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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1987/2019 & CrI.M.A. 33406/2019 & CrI.M(B)**
1424/2019

RATUL PURI Petitioner

Through: Dr. A.M.Singhvi & Mr. Mohit
Mathur, Senior Advocates with
Mr. Vijay Aggarwal, Mr. Mudit
Jain, Mr. Deepanshu, Ms. Nikita
Jaiswal, Mr. Shailesh Pandey, Ms.
Shephalie Ailawadi & Ms. Mohini
Sharma, Advocates

Versus

DIRECTORATE ENFORCEMENT OF INDIA, DELHI ZONAL
OFFICE, NEW DELHI Respondent

Through: Mr. Aman Lekhi, ASG with
Mr. Zoaib Hussain & Mr. Vikas
Garg, Special Counsel & Mr. Ajay
Digpaul, CGSC, Mr. Ujjwal Sinha,
Mr. Pranay Lekhi, Mr. Udit
Konkar & Ms. Ananya Mohan,
Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
20.08.2019

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Petitioner seeks pre-arrest bail in ECIR /15/DLZO/2014 of 3rd July, 2014, registered by respondent under Sections 3 & 4 of the *Prevention of Money Laundering Act, 2002* (henceforth referred to as the 'PMLA') while claiming to be innocent. Learned senior counsel for

petitioner submits that in the complaint filed (*after due investigation*) in November, 2014, petitioner's name does not appear. It was pointed out that even in the four supplementary complaints filed in the years 2016 to 2019, name of petitioner does not figure. It was submitted that it is only in the fifth supplementary complaint filed in May, 2019, name of petitioner finds mention. It was submitted that statement of petitioner under Section 50 of the *PMLA* has been recorded but its copy has not been supplied to petitioner.

Learned senior counsel for petitioner contended that principles of natural justice require that copy of petitioner's statement recorded under Section 50 of the *PMLA* needs to be supplied to petitioner. On the last date of hearing, learned Additional Solicitor General (ASG) had submitted that copy of petitioner's statement recorded under Section 50 of the *PMLA* can be made available to the Court but not to the petitioner.

Learned senior counsel for petitioner had drawn attention of this Court to respondent's Reply (*Annexure-I*) filed before the court of Sessions to point out that stand taken by respondent is that petitioner during investigation has remained evasive and non cooperative. Attention of this Court was also drawn to *Annexue-J* attached to the reply filed by respondent before the court of Sessions to point out that petitioner's statement has been recorded on 25 occasions for 105 hours and the statement of petitioner recorded consists of 111 pages. Attention of this Court was also drawn to Supreme Court's decision in *Santosh s/o Dwarkadas Fafat Vs. State of Maharashtra* (2017) 9 SCC 714 to submit that the purpose of custodial interrogation is not just for the purpose of confession and the right against self-incrimination is provided for in

Article 20 (3) of the Constitution of India. It was pointed out by learned senior counsel for petitioner that merely because petitioner did not confess, cannot be the basis to assert that petitioner has not cooperated with the investigation.

Learned senior counsel for petitioner submitted that the punishment for the offence in question is upto seven years and Section 19 of *PMLA* provides that to arrest an accused under the *PMLA*, there has to be reason to believe (*to be recorded in writing*) that such person is guilty of the offences punishable under the *PMLA*. It was pointed out that arrest under the Code of Criminal Procedure is on suspicion, whereas to arrest a person under the *PMLA*, it has to be shown that a person is guilty of the offence alleged. It was next submitted by learned senior counsel for petitioner that facts noticed in paragraph No. 4 of order of 6th August, 2019 of the Session's court declining pre-arrest bail to petitioner, is based on the statement of co-accused- *Rajiv Saxena* who was made approver and later on, application for cancellation of his bail has been filed by the respondent while labeling him as an unreliable witness. It was submitted that properties worth more than ₹800 crores of petitioner's company have been already attached by the Income Tax Authorities under *The Benami Transactions (Prohibition) Act, 1988* post denial of pre-arrest bail.

