NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 6533 of 2019

- 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 B.P. Sharma, Advocate with Shri Aayush Bhatia and Shri M.L. Sakat, Advocates.
For Respondent.	:	Dr. Saurabh Kumar Pande, Advocate with Shri Anil S. Pandey, Advocate.

Hon'ble Smt. Justice Rajani Dubey

Order on Board

03/01/2020

1. The applicant has filed this 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. 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**.

3. Learned counsel for the applicant submits that the applicant has been falsely implicated in the crime in question. He further submits that this is a complaint case on which

cognizance has been taken by the Court below. Learned counsel for the applicant has drawn attention of this Court towards order sheets of the Court below dated 16.07.2018, 20.08.2018, 06.10.2018, and 11.10.2018 and submits that the trial Court is adjourning the matter on each and every hearing on account of pending of criminal revisions filed before this Court by the applicant and other co-accused persons. The applicant himself surrendered before the trial Court and he has not misused the temporary bail granted to him nor has influenced any witness. It is also submitted by learned counsel for the applicant that in this case there are as many as 9 accused persons including present applicant and bail application of present applicant has only been vehemently and strongly opposed by the Prosecution, whereas formal objection was raised by the Special Public Prosecutor in respect of bail of others. It is next submitted by learned counsel for the applicant that till date there is no progress at all in the trial and the trial Court is simply adjourning the matter. Thus, it is apparent that disposal of the case may take long time. Other accused persons have already been granted bail. The applicant is in custody for 1 year, 2 months and 3 days. He is suffering from serious physical ailments and his condition is deteriorating day-by-day. It is also submitted that charge sheet has already been filed and now there is no need of applicant for interrogation, therefore, no purpose would be served in detaining the applicant till conclusion of the trial. In support of his submission, he relied upon the decision of 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. Learned counsel for the applicant also places reliance upon the decision of the Supreme Court in the matter of ***P. Chidambaram Vs. Directorate of Enforcement*** reported in ***2019 SCC OnLine SC 1549.*** Alternative submission of learned counsel for the applicant is that the present applicant and other co-accused persons have filed Criminal Revision Nos.816/2018, 1129/2018 and 898/2018 before this High Court, and till the final decision in these revisions, the applicant may be granted bail.

4. On the other hand, learned counsel for respondent vehemently opposed the bail application and, after taking this Court through Sections 3, 24, 71 of the PML Act, latest amendment in Section 44 of the Finance Act, 2002, proceedings by the trial Court and evidence on record, submitted that the applicant is a Government Servant (In-charge Executive Engineer in Water Resources Department) and by way of corrupt means, under proceeds of crime, has earned near about Rs.16,51,31,878/- while he was posted as In-charge Executive Engineer at Kharang Water Resources Division, Bilaspur from 04.07.2008 to 05.01.2015. According to him, the money which was earned under 'Scheduled Offence' and 'Proceeds of Crime' has been invested in his wife's and brother's business showing it to be untainted and,

