

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 361 OF 2020

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Shri Ramchand Karunakaran.
 Managing Director, IL&FS
 Transportation Networks Ltd

.. Applicant

Versus

Directorate of Enforcement,
 through the Assistant Director,
 Zonal Office, Ballard Estate,
 Fort, Mumbai

.. Respondents

...

Mr. AHH Ponda, Sr. Advocate with Gunjan Mangla for the
 applicant.

Mr.H.S. Venegaonkar, for the Directorate of Enforcement.

Mr.Suraj S. Hulke, APP for the State.

CORAM: BHARATI DANGRE, J.
RESERVED: 14th October 2020
DATED : 29th October 2020

P.C:-

1 The applicant is seeking his release on bail in
 relation to an offence under the Prevention of Money
 Laundering Act, 2002.

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2 Heard the learned senior counsel Mr.AHH Ponda for the applicant and Mr.Venegaonkar for the Directorate of Enforcement, Mumbai. ECIR bearing No.ECIR/MBZO-1/2/2019 was registered by the Directorate of Enforcement, Mumbai. The Assistant Directorate, PMLA filed a complaint in the designated Court for the Prevention of Money Laundering Act, 2002 under Sections 44 and 45 of the PMLA for commission of the offence of Money Laundering as defined under Sections 3 and punishable under Section 4 of the said Act. On 31st August 2019, the designated Court took cognizance of the complaint and issued summons to the accused persons. The case was then numbered as Case No.6 of 2019. The applicant is one of the accused who has been alleged to have indulged in money laundering according to the said complaint.

3 Learned counsel Shri Ponda appearing for the complainant would urge that the applicant is a sexagenarian and is a qualified Civil Engineer who had joined the Infrastructure Leasing and Financial Services Ltd (hereinafter referred to as 'IL&FS'). He was sent to deputation to the IL&FS Transportation Networks Limited (ITNL). He came to be appointed as Managing Director of ITNL and

continued on the said post till he was asked to tender his resignation in October 2018.

The learned counsel would submit that on an ECIR numbered above, being registered on 19th February 2019, the applicant was summoned by Enforcement Directorate for investigation and he co-operated with the investigation throughout. The applicant was arrested on 19th June 2019 and the Enforcement Directorate was granted his custody. From 20th June 2019, he was remanded to judicial custody and since then, is incarcerated. The submission of Mr.Ponda is to the effect that on perusal of the complaint, the alleged case of ED is that the Committee of Directors (COD) of IFIN in connivance with promoters of groups sanctioned loans to several group companies which have been named in the complaint, at the time when these groups were under financial stress and unable to discharge their outstanding loans and the new loans were sanctioned to repay their earlier loans and to be utilized by the groups, otherwise then, as mentioned in the Credit Approval Memorandum thereby committing schedule offences. It is alleged that the COD did so in order to maintain the credentials of IFIN and in lieu to continue to receive high remuneration. Thus, according to him, the COD of IFIN which had the sole authority to

approve all loan proposals but the COD included four accused persons i.e. Ravi Parthasarthy, Ramesh Bawa, Hari Sankaran and Arun Saha. According to Shri Ponda, the applicant was not a member of COD of IFIN and thus, no accusations can be attributed to him. Further, according to him, the name of the applicant is not included in the Top Management, which is not the case as regards the other accused persons. According to him, the applicant was only a member of United Approval Framework (UAF) of IFIN Infrastructure Projects and the role of the applicant was limited to review of the infrastructure projects which, in any case, was not binding on IFIN. Further, he is not recipient of any monies from IFIN. The submission, therefore, is during his entire tenure with IL&FS, the applicant remained merely as its employee. He came to be deputed to ITNL being employee of IL&FS, which raised invoices over ITNL towards deputation cost and this deputation cost was paid to IL&FS and not to the applicant who received his salary from IL&FS and Performance Related Perquisites (PRP) from ITNL. According to Shri Ponda, the applicant was not recipient of any PRP, deputation cost, commission and sitting fees through IFIN during his entire tenure. The applicant is said to have been received salary from IL&FS and also his

superannuation dues including the Provident Fund, Gratuity which was deposited into a fund in LIC has not been released in his favour. Thus, according to Shri Ponda, the offence of Money laundering which has been attributed in the complaint do not implicate him and he has no concern with IFIN.