Learned senior counsel for petitioner submitted that parameters governing grant of pre-arrest bail are of abscondance, tampering with the evidence and non-cooperation, which are *ex facie* not attracted to the instant case. On the aspect of gravity of the offence alleged, it was submitted by learned senior counsel for petitioner that the statement of petitioner recorded under Section 50 of the *PMLA* does not incriminate

him, provided it is correctly recorded. It was asserted by learned senior counsel for petitioner that to gauge the gravity of the offence alleged, severity of the punishment provided is the yardstick. Thus, grant of pre-arrest bail to petitioner is sought.

Learned ASG appearing for respondent, pointed out that a reply has been filed and also handed over petitioner's statement recorded under Section 50 of the *PMLA (in sealed cover)* to submit that total quantum of kickbacks involved in this case is atleast seventy million Euros, which were laundered by two chains of fund transfer, one headed by Christian Michel James and the other by Guido Haschke and Carlo Gerosa. To highlight the extent and magnitude of money laundering, attention of this Court was drawn by learned ASG to various paragraphs of the reply and it was submitted that the offence committed by petitioner adversely affects the economy of country. It was submitted that attachment of petitioner's property by Income Tax Authorities in different proceedings cannot be a yard stick to dilute the gravity of offence committed by petitioner. It was pointed out that though petitioner had joined the investigation but is evasive in his replies and so, custodial interrogation of petitioner is required for an effective investigation. It was asserted by learned ASG that petitioner is trying to influence and threaten the witnesses and tamper with the evidence and the statement of petitioner recorded under Section 50 of *PMLA* incriminates him and apart from it, there are other facets which require custodial interrogation of petitioner. Thus, dismissal of this application is sought.

Learned senior counsel for petitioner controverts the stand taken on behalf of respondent and submitted that the offence in question is

punishable upto term for seven years and in such cases, '*plea bargaining*' is permissible. It was submitted that denial of bail granted cannot be by way of punishment and the liberty of a person cannot be routinely curtailed. Reliance was placed upon Supreme Court's decision in *Sanjay Chandra Vs. Central Bureau of Investigation* (2012) 1 SCC 40 to submit that severity of the punishment should be taken into consideration while granting or refusing bail. Reliance was also placed upon decisions of Coordinate Bench of this Court in *H.B. Chaturvedi Vs. CBI* 2010 (3) JCC 2109 and *Anil Mahajan Vs. Commissioner of Customs & Anr.* 2000 (2) JCC (Delhi) 302. Reliance was also placed upon another Coordinate Bench decision of this Court in *Paras Mal Lodha Vs. Assistant Director, Directorate of Enforcement* 2017 SCC OnLine Del 8676 to submit that the veracity of petitioner's statement under Section 50 of *PMLA* is yet to be tested and so, it cannot be made the basis to deny bail to petitioner.

Having considered the submissions advanced by both the sides and on perusal of material on record and the decisions cited, I find that severity of the punishment alone cannot be the criteria to determine as to whether bail has to be granted or not. Gravity of the offence is a relevant criteria which has to be considered while granting or refusing the bail. During the course of hearing, reliance was placed by learned ASG upon Section 265-A of Cr.P.C. to urge that in an offence punishable with term up to seven years, '*plea bargaining*' can be entertained, is misplaced as proviso to Sub-Section (1) (b) of Section 265-A of Cr.P.C. contains a rider that '*plea bargaining*' is not available where the offence committed affects socio and economic conditions of the country. A bare perusal of petitioner's statement recorded under Section 50 of the *PMLA* reveals that

he is evasive in his replies. However, gravity of the offence committed can be gauged from the contents of the aforesaid statement recorded under Section 50 of *PMLA*. In any case, it cannot be *prima facie* said that petitioner's statement recorded under Section 50 *PMLA* does not incriminate him.

This Court is of the *prima facie* opinion that custodial interrogation of petitioner is required for an effective investigation. Mere attachment of petitioner's property in Income Tax proceedings would not justify grant of *pre-arrest bail* to petitioner, who is not only evasive in his replies but is trying to influence the witnesses. It is so evident from the statement of witnesses recorded by respondent, which has been provided to this Court in sealed cover. Upon considering this case in its entirety, this Court finds that grant of *pre-arrest bail* to petitioner would stall effective investigation in this case.

Consequently, the applications are dismissed while vacating the interim order and by not commenting upon the merits of this case.

DASTI.

(SUNIL GAUR)
JUDGE

AUGUST 20, 2019

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