in a very short span time, the turnover of their business have crossed crores of rupees, which they have failed to establish. The learned counsel submitted that transfer of the huge sums from someone's account to another was one of the methods adopted by persons involved in money-laundering to cover the trail of the money which were the proceeds of crime. Learned counsel submitted that the present applicant used the different methods by submitting false documents, to acquire tender in favour of his brother to engage in the laundering of tainted money which brought such transactions squarely within the scope and ambit of Section 3 of the PML Act. The learned counsel submitted that the enormous sums of money held by the applicant in wife's business, her account and in brother's business and the transactions in respect thereof, prima facie indicated the involvement of the applicant in dealing with proceeds of crime and projecting the same as untainted property, which was sufficient to attract the provisions of Section 3 of the PML Act, 2002. The learned counsel for respondent submitted that under Section 24 of the aforesaid Act, when a person is accused of having committed an offence under Section 3, the burden of proving that the money involved were neither proceeds of crime nor untainted property, is on the accused. It was urged that once a definite allegation had been made against the applicant on the basis of documents seized, that the money in his various accounts were the proceeds of crime, the burden of proving that the money involved was neither the proceeds of crime nor untainted, shifted to him and it was upto him to prove the contrary. That apart, an unsecured loan of Rs.70,00,000/- was also taken by the applicant from his relatives, but the relatives of the applicant in their statement have categorically denied giving of any such loan to the applicant. He also submits that the applicant is the man of corrupt nature and earlier also due to commission of irregularities in muster-roll, he was placed under suspension on 25.07.1996. Learned counsel has also taken this Court through the statements of co-accused persons, except his wife, brother and friends, from whom huge cash was seized and they have categorically stated that they were subordinate to the applicant, the cash belongs to the applicant and the applicant was threatening them that if they do not keep his money, he will take departmental action against them, to which learned counsel for applicant raised serious objection that under what provision of Code of Criminal Procedure the statements of co-accused can be used against the applicant. In addition to above, it has been submitted by learned counsel for the respondent that the prosecution has taken all endeavor for speedy trial of the case but it is the applicant who from time-to-time raised legal impediment, in particular, the jurisdiction to try the case. It is also submitted that under Section 50 sub-section (2) of the PML Act, the defence witnesses were given opportunity to adduce evidence to substantiate their case but they have not proved their case. It is also contended by learned counsel that there is documentary evidence on record which shows that the applicant, in a calculated design, has earned money from scheduled offence as also from proceed of crime disproportionate to his known source of income and caused great loss to the State exchequer and the Community. In addition to above, learned counsel has drawn this Court's attention to the medical condition of the applicant and argued 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. It is also added by learned counsel for the respondent that a murder may be committed in a heat of passion but economic offence is always committed with calculated design profiting himself and his relatives regardless of the consequence to the community. In support of his submission, he placed reliance on the decisions of Supreme Court in the matter of ***State of Gujarat Vs. Mohanlal Jitamalji Porwal and another*** reported in ***AIR 1987 SC 1321*** and ***Nikesh Tarachand Shah Vs. Union of India and another*** reported in ***(2018) 11 SCC.***

5. I have heard learned counsel for the parties and perused the record.

6. It is true that at present there may or may not be direct or indirect attempts to indulge the applicant in any process of activity connected with the proceeds of crime, there is no attempt on the part of the applicant to disclose the source of the large sums of money handled by him. There is no denying the fact that allegations have been made that the said money was the proceeds of crime and by depositing or investing the same in his wife's account and in the business

of his wife and brother, the applicant has attempted to project the same as untainted money. The said allegations may be the subject matter of final outcome of the trial, but having been made, the burden of proof that the said money is not the proceeds of crime and, therefore, shifted to the applicant under Section 24 of the PML Act, 2002. For the sake of reference, Sections 3 and 24 of the PML Act are extracted herein below :-

> *"3. **Offence of money-laundering.-** Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the [4][proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering."*

> "**24. Burden of Proof. -** *In any proceeding relating to proceeds of crime under this Act, -*
>
> *(a) in the case of a person charged with the offence of money-laundering under Section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and*
>
> *(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering."*

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 applicant has filed Criminal Revision No.1129/2018, co-accused Sh. Abrar Baig and Vinod Malewar have filed CRR Nos.898/2018 and 816/2018 respectively, which are still pending consideration. Earlier, in Scheduled Offence, the present applicant was granted bail by this Court on 23.08.2019 and in the present bail application, the applicant is facing charge under the PML Act. Though, according to the medical documents, the applicant is suffering from serious physical ailment but no such document is there on record which could establish that he is suffering from any life threatening disease. He was granted temporary bail for 20 days by this Court for quality treatment of his disease.

9. Taking into consideration the entire circumstances of the case, judicial pronouncement of Supreme Court in **Rohit** (supra), gravity of offence and further considering the fact that the applicant is a Govt. Servant (In-charge Executive Engineer, Water Resources Department) and the manner in which the public money is alleged to have been laundered by the applicant, I am not inclined to release him on bail.

10. Accordingly, his application filed under Section 439 of the Code of Criminal Procedure is rejected.

11. Certified copy as per rules.

Sd/-

(Rajani Dubey)
Judge

Pekde