4 Shri Ponda also claim parity with other co-accused and he submit that, that other members of the COD of IFIN being Shri Ravi Parathasarathy, Shri Ramesh Bawa and Shri Hari Sankaran were not arrested by ED and in fact, they have been granted bail under Section 88 of the Cr.P.C. by the designated Court on 23rd September 2019. Same is the case of another co-accused C. Sivasankaran. According to the learned counsel, the applicant is only a non-Director, non-key managerial personnel and a non-employee and non-consultant of IFIN who has been arrested by ED, whereas other Directors and members of COD who were at the helm of the affairs have been spared. Thus, the very basis of his arrest is erroneous. He would submit that in the complaint, ED has apportioned an amount of Rs.27,78,00,000/- (Rupees Twenty Seven Crore Seventy Eight Lakhs) towards proceeds of crime under Section 2(1)(u) of PMLA being PRP,

deputation cost and proceeds receipts from sale of shares received by the applicant during financial year 2015 to 2018, out of which the submission advanced is, the deputation cost is not paid to the applicant but it has gone to the IL&FS from ITIN. The submission is that the properties worth Rs.21,50,00,000/- are already provisionally attached by the ED and the competent authority appointed under PMLA, thus, securing the alleged claim of proceeds of crime against the applicant. The submission, therefore, is that since the complaint is now filed and the properties being attached, the applicant is entitled to be released on bail.

5 In response to the submissions of the learned senior counsel, Shri Venegaonkar appearing for the respondent strongly rely on the material contained in the complaint and submit that the applicant is implicated in a serious offence under the Prevention of Money Laundering Act and relying on the affidavit in reply sworn by the competent officer of the Directorate of Enforcement, Shri Venegaonkar would asseverate that while considering the bail for an offence under the PMLA, the barrier of Section 24 of the Act, which cast a burden of proof on the accused/applicant in any proceedings under PMLA will have

to be crossed. He submit that this has become even more essential as post the 2018 amendment, Section 45(1) of the Act now refers to the offence of Money Laundering and therefore, the accused must discharge the burden of proof cast under Section 24, before seeking any relief under the Act. The submission of Shri Venegaonkar is that the applicant has failed to discharge the burden and has failed to produce even *prima facie* material in support of his contention. Shri Venegaonkar specifically deny the submission of Shri Ponda that the applicant was not a member of COD of IFIN at any point of time. According to him, from the Forensic Audit Report conducted by Grant Thornton, Shri Ramchand Karunakaran, i.e. the applicant was one of the members of the Committee of Directors as regards the infrastructural projects. Further, according to him, in his own statement recorded under Section 50(2) and (3) of PMLA 2002, he has addressed himself to be a member of COD of IFIN. Further, from the Credit Approval Memorandum, the applicant has signed as a Member of COD of IFIN. Shri Venegaonkar would also submit that he was one of the members of the COD of IFIN for infrastructural projects and apart from that, he was a Managing Director of ITNL and in IFIN, every member shared equal responsibilities like sanction of loans

for infrastructural projects and therefore, the applicant cannot now say that he did not share any responsibility. Shri Venegaonkar has exhaustively taken me through the complaint and the allegations levelled against the present applicant. He has also referred to the FIR registered with EOW, Delhi which was the trigger point for commencement of investigation by the DRI under the PMLA. He also refers to a complaint filed by Serious Fraud Investigation Office (SFIO) on 30th May 2019 for commission of offence under Section 447 of the Companies Act, 2013 read with Section 120B and Section 420 of the IPC. Further, responding to the submission that the applicant is the only one who has been discriminated, Shri Venegaonkar submits that the present applicant along with one of the Members of COD of IFIN was arrested on 19th June 2019, the other two members Shri Ramesh Bawa and Hari Sankaran were also arrested by SFIO and they are already in jail custody. He has also placed reliance on the statement given by various officials of IFIN and relied on documents including the Forensic Audit Report submitted by Grant Thornton reflecting substantial anomalies in sanctioning loan to third parties.

