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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRM-M No.12488 of 2019
Date of Decision: 13.02.2020

Mandeep Singh ......Petitioner
Vs
Assistant Director, Directorate of Enforcement, PMLA, Jalandhar ....Respondent

2. CRM-M No.19330 of 2019

Makhan Singh ......Petitioner
Vs
Assistant Director, Directorate of Enforcement, PMLA, Jalandhar ....Respondent

3. CRM-M No.21330 of 2019

Avtar Singh ......Petitioner
Vs
Assistant Director, Directorate of Enforcement, PMLA, Jalandhar ....Respondent

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Pratham Sethi, Advocate
for the petitioner.

Mr. P.S. Ahluwalia, Advocate
for the petitioner in CRM-M No.19330 of 2019.

Mr. Virat Amarnath, Advocate
for the petitioner in CRM-M No.21330 of 2019.

Mr. Arvind Moudgil, Senior Panel Advocate
Mr. Lokesh Narang, Senior Panel Advocate and
Ms. Sharmila Sharma, Senior Panel Advocate
for the respondent(s).

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RAJ MOHAN SINGH, J.

[1]. Vide this common order, CRM-M No.12488 of 2019, CRM-M No.19330 of 2019 and CRM-M No.21330 of 2019 are being decided. Since all the petition arise out of same FIR, therefore, common facts are being noticed.

[2]. Petitioners have prayed for grant of anticipatory bail under Section 438 Cr.P.C. read with Section 65 of Prevention of Money Laundering Act, 2002 (for short 'the PMLA') in Prosecution Complaint No.COMA/2/2018 dated 31.08.2018 titled 'Assistant Director, Directorate of Enforcement vs. M/s Ashiana Inn Ltd. & other registered on the basis of ECIR/JLZO/01/2016 dated 18.02.2016 under Section 45(1) of the PMLA.

[3]. For the offence of money laundering under Section 3 punishable under Section 4 of the Prevention of Money Laundering Act, 2002, the FIR No.12 dated 26.08.2015 under the Prevention of Corruption Act, 1988 was lodged against the petitioners for being in possession of disproportionate assets to the known sources of his income. Petitioners were granted bail in FIR No.12 dated 26.08.2015 under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act and Section 120-B IPC, Police Station Vigilance Bureau, Flying Squad-1, Punjab at Mohali.

[4]. The aforesaid FIR was registered against Mandeep Singh, IAS. It was alleged that he had acquired disproportionate assets. Other accused/petitioners were also arrayed on the allegations of having connived with the principal accused i.e. Mandeep Singh.

[5]. Petitioners have been summoned in pursuance of institution of complaint after taking cognizance by the trial Court. They have been summoned vide order dated 02.11.2018 to face trial in complaint instituted under Section 45(1) of the PMLA. The application filed by Mandeep Singh for grant of anticipatory bail before the Special Judge under the Prevention of Money Laundering Act, SAS Nagar (Mohali) has been dismissed vide order dated 01.03.2019.

[6]. After issuance of notice of motion, interim order dated 09.04.2019 was passed in favour of the petitioner-Mandeep Singh in CRM-M No.12488 of 2019 to the following effect:-

> *This is a petition for grant of pre-arrest bail to the petitioner under Section 438 Cr.P.C. registered under Section 65 of the Prevention of Money Laundering Act, 2002 (for short the Act) in Prosecution Complaint No.COMA/2/2018 titled as Assistant Director, Directorate of Enforcement Vs. M/s Ashiana Inn Ltd & other registered on the basis of ECIR/JLZ0/01/2016 dated 18.02.2016 u/s 45 (1) of P.M.L.A.*
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> *The brief facts are that initially an FIR under the Prevention of Corruption Act, 1988 (for short the P.C. Act)*

was lodged against the petitioner for being in possession of assets disproportionate to his income. Admittedly, he remained in custody for more than 3 months before he was bailed out by this Court. On the basis of that FIR the Enforcement Directorate filed the present case against the petitioner in respect of laundering and diversion of those ill gotten assets and it is in this complaint that the petitioner is seeking anticipatory bail.

Counsel appearing on behalf of the respondent-Enforcement Directorate has accepted that the present complaint is based on the FIR under the P.C. Act. He has argued that this is a case where the petitioner has diverted almost Rs.600 crores of ill gotten assets. He has argued that the investigation is still going on, to which the senior counsel appearing for the petitioner has responded by stating that the petitioner would have no objection in appearing before the Investigating Officer.

In the circumstances, I deem it appropriate to grant interim bail to the petitioner to enable him to appear before the Investigating Officer.

In the meantime, let the petitioner appear before the Investigating Officer on 15.04.2019 at 10.00 AM and on any other date as and when his presence is required and he will be released on bail by the Investigating Officer subject to the conditions envisaged under Section 438 (2) Cr.P.C.

Learned senior counsel for the petitioner further states that the petitioner has to appear before the Court in response to the summons on 18.04.2019, on his so appearing he shall be released on interim bail.

Adjourned to 28.05.2019, to await the report of the

Investigating Officer."

[7]. In CRM-M No.19330 of 2019, notice of motion was issued on 30.04.2019 and the petition was ordered to be listed along with CRM-M No.12488 of 2019. Interim order was also passed in the same terms as passed in CRM-M No.12488 of 2019.

