

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 5692 of 2020**

- Mr. Alok Kumar Agrawal, aged 49 years, S/o Shri Radheshyam Agrawal, R/o in front of Tejswani Girls Hostel, Parijat Extension, Nehru Nagar, Bilaspur (C.G.).

Posted as Assistant Engineer (U/S) O/o The Chief Engineer, Mahanadi Project, Raipur (C.G.)

---- Applicant**Versus**

- Directorate of Enforcement, Government of India, Through : Assistant Director, Raipur Sub-zonal Office, A-1 Block, Pujari Complex, New Dhamtari Road, Pachpedi Naka, Raipur (C.G.)

---- Respondent

For Applicant.	:	Shri K.A. Ansari, Sr. Advocate assisted by Smt. Meera Ansari and Shri Aman Ansari, Advocates.
For Respondent.	:	Dr. Saurabh Kumar Pande, Advocate.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****09/12/2020**

1. The applicant has filed this second bail application under Section 439 of the Code of Criminal Procedure for grant of regular bail as he is in custody since 11.10.2018 in connection with Crime No.ECIR/RPSZO/03/2015 dated 30.03.2015 for the offence punishable under Sections 3 and 4 of Prevention of Money Laundering Act, 2002.
2. On 03.01.2020, first bail application of the applicant was dismissed on merit.
3. The prosecution case, in brief, is that initially an FIR bearing No.05/2015 was registered by the Economic Offences Wing -

Anti Corruption Bureau against the applicant for alleged commission of offence punishable under Sections 13(1)(e) and 13(2) of Prevention of Corruption Act, 1988 and Sections 109, 120-B, 420, 467, 468 and 471 of the Indian Penal Code and the EOW-ACB charge-sheeted the applicant on 15.06.2015. Since these offences were scheduled offences, the Directorate of Enforcement registered a case under the Prevention of Money-Laundering Act, 2002 (for short 'the PML Act') against the applicant and other accused persons, and after inquiry, submitted a complaint case before the jurisdictional Special Court, thereafter the Directorate of Enforcement, after due investigation, had submitted a final report. Further case is that thereafter, the learned Special Court (PML Act), Raipur, through an order dated 16.07.2018 took cognizance against the applicant qua eight others for the offence punishable under Sections 3 and 4 of PML Act. The allegation against the present applicant is that while he was posted as In-charge Executive Engineer, Water Resources Division – Bilaspur, a public servant, in conspiracy with other accused, prepared forged documents and records and thereby misused and abused his official position and not only caused financial loss to the Government but also amassed huge wealth through corrupt means which is alleged to be disproportionate to his known sources of income. Based on this, offence has been registered. The present applicant has been taken into custody on **11.10.2018.**

4. Learned counsel for the applicant submits that the applicant

has been falsely implicated in the crime in question. He further submits that vide order dated 23.08.2019 passed in MCRC No.4706/2019, this Hon'ble Court has granted bail to the applicant in Case No.09/2018 filed under P.C. Act and IPC. The applicant is bound with polio and though originally admitted in judicial custody with 40% disability, it has now increased to 71% during his detention. The applicant has been examined in various hospitals of Bilaspur as well as Delhi viz AIIMS Delhi, Gangaram Hospital, Deendayal Upadhyay Institute for disables, New Delhi, by orders of Hon'ble Supreme Court and has been found to be suffering from "Anterior poliomyelitis with residual atrophy" and weakness in left upper limb and right lower limb also ailments like cervical and lumbar disc prolapsed with right upper limb radiculopathy and left lower limb radiculopathy with limb girdle dystrophy. Learned counsel also submits that in view of prevalence of COVID-19 pandemic, certain directions have been issued regarding the convicts undergoing imprisonment and the under trial who are facing trials punishable with jail sentence of 7 years or less. On the basis of direction of Hon'ble Supreme Court, this High Court registered a *suo moto* case and issued directions in consonance with the directions of the Hon'ble Supreme Court for release of convicts and under trial on parole/temporary bail. The applicant had moved an application before the High Power Committee constituted by this Hon'ble Court with reference to the direction of Hon'ble Supreme Court but the release of applicant on bail was not considered by the

committee. He also submits that medical reports of the applicant which have been filed clearly demonstrate that the applicant is suffering from serious ailments and he is susceptible to the COVID-19 and his life is in jeopardy. The applicant is in judicial custody since 20.03.2015 except for the brief period when he was granted temporary bail by Hon'ble Supreme Court, and this High Court had also granted bail for medical treatment for limited period of 20 days. It is also submitted that at the time of 1st bail application in connection with PMLA case, which was dismissed, there was no widespread prevalence of COVID-19 but at present the picture is very gloomy as is apparent from the reports. It has been further submitted by learned counsel that taking into consideration the circumstances of the case and also looking to the fact that the case under PMLA is bound to take a long time and also because that there is a petition challenging PMLA case before the Hon'ble Court by co-accused persons and further in view of the fact that the ACB case will also take a long time for disposal as there are more than 300 witnesses out of which only 32 have been examined so far. Therefore, the applicant deserves to be released on bail. Lastly, he submits that after rejection of first bail application vide order dated 03.01.2020, the applicant has moved this second bail application mainly on the ground of long detention and that the trial is not likely to be concluded early because of criminal revision which is pending before co-ordinate Bench. The applicant's condition is deteriorating day-by-day and the kind of treatment, he is in need of, is not available in the jail

hospital. The applicant is not likely to flee away from justice and did not misuse the interim bail, which was granted by Hon'ble Supreme Court and by this High Court. He also added that to ensure presence of the applicant, appropriate onerous conditions may be imposed and he is ready and willing to abide by any such conditions. In support of his submission, he relied upon the decision of Hon'ble Supreme Court in the matter of **Dipak Shubhashchandra Mehta Vs. Central Bureau of Investigation and another** reported in **(2012) 4 SCC 134** wherein it has been held that where there is delay in trial, the bail should be granted to the accused and pre-trial detention is not permissible.

5. On the other hand, learned counsel for respondent opposing the bail application submits that first bail application of the applicant was dismissed on merit on 03.01.2020 and there is no change in the circumstances. He further submits that the prosecution has taken all the endeavour for speedy trial of the case but due to COVID-19 pandemic and the legal impediment which is being raised by the applicant from time-to-time, in particular, the jurisdiction to try the case, the delay occurred in trial. So far as medical condition of the applicant is concerned, learned counsel for respondent submits that there is no such document on record which proves that the applicant is suffering from any life threatening disease and if he is not released on bail then his life may be in danger. In support of his submission, he placed reliance on the decisions of Supreme Court in the matter of **State of Gujarat Vs. Mohanlal Jitmalji Porwal and**

another reported in **AIR 1987 SC 1321** and **Nikesh Tarachand Shah Vs. Union of India and another** reported in **(2018) 11 SCC 46.**

6. I have heard learned counsel for the parties and perused the material on record.
7. The Supreme Court in the matter of **Rohit Tandon Vs. The Enforcement Directorate** reported in **2018 (11) SCC 46 : AIR 2017 SC 5309** has held in para 18, which reads thus:-

“**18.** The consistent view taken by this Court is that economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Further, when attempt is made to project the proceeds of crime as untainted money and also that the allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifts on the accused person under Section 24 of the Act of 2002.”

8. The first bail application of the applicant was rejected by this Court on 03.01.2020 taking into consideration the gravity of offence and the nature of allegation against the applicant. After dismissal of first bail application, I do not find any change in circumstances.
9. Accordingly, his second application filed under Section 439 of the Code of Criminal Procedure is rejected.
10. Certified copy as per rules.

Sd/-

(Rajani Dubey)
Judge