6 Relying on the said documents, Venegaonkar would urge that IFIN business model has focussed on

working with select groups with relationship driven by top management team comprising of Mr.Ravi Parthasarathy, Mr.Hari Sankaran, Mr. Ramesh Bawa, Mr.Ramchand and there has been no change in the top management team since last 15 – 20 years. They also happened to be the members of Committee of Directors in whom the sole authority to approve the loan proposals vested. Since the applicant was the Managing Director of ITNL and one of the member of COD of IFIN for infrastructure project, IFIN had the sole mandate to carry out debt and equity syndication for ITNL. During the course of investigation, it appear that RBI in its inspection report dated 1st November 2017 had advised IFIN to run down its exposures to group companies with no fresh lending and in ignorance of this advise, it managed to receive funds from IFIN and the modus operandi was that the loans came to be sanctioned to various entities and through them, the money was routed to ITNL and the Special Purpose Vehicles by IFIN. Shri Venegaonkar would submit that the allegations levelled in the complaint that the applicant along with other COD members of IFIN, in connivance with promoters of loanee group did not exercise their due diligence for their personal benefit is substantiated. He would state that the amount received by the applicant is part of proceeds

of crime in terms of Section 2(1)(u) of PMLA, which was thereafter laundered and projected by him as untainted. Thus, the applicant has indulged in the offence of money laundering in terms of Section 3 read with Section 70 of the PMLA 2002, since he has received huge amount of performance related perks and there was a substantial hike in the PRP and sitting fees during last three consecutive financial years.

7 The respective counsel have place reliance on several documents to support their submission. From the material placed on record including the complaint, the following factual events can be discerned.

IL&FS Group is an Indian Infrastructure Development and Finance Company formed in 1987 as an RBI registered core investment company by 3 financial institutions, i.e. Central Bank of India, Unit Trust of India and Housing Development Finance Company to provide finance and loans for major infrastructure projects. Its primary mandate is catalyzing the development of innovative, world class infrastructure in India. IL&FS Limited is a core investment company and serve the holding company IL&FS group. This group operated as on 31st March 2018 with 24

direct subsidiaries, 136 indirect subsidiaries, 6 joint ventures and 4 associate companies. IL&FS had institutional shareholders which included LIC (25.34%), Orix Corporation of Japan (23.54%), ADIA (12.56%), HDFC (9.2%), Central Bank of India (7.67 %) and State Bank of India (6.42%).

The IL&FS Finance Services Ltd (IFIN) was incorporated as IL&FS Asset Management Co. in 1995 and in the year 2005, obtained a Non-Banking Finance Company licence (NBFC) and was renamed as IL&FS Invest Limited. Subsequently, in the year 2006, the banking team from ILFS and the syndication team from ILFS Investment Ltd were integrated and integrated team was renamed as ILFS Financial Services Ltd (IFIN). It is a 100% subsidiary of Infrastructure Leasing and Financial Services Limited. IFIN is responsible for undertaking corporate advisory services, syndication, project finance and lending transactions. IFIN was led and managed by Ravi Parthasarathy, Ramesh Bawa as Managing Director and Chief Executive Officer since its inception. Milind Patel was the joint Managing Director of IFIN who oversaw the asset and structured finance and Corporate Advisory Business. Rajesh Kotian was the Dy. Managing Director and was entrusted with debt syndication

business of IFIN (both domestic and overseas). Additionally, from the IL&FS Board, Shri Ravi Parthasarathy, Hari Sankaran, Vaibhav Kapur and Arun Saha were discharging their function as non- executive directors of IFIN till their resignation. The Committee of Directors (COD) of IFIN comprise of Shri Ravi Parthasarathy, Arun Kumar Saha, Ramesh Bawa, Hari Sankaran, Ramchand Karunakaran (in case of infrastructure projects) as on 31st March 2018 till their resignation on appointment of new Board of Directors as per the direction issued by NCLT. Further, the name of the applicant was also found in the Approval Committee for approval of various documents i.e. transaction approval Memorandum (TAM), Advisory Approval Memorandum (AAM), Bid submission Approval Memorandum, Investment Approval Memorandum etc. along with Shri Ravi Parthasarathy, Ramesh Bawa, Hari Sankaran and Arun Saha.

8 The IFIN also had an Unified Approval Framework which mandated that all loan approvals by IFIN Committee of Directors (COD). Asset and Structured Finance (ASF), team was primarily involved in execution of these transactions. The method of working disclose that all loan approvals were to pass through the COD of IFIN and

the Asset and Structured Finance Team was involved in execution of the transaction including client sourcing, preparation of group approval memo, getting approval from COD, documentation of facilitating and disbursement of loan. The ASF team was required to discuss the proposal with Milind Patel and Ramesh Bawa and only after their approval on the issue of pricing, adequacy of security, modification, extent of incremental exposure, etc. a Credit Approval Memorandum was prepared which was routed through various departments and then, the proposal was put up before the approval of Committee of Directors who had ultimate power to approve any Credit Approval Memorandum.

The IFIN loans were primarily given to corporate business houses involved in various business. The IFIN's main lending was to holding/promoter companies where repayments were linked to future liquidating events rather than confirmed cash flow out. Liquidity events were mostly equity divestment to private equity/strategy investors/IPO/Cell of identified assets.

9 IL&FS Transportation Networks Limited (ITNL) was formed as a wholly owned subsidiary of IL&FS in the

year 2000. Transportation Infrastructure Development was initially taken up in IL&FS and thereafter transportation vertical IL&FS transportation was formed wherein the projects undertaken and implemented by IL&FS were domiciled. ITNL benefits significantly from its affiliation with IL&FS which had an established track record in promoting and financing range of public infrastructure in India over the last decades. The applicant along with Shri Ravi Parthasarathy, Hari Sankaran, Arun Saha was incorporated in the Board of Directors of ITNL since 2010-11 and continued till he resigned in the year 2018. The applicant also continued to be in the COD of ITNL till 2018. The brief working of ITNL was that after successful bidding for a project, SPV was formed and named after the name of the project to be undertaken. Subsequent to formation of SPV, there was bidding process for award of contract and a separate SOP was drawn. ITNL was entrusted the responsibility of executing the entire project and from the SOP, it is discerned that the Managing Director, the Executive Director and the Committee of Directors had a key role to play in execution of any project. After the company defaulted on its loss in 2018, the Government of India took control of the company and appointed new Board.

10 In the backdrop of the said framework of the IL&FS and its subsidiary companies, FIR No.0253 of 2018 was registered by EOW, Delhi on a complaint filed by Ashish Begwani, Director of M/s. ENSO Infrastructure (P) Ltd against ILFS, Rail Ltd, ILFS Transportation Networks Ltd (ITNL), Shri Ravi Parthasarathy, Chairman and Managing Director of IL&FS, Director of ITNL, Shri Hari Sankaran Director of ILFS and ITNL. Ramesh Bava, Chairman and CEO of IFIN, Ramchand Karunakaran, Managing Director of ITNL alleging commission of offences under Section 120B, 409, 467, 468, 471 of IPC, which fall within the purview of scheduled offence under PMLA Part 'A'. Accordingly, the Directorate of Enforcement, Bombay Zonal Office-I recorded case vide ECIR MDZO-1/02/2019 dated 19th February 2019 under the provisions of PMLA against the aforesaid entities and the accused persons which included the applicant in the capacity of Managing Director of ITNL. Further, against the ILFS, on 30th September 2018, the Ministry of Corporate Affairs, Government of India directed the Serious Fraud Investigating Office (SFIO) to conduct investigation against the group companies of ILFS. On investigation, SFIO filed a criminal complaint bearing No.20

of 2019 dated 30th May 2019, wherein the ILFS and the accused persons along with M/s.Siva Group Companies and its proprietor C. Sivasankaran and others under Section 447 of the Companies Act, 2018 read with Section 120B, 417, 420 of IPC. Section 447 of the Companies Act also being a scheduled offence under Para 29 of Part 'A' of PMLA, the offence registered by SFIO was merged in ECIR dated 1/02/2019 for the purpose of investigation. The investigation under the PMLA was thus initiated against the entities and the individuals who have been alleged to have committed the aforesaid scheduled offences.

11 Investigation reveal that as far as the complaint registered by Ashish Begwani who had alleged that the accused persons had offered to sell him aggregate of 2,62,000 shares which were held by M/s.ILFS Transportation Network Limited in the name of ILFS Rail Ltd which were offered to him at the price of Rs.25/- per share. Lured by a promise for handsome returns, the complainant agreed to purchase shares of ITNL @ Rs.10/- each at a premium of Rs.15 per share amounting to Rs.65.50 crore. A facade was being projected and it is alleged that in connivance and collusion with each other, all the accused persons indulged in initially locating

and identifying dubious companies which have been engaged in infrastructure development and later, issued fictitious purchase orders for non-existent works. The forte of such companies lie in providing accommodation entries in form of bogus billing, inducting bogus share capital and advancing unsecured loan(s) to the beneficiaries in lieu of commission. Thus, with regard to ILFS Rail Ltd, bogus entities were allocated bogus work orders and invoices were raised by those companies, and the money was received and layered through their accounts and cash was taken and handed back. The investigation reveal a common thread in the work orders issued to such bogus companies as nearly all the work orders were issued to either resettle the shopkeepers or for road repairs or road widening and it is alleged that the accused persons siphoned a sum approximated at Rs.74.00 crores and more. The Income Tax department also mentioned the investigation into the bogus nature of work awarded to shell companies in the assessment order and focused its attention on the bogus invoices M/s.ILFS Rail Limited had procured from such companies, leading to identification of some of the companies but unaware of the magnitude of the fraud perpetuated by the accused.

12 The SFIO alleged that the accused persons who were controlling day to day affairs of IFIN colluded in order to avoid declaring non-performing asset of the defaulting loan recipients, lent to other companies belonging to the borrowing group for repaying the principal and/or interest of the defaulting borrower company. The aforesaid *modus operandi* was alleged to be in violation of the RBI directives. The process was repeated on multiple occasions with the earlier loan facility being closed and a new one being created which was again funded, on their default through another cycle of funding through the same or another group company. After the scam broke off, the current outstanding final loan facility was declared as NPA or written off, or is still shown outstanding resulting in delayed recognition of the non-performing assets, ballooning of debt and ultimate higher losses to IFIN and its stake holders. The lending of IFIN to its group companies increased substantially and reached to 37% of total loans and advances in financial year 2017-18 and to circumvent the RBI guidelines on group lending, they devised illegal strategy for IFIN to lend money to its group companies by routing the funds in the garb of sanctioning loans to third party contractors of the ITNL. In order to keep

IFIN and its other group companies afloat, the accused persons abused their position, connived and through the fraudulent means delayed the debt classifying of the defaulting borrower as NPA. M/s.Siva Group of Companies connived with the top management of IFIN and received wrongful gain in the form of loan from IFIN with no intention to repay. Statutory auditors also played their role in colluding and concealing the material information/facts and fraudulently falsifying the books of accounts and also the financial statements from the Financial Year 2014-15 to 2017-18. The Auditor did not report the true state of affairs of the company, particularly the negative net owned fund (NOF) and Negative Capital to Riskweight Asset Ratio (CRAR). This resulted in loss being caused to the creditors of the company who had lent and invested in the non-convertible debentures. The complaint contained the minute details in respect of lending to M/s.Siva Group. The entire routing of fund sanctioned from IFIN in the various group of companies of Siva Group is elaborated in form of an annexure. The COD of IFIN in connivance with C. Siva Sankaran continued to re-finance huge loans to various Siva Group Companies against which there was already a huge outstanding. At the time of re-financing, no proper collateral

security was obtained. The said groups which were already in financial stress were chosen, is the allegation.

13 The investigation till date has revealed that ILFS Financial Service Ltd had the sole mandate to carry out the debt and equity syndication for ITNL. IFIN would approach bank, financial institutions and other market players like Mutual Funds to source finances, to match requirements of ITNL. The investigation has revealed that RBI in its inspection report for the Financial Year ending on 31st March 2016 clearly instructed IFIN to run down its exposures to group companies with no fresh lending. The said inspection is carried out under Section 45N of the Reserve Bank of India Act, 1934. In spite of the said advice, ITNL managed to receive fund from IFIN and a new method was adopted through companies which were their contractors or with whom they had business relations in the past. The rate of interest for entities/contractors which were getting loan from IFIN was 1 to 2 % less than the rate of interest at which they were lending to IFNL or its Special Purpose Vehicles. 14 such companies are enlisted, through whom the amounts were transferred to ITNL by IFIN. The statement recorded under the PMLA reveal that thus the Directors/third parties were

instructed to transfer the loans received, either to ITNL or to its SPV in the form of loan. By this method, ITNL and its SPVs received huge loans and as per Grant Thornton report, Rs.2270 crores remained outstanding against those parties to IFIN, who in turn funded to ITNL or its SPV. It is in the conspectus of this transaction, the applicant has been implicated.

14 The response of ED is to the effect that the Committee of Directors had thus created a complex system in order to show artificially enhanced turnover and show profits in order to increase profitability and attract capital from third parties. This was done in order to maintain high credibility which gave way to easy access to the loans at lower rate of interest. The COD members have shown inflated performance of the group in order to receive high PRP. The accused persons received huge amount of PRP from the financial Year 2011-12 to 2017-18. There was substantial hike in their PRP and sitting fees for last three consecutive financial years. The complaint give the details of the amounts received by the accused persons and as far as the present applicant is concerned, he is alleged to have received Rs.14,81,87,500/- towards PRP, sitting/deputation fee to the

tune of Rs.25,09,67,490/-.

15 The attempt of Mr.Ponda is to repel the allegations contained in the complaint. As far as the direction issued by RBI is concerned and the allegation that the methodology adopted was contrary to the RBI directives issued on 1st November 2017, Mr.Ponda submit that the IFIN is a listed company regulated by SEBI and not by RBI and it has no power to impose a cap on its borrowings. This has no merit. IFIN is incorporated as Asset Management Company of IL&FS and it has obtained a non-banking Financial Company licence. As far as ITNL is concerned, it is a wholly owned subsidiary of IL&FS. The directives of RBI contained in its letter dated 1st November 2017 are in pursuance of the inspection carried out of the IL&FS Financial Services Ltd and is under Section 45N of the RBI Act, 1934. The RBI by virtue of the said provision is competent to cause inspection of any non-banking institution including a financial institution for the purposes of verifying the correctness or completeness of any statement, information or particulars furnished to the Bank. The RBI is also empowered to carry out inspection of any non-banking institution, being a financial institution if the bank considers it necessary or

expedient. The advise given is to revisit the framework for assessing group exposure and the classification of group companies in order to arrive at the NOF and CAR in terms of Section 45(1)(A), which relate to requirement of registration before commencement of any business by a non-banking financial institution. The registration is mandatory before a non-banking financial company commence its business as Non-banking Financial Institution (NBFI) and having net owned fund of Rs.25 lakhs. The provision inserted in the year 1997 is the reason for the inspection carried out and and advise tendered which was directed to be placed before the Board of Directors and action taken report to be placed on record. *Prima facie*, the counsel for the applicant is therefore not justified in making his submission that the letter of RBI is only an advisory. The letter is addressed to IFIN, which is a subsidiary of IL&FS and subjected to the RBI Regime.

16 As far as the complicity of the applicant is concerned, though Mr.Ponda has asserted that he is not involved in the entire allegation as he is not the member of COD of IFIN and for this purpose, he has placed reliance on some brochure as well as the documents from Ministry of

Corporate Affairs, he is shown as Managing Director of ITNL and a Director of IL&FS Engineering and Construction Ltd. The profile of the applicant on the website of Ministry of Corporate Affairs reflect him to be a Director and Additional Director in the IL&FS subsidiaries including the Transportation Networks Limited (ITNL) Renewable Energy Limited, IL&FS Energy Development Co, Maritime Infrastructure Company, ITNL Road Infrastructure Development Company, IL&FS Asian Infrastructure Managers Ltd, IL&FS Township and Urban Asset Ltd etc. From the material placed by the respondent, it can be seen that the applicant was involved in the infrastructure projects and the documents from the Ministry of Corporate affairs rather corroborate the submission of the respondent. He was involved into various infrastructure projects and therefore, in various Special Purpose vehicles or various infrastructure Limited companies, his name feature as a Director. The submission of Mr.Ponda therefore thus require a mention, just for its rejection. The applicant has also received amounts towards PRP, deputation cost and sitting fee that is clearly reflective of the benefit being drawn by him from the dealings of IFIN as well as IL&FS Financial Services. Reliance is placed on statements recorded during the course of

investigation under the PMLA Act and the *modus operandi* of IL&FS and its subsidiary companies has surfaced. The PMLA Act of 2002 which aim to prevent money laundering, it contain a provision which raises presumption as to records or property and into interconnected transactions. By virtue of Section 24 while dealing with proceedings relating to proceeds of crime unless the contrary is proved, a presumption exists that such proceeds of crime are involved, where a person is charged with offence of money laundering. The burden under Section 24 is cast on the accused to prove that proceeds of crime are not involved in purchasing the properties owned by the accused. The applicant who has been arraigned as an accused in the capacity as the Managing Director of ITNL and one of the members of the Committee of Directors of IFIN (for infrastructure projects) is attributed a key role. IFIN who was shouldering the responsibility of syndicating the debt and equity for ITNL and ITNL would post its requirement for the projects to IFIN, the RBI had advised IFIN to run down its exposure to group companies with no fresh lending. In spite of that, ITNL for whom the applicant was working as Managing Director received fund from IFIN. It is revealed during investigation that loans were sanctioned to various entities who were undertaking various

projects and the applicant had given letter of assurance dated 29th March 2018 on behalf of ITNL. The CFO of one of the groups in his statement has admitted that he had meetings with K. Ramchand for obtaining fund from IFIN in favour of M/s.GHV Hotels Ltd which is running in loss for last few years which was entitled to be transferred to ITNL. As a decision maker in the infrastructure project, the applicant shared the same responsibility as the COD of IFIN who had alleged to act in connivance with the promoters of the loanee group and for not exercising due diligence and availing personal benefit. The burden which he is expected to discharge under the provisions of PMLA would be done by him at the time of trial.

Prima facie on the basis of the allegations levelled against him and on the basis of the statements of the co-accused, Arun Saha has described the applicant to be in executive management of ITNL as Managing Director and Chief Executive Officer and his response to the query whether ITNL had any control over the SPVs and the contractors to whom work was allotted, is that ITNL had control over those SPVs in which ITNL was one of the partners and holding majority stake and that the executive management of ITNL had a role to play by ascertaining the

genuineness, working experience, good will etc for contractors and their companies. The applicant has played a pivotal role since in most of the SPVs, ITNL had 100% stake. The applicant who was working as Managing Director of ITNL, therefore, will have to answer the charge.

17 In the backdrop of the aforesaid incriminating material collated by the ED against the applicant, the present application requires a consideration in light of the view which has been echoed by the higher Courts over the years in relation to economic offences.

It is a well settled position that the jurisdiction to grant bail has to be exercised having regard to the facts and circumstances. The following factors are to be taken into consideration while considering an application for bail – (a) The nature of accusation and severity of the punishment in case of conviction and nature of material relied upon by the prosecution (b) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses (c) reasonable possibility of securing the presence of accused at the time of trial or the likelihood of his abscondence (d) character, behaviour and standing of accused and circumstances peculiar to him. (e) larger interest of public

of the State and similar other considerations. There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on its own merit, the only rider is that the Court has to exercise the discretion judiciously and not arbitrarily.

18 In Y.S. Jagan Mohan Reddy, (2013) 7 SCC 439, Their Lordships while dealing with an offence involving conspiracy to commit economic offence of huge magnitude involving public monies and public properties have laid down the following parameters.

34 Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs 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.

35. While granting bail, the court has to keep in mind the nature of accusations, the 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 the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other

similar considerations.

19 In Union of India v. Hassan Ali Khan, (2011) 10 SCC 235, the Apex Court has laid down that what will be the burden of proof when attempt is made to project the proceeds of crime as untainted money. It is held that 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 shifted on the accused persons under Section 24 of the PML Act, 2002.

Therefore, taking into account the aforesaid proposition of law, the application for bail of the applicant should be seen at this stage while he is involved in the economic offence, in general, and for the offence punishable under Section 4 of the PMLA, in particular.

20 Learned counsel Shri Ponda has heavily relied upon the judgment of the Apex Court in P. Chidambaram vs. DRI, 2019 SCC Online SC 1549. The said judgment will have to be read in light of the facts involved. While testing the judgment of the High Court which had concluded that the triple test of flight risk, tampering with evidence and influencing the witnesses, was in favour of the appellant, the High Court was found to be justified in adverting to the issue

relating to gravity of the offence. On discerning the typical facts involved that the appellant was not named as one of the accused in the ECIR but the allegation while being made against the co-accused, it is indicated that the appellant who was the Finance Minister at that point has aided in illegal transaction since one of the co-accused is the son of the appellant. It is in this context by taking into account the statements on record, it was noted that the complicity of the appellant will have to be established in the trial and if convicted, he will undergo a sentence. Noting that one of the co-accused has already been granted bail by the High Court, taking into account the age of the appellant and the bouts of his illness during his incarceration, he was entitled to be released on bail. It is in the typical facts of the case the ratio of the judgment will have to be applied.

21 In Nikesh Tarachand Shah Vs. Union of India, 2018(11) SCC 1, the Apex Court has reiterated the principle concerning grant of bail being the rule and refusal being exception and while dealing with Section 45 of the PMLA Act which imposes twin stringent condition for offences classified thereunder, direction was issued to reconsider all Bail Applications denied under Section 45 on merits without applying the twin stringent conditions. In the wake of the

said authoritative pronouncement, the complaint of the applicant would be entitled to be considered by applying the parameters applicable while availing bail under Section 439 of the Cr.P.C and the seriousness of the accusation, the nature of involvement, the penalty to be imposed on conviction and the possibility of tampering with the prosecution evidence, if released on bail, will have to be properly weighed and each factor be given due weightage.

The magnitude of the offence involving the applicant is enormous and the amount involved is huge. The effect of the conspiracy on behalf of the accused persons focusing on a desired result makes it a serious economic offence. The IL&FS Financial Services which was facing a serious liquidity crisis leading to their inability to fulfil debt obligation and the investigation has revealed that those in helm of affairs played a hoax and in a disguised way duped the stakeholders and general public whose monies were at stake. The Committee of Directors failed to discharge their obligation and they were in hand-in-gloves with big corporate groups. They continued to refinance the big groups in connivance with their promoters, on the existing collateral or without sufficient security merely on personal guarantees being offered in order to avail the loans as also in re-

financing. IFIN continued to project its business as healthy and robust and maintain high rating though the Directors continued to receive their remuneration. Investigation has revealed that although the profit earned by IFIN was on a decline, the PRP, commission, deputation cost, sitting fee received by the officials of IL&FS as well as IFIN, ITNL have increased significantly. This had a wide impact on the economy of the country, since the IL&FS is a finance company which subuded the equity from shareholders like the LIC, HDFC, Central Bank of India and State Bank of India. In light of the accusations and the manner in which the economy of this country has been impacted, the role of the applicant is clearly exposed. The default crisis in the IL&FS has adversely impacted the growth of Non-banking Finance Companies. It has jeopardised hundreds of investors, banks and mutual funds associated with IL&FS and sparked panic among equity investors, as several NBFC faced turmoil amid a default scare.

In the background of the accusations and its gravity, the applicant is not entitled for being released on bail and the application deserves to be rejected.

22 The observations made above are *prima facie* in nature, on the bare reading of the complaint of the DRI and

the material collected by it during the course of investigation and any observations made above will not be taken as a finding recorded, relating to the alleged offence.

23 Application is rejected.

SMT. BHARATI DANGRE, J