[8]. In CRM-M No.21330 of 2019, similar order was passed on 10.05.2019 and the petition was ordered to be listed along with CRM-M No.12488 of 2019. Interim order was passed in the same terms as passed in CRM-M No.12488 of 2019.

[9]. Learned Senior counsel and other counsel appearing on behalf of the petitioner(s) submitted that the investigation in the complaint case is still going on and in view of interim protection granted by the High Court, the petitioners have been appearing before the Investigating Officer. The investigation in the complaint started on 18.02.2016. The complaint in question came to be filed on 31.08.2018. Petitioners have been summoned only on 02.11.2018. Petitioners were never sought to be arrested during process of inquiry/investigation prior to filing of the complaint for more than 2½ years.

[10]. It has been further submitted that during course of inquiry before filing of complaint and before passing of order of summoning, statements of the petitioners were recorded by

joining them in the investigation. For instance statement of Makhan Singh was recorded on 25.05.2016 and he had revealed all the facts necessary for investigation of the case. His statement was further recorded on 11.07.2017. Petitioners were never arrested during inquiry. Under Section 19 of the PMLA, the prosecuting agency could have arrested the petitioners, but the prosecuting agency, only associated the petitioners during process of inquiry/investigation. Provisional attachment of properties has also been made before summoning of the petitioners.

[11]. As per record, the prosecuting agency has attached 33 properties of worth Rs.2,62,46,148/-. As per recital in the complaint itself, the prosecuting Agency has also attached Hotel Marc Royale-I, village Dhakoli, Tehsil Dera Bassi owned by Avtar Singh, whose fair market value is Rs.33.47 crores, conservative value is Rs.28.44 crores. The distressed value of the same has been assessed as Rs.26.75 crores. Prosecuting Agency has also attached Hotel Marc Royale-II village Dhakoli, Tehsil Dera Bassi owned by M/s Ashiana Inn (P) Ltd. now known as M/s Ashiana Inn Ltd, whose fair market value of Rs.58.36 crores, conservative value of Rs.49.60 crores and distressed value of Rs.43.75 crores have been assessed.

[12]. It has been further submitted that since the petitioners

have not misused the concession of interim direction issued by this Court and they have already furnished bail bonds/surety bonds to the satisfaction of the concerned Special Judge, SAS Nagar, Mohali, therefore, in the light of observations made by the Hon'ble Apex Court in ***Dataram Singh vs. State of Uttar Pradesh & Anr., 2018(2) R.C.R.) Criminal 131***, petitioners are entitled for bail. The indulgence qua the same had already been granted by this Court and the petitioners have already furnished bail bonds/surety bonds to the satisfaction of the concerned Special Judge. Para Nos.2 and 17 of the aforesaid judgment reads as under:-

> "*2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.*
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> *17. In our opinion, it is not necessary to go into the*

correctness or otherwise of the allegations made against the appellant. This is a matter that will, of course, be dealt with by the trial judge. However, what is important, as far as we are concerned, is that during the entire period of investigations which appear to have been spread over seven months, the appellant was not arrested by the investigating officer. Even when the appellant apprehended that he might be arrested after the charge sheet was filed against him, he was not arrested for a considerable period of time. When he approached the Allahabad High Court for quashing the FIR lodged against him, he was granted two months time to appear before the trial judge. All these facts are an indication that there was no apprehension that the appellant would abscond or would hamper the trial in any manner. That being the case, the trial judge, as well as the High Court ought to have judiciously exercised discretion and granted bail to the appellant. It is nobody's case that the appellant is a shady character and there is nothing on record to indicate that the appellant had earlier been involved in any unacceptable activity, let alone any alleged illegal activity."

[13]. It has been further submitted that Section 45(1) of the PMLA was declared to be ultra vires in ***Nikesh Tarachand Shah vs. Union of India & Anr., 2018(2) R.C.R. (Criminal) 232*** on 23.11.2017. The aforesaid provision has been re-enforced w.e.f. 19.04.2018 and the amendment is prospective in nature. Pre-trial bail provision under Section 45 of the PMLA, imposing twin stringent conditions for the offences classified thereunder was held to be arbitrary, discriminatory and invalid.

[14]. At the last, it has been submitted that in the event of further investigation, the petitioners are not averse to join the investigation as and when called upon to do so. In terms of the prayer clause of the complaint, the custodial interrogation of the petitioners is not required.

[15]. Per contra, learned counsel appearing on the behalf of the respondent vehemently opposed the prayer on the ground that after filing of the complaint and order of summoning, the petitioners are required to surrender before the trial Court and seek regular bail in accordance with law.

[16]. I have considered the submission made by learned counsel for the parties.

[17]. Both the parties have tried to argue the case on merits, which in considered opinion of this Court is not necessary for deciding the bail, lest it may prejudice the case of any of the parties.

[18]. Vide order dated 20.01.2020 passed by this Court, the case was adjourned at the instance of learned counsel for the respondent-Directorate of Enforcement, PMLA Jalandhar in order to have the details of the properties attached by the Department. As narrated above, the Department has already attached the properties of the petitioners as per valuation shown

in the documents narrated in preceding paras of the judgment.

[19]. Evidently, the investigation started in the complaint w.e.f. 18.02.2016. For more than 2½ years, the petitioners were never sought to be arrested, rather they were allowed to join the investigation by means of recording their statements and provisional attachment of their properties was also done. Petitioners could have been arrested under Section 19 of the PMLA, but the same was not done by the respondent-Department. Even as per reply submitted by Assistant Director/respