

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

% Reserved on: 15th January, 2018
Decided on: 25th January, 2018

+ **BAIL APPLN. 1113/2017 and Crl. M.A. No. 244/2018**

VIRENDRA JAIN Petitioner
Represented by: Mr. Vikram Chaudhri, Sr. Advocate
with Mr. Harshit Sethi, Mr. S.P.
Singh, Mr. Rishi Sehgal and Mr.
Nikhil Jain, Advocates.

versus

ENFORCEMENT DIRECTORATE DELHI
ZONAL OFFICE ZONE II NEW DELHI Respondent
Represented by: Mr. Sanjeev Narula, CGSC, Mr. Amit
Mahajan, CGSC, Mr. Nitesh Rana,
SPP and Ms. Anumita Chandra,
Advocate.

+ **BAIL APPLN. 1114/2017 and Crl. M.A. No. 239/2018**

SURENDER KUMAR JAIN Petitioner
Represented by: Mr. Vikram Chaudhri, Sr. Advocate
with Mr. Harshit Sethi, Mr. S.P.
Singh, Mr. Rishi Sehgal and Mr.
Nikhil Jain, Advocates.

versus

ENFORCEMENT DIRECTORATE DELHI
ZONEL OFFICE ZONE II NEW DELHI Respondent
Represented by: Mr. Sanjeev Narula, CGSC, Mr. Amit
Mahajan, CGSC, Mr. Nitesh Rana,
SPP and Ms. Anumita Chandra,
Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

BAIL APPLN. 1113/2017 & CrI.M.A.No.244/2018

BAIL APPLN. 1114/2017 & CrI.M.A.No.239/2018

1. By way of the present applications, petitioners Virendra Jain and Surender Kumar Jain, the two brothers seek regular bail in ECIR/01/DLZO-II/2017 dated 11th February, 2017 under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (in short 'PMLA').
2. The above-noted complaint was lodged after an order dated 28th October, 2013 was passed by the Ministry of Corporate Affairs directing investigation by Serious Fraud Investigating Officer (in short 'SFIO') into affairs of the various companies. On the basis of the investigation report a Criminal Complaint No. 57463/2016 dated 29th November, 2016 was filed by SFIO against 31 accused persons including the two petitioners for violation of the provisions under Sections 233/628 read with Sections 211/240 (3) of the Companies Act and under Sections 420/468/477-A/120B IPC before the learned Additional Chief Metropolitan Magistrate (Central) Special Acts, Tis Hazari Courts, Delhi.
3. These bail applications came up before this Court earlier and vide order dated 20th September, 2017, this Court dismissed the two bail applications.
4. Aggrieved by the order dated 20th September, 2017 dismissing the bail applications, the petitioners preferred Special Leave Petition before the Hon'ble Supreme Court and vide order dated 23rd November, 2017 in a batch of writ petitions and criminal appeals, the Hon'ble Supreme Court declared the two further conditions imposed for release on bail in Section 45

(1) of PMLA to be unconstitutional, violative of Articles 14 and 21 of the Constitution of India and remanded back the matter to the respective Courts which denied the bail, to be heard on merits without application of the twin conditions mentioned in Section 45 of the PMLA. The petitioners, in the meantime also applied before the learned Special Judge, PMLA for grant of bail after passing of the order of the Supreme Court however, the same was declined vide order dated 8th December, 2017. Thus in both the petitions additional applications challenging the order dated 8th December, 2017 passed by the learned Special Judge have also been filed.

5. Case of the prosecution originates from the allegation that M/s Jagat Projects Ltd. laundered its unaccounted income through the set of companies controlled by the petitioners in guise of share subscription money at a huge premium to the tune of ₹64.70 crores during the financial year 2008-09 with the help of a professional Chartered Accountant Rajesh Aggarwal. It is the case of prosecution that the petitioners received ₹1,11,46,000/- as commission @1.80% on the total accommodation entries of ₹64.70 crores.

6. As per the petitioners after the income tax raids were conducted at their residential and business premises on 14th September, 2010 an assessment order was passed by the Assessing Authority, Income Tax Department against M/s Jagat Projects Ltd. opining that the share capital and share premium received by M/s Jagat Projects Ltd. were accommodation entries by routing unexplained money and the Assessing Authority treated the entire amount of share capital and premium of ₹64.70 crores as income and added the same under Section 68 of the Income Tax Act to the total income of the assessee. The Assessing Officer also recorded a finding that M/s Jagat Projects Ltd. had paid commission of ₹1,16,46,000/- for receiving

the share capital to the petitioners. Appeals filed before the Commissioner, Income Tax were dismissed however, the challenge before the Income Tax Appellate Tribunal succeeded and both the orders of the Assessing Authority and CIT (Appeals) were set aside and the matter remanded back with directions to provide adequate opportunity to the petitioners after confronting them with the entire material. On remand the Commissioner, Income Tax (Appeals) held that the share capital received by M/s Jagat Projects was not in the nature of accommodation entries but genuine share application money invested by those 30 companies and shareholder companies had sufficient funds to invest in the shares of M/s Jagat Projects. Finding of the Assessing Officer that a commission of ₹1,16,46,000/- was paid for receiving the share capital was set aside.

7. Grievance of the petitioners is that despite the facts that the petitioners were on bail in the complaint filed by SFIO, co-accused Rajesh Aggarwal has since been released on bail in the present complaint and a finding has been arrived at by the Commissioner of Income Tax (Appeals) that the money invested was by genuine share subscription they have been denied bail. Learned counsel for the petitioner further contends that the mandate of investigation by SFIO is only provisions of Companies Act and they cannot investigate penal offences. No scheduled offence having been found out there is no basis for a complaint under the provisions of PMLA.

8. Learned counsel for the respondent vehemently opposing the bail applications contends that since the predicate offence in the present case is money laundering of the tainted property by a scheduled offence, that is, 420 IPC even if it is held that no commission was paid, the said finding of the Commissioner of Income Tax (Appeals) related to the assessment for the

purposes of tax and has no bearing on the facts of the offence alleged under Section 3 punishable under Section 4 of the PMLA.

9. Learned counsel for the respondent places emphasis on the rotational entries for a sum of ₹8,000 crores made in a short span of time in the various companies of the petitioner/their family members. It is contended that though complaint and supplementary complaint have been filed further investigation is going on and release of the petitioner would hamper the investigation. It is also contended that the time spend in the custody is not the sole criteria for grant of bail and reliance in this regard is placed on the decision reported as 2007 (216) ELT 673 Lalit Goel vs. Commissioner of Central Excise. Referring to the decision reported as 2013 (7) SCC 439 Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation it is contended that even after a span of one year in custody bail application was dismissed. Rajesh Aggarwal, the co-accused was a Chartered Accountant and was acting as a Mediator only. Thus the petitioners cannot claim parity with him.

10. As noted above, the Supreme Court vide judgment dated 23rd November, 2017 has struck down the twin conditions imposed by Section 45 (1) of PMLA. Thus the present applications for bail are required to be considered on the touchstone of the law laid down for grant of bail under the provisions of Code of Criminal Procedure, 1973.

11. In the complaint on the basis of which ECIR/01/DLZO-II/2017 was registered on 11th February, 2017 under Sections 3 and 4 of the PMLA the prosecution bases its case heavily on the findings of the Income Tax Assessing Officer vide Assessment Order dated 28th March, 2013, recording a finding that M/s Jagat Projects Ltd. had laundered its unaccounted income

through a set of companies controlled by the petitioners in the guise of share subscription money at a huge premium to the tune of ₹64.70 crores during the financial year 2008-09 with the help of professional Chartered Accountant Rajesh Aggarwal. As noted above the said finding of the Assessing officer has been set aside.

12. The second basis of the above noted complaint is the finding of SFIO in its investigation that eight companies were involved in providing total accommodation entries of ₹123,57,21,550/- in the Financial Year 2009-10 and the commission received on accommodation entries is nowhere recorded in the audited accounts. It is also the finding that a robust balance sheet of M/s NKS was created fictitiously increasing its share capital and investments through rotation of cheques in the bank account while in fact actual value of investment in the group companies was nil. It is the case of the respondents that based on rotation in three months accumulation of huge credit and debit summations was made to the tune of ₹8171.66 crores and the whole process of circular flow of funds was conducted through rotational transactions in the accounts of NKS and other companies. This Court during the course of arguments repeatedly inquired from the learned counsel for the respondent that even if assuming there was rotation of entries to the tune of approximately 8,000 crores and since substantial investigation has been carried out, what was the financial stability of the companies and the amount available with the companies however, no clear figure could be given by learned counsel for the respondent.

13. It is not disputed by learned counsel for the respondent that a complaint and a supplementary complaint have already been filed in the case. The case of the prosecution rests primarily on the documentary

evidence which has already been collected. The predicate offence of proceeds of crime in the present case is based on the alleged scheduled offence being Section 420 IPC and the maximum sentence that can be awarded to the petitioners for offence punishable under Section 4 of the PMLA is seven years imprisonment, being an offence in Paragraph-I of Part-A of the Schedule of offences.

14. In the decision reported as Y.S. Jagan Mohan Reddy (supra) the Supreme Court noted that while granting bail, the court has to keep in mind the nature of accusations, nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.

15. The petitioners have been in custody for more than 10 months, the nature of evidence is primarily documentary in nature, which documents have been collected, the trial is likely to take some time, the maximum sentence that can be awarded to the petitioners if convicted would be seven years imprisonment and that the petitioners have no previous involvement except the SFIO complaint on the same transaction in which they have been granted bail, this Court deems it fit to grant bail to the petitioners. It is therefore, directed that the petitioners be released on bail on their furnishing personal bond in the sum of ₹2 lakhs each with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, further subject to the condition that the petitioners will not leave the country without the prior permission of the court concerned. In case of change of residential

address the same will be duly informed to the court by way of an affidavit and in case the petitioners are found interfering in the process of further investigation or tampering with the evidence or violating the conditions imposed, the respondent will be at liberty to take appropriate remedies in accordance with law.

16. Petitions and applications are disposed of.

17. Order dasti.

(MUKTA GUPTA)
JUDGE

JANUARY 25, 2018
‘vn’



न्यायमेव जयते