garg, son of the petitioner. Further, money was floated from shell companies whereafter RTGS transactions were made to RAG Buildtech. It is alleged that the petitioner through RAG Buildtech utilized the illicit money to the tune of ₹1,15,00,000/- for purchasing a residential flat at Indore for a sum of ₹36.85 lakh on 28th March, 2013, a residential house at Chandralok Colony for ₹1 crore which was further sold for a sum of ₹1,10,27,000/- to some other person on 29th September, 2014, an agricultural land at Indore for ₹85 lakh subsequently sold for ₹90 lakh, an agricultural land at district Devas, Madhya Pradesh for a sum of ₹47,04,500/-, a Maruti Suzuki Dezire car, a Renault Duster car and four fixed deposits each of ₹7,50,000/- with UCO Bank at Indore. The movable and immovable properties have since been provisionally attached.

5. Learned counsel for the petitioner contends that the petitioner was only an independent director being a Chartered Accountant of the Andhra Bank. The credit facilities to the SBL group of companies were provided by consortium of banks and the facility provided by the Andhra Bank was duly approved by the Board of Directors and not on the sole direction of the petitioner. The petitioner has not been arrested in the alleged scheduled offence registered by the CBI and no charge-sheet thereon has been filed. In

terms of Section 44 of the PMLA, trial for the two offences i.e. the scheduled offence under section 13(2) read with Section 13(1)(d) of the PC Act by CBI and offence under Section 3 and 4 of the PMLA has to be conducted jointly. The petitioner has been in custody since 12th January, 2018 and is no more required for investigation purposes.

6. Learned counsel for the respondent reiterating the allegations in the complaint as noted above states that during the course of investigation, sufficient evidence oral, documentary as well as circumstantial, has been gathered against the petitioner to prove the charge for commission of offence punishable under Sections 3 and 4 of PMLA. Statement of Ashok Chotalal Gandhi, an employee of SBL group of companies clearly shows the cash payments made by SBL group to the petitioner. Further, petitioner is the only bank official whose name features in the FIR registered by CBI to whom cash payments were made by Chetan Jayantilal Sandesara of the SBL group. Considering the gravity of the offence, nature of allegations and the investigation carried out, no bail be granted to the petitioner.

7. This Court has heard learned counsel for the parties at length. As noted above, the allegations against the petitioner are of having received cash to the tune of ₹1,52,50,000/- in various tranches at Delhi and Mumbai withdrawn from various companies of SBL group in cash and thereafter by rotating it through various shell companies received the money in RAG Buildtech owned by his son, shares whereof were then inflated and from the money infused in RAG Buildtech various properties, movable and immovable, were purchased.

8. Charge-sheet for offence punishable under Sections 13(1)(d) read with Section 13(2) of the PC Act is yet to be filed by the CBI. As per the

mandate of Section 44 of PMLA, the trial in the scheduled offence and the complaint filed by the respondent is to be conducted jointly. Co-accused Gagan Dhawan has been granted bail by the learned ASJ on the ground that the case is based on documentary evidence and all the bank transactions are recorded which cannot be erased or tampered with by the influence of Gagan Dhawan and the Enforcement Directorate has already attached the plot of Gagan Dhawan worth ₹1.17 crores situated in Gurgaon and that he remained in custody for 62 days. Offence defined under Section 3 and punishable under Section 4 PMLA entails a minimum punishment for 3 years imprisonment which may extend to 7 years imprisonment. The petitioner is in custody since 12th January, 2018.

9. Consequently, the petitioner is directed to be released on bail on his furnishing a personal bond in the sum of ₹2,00,000/- with two surety bonds of the like amount, subject to the satisfaction of the Trial Court and further subject to the condition that :

(i) the petitioner will not leave country without prior permission of the Court concerned;

(ii) in case of change of residential address the same will be intimated to the Court concerned by way of an affidavit; and

(iii) the petitioner will not directly or indirectly influence the witnesses or interfere in the further investigation.

10. Petition is disposed of.

11. Order dasti.

(MUKTA GUPTA)
JUDGE

AUGUST 06, 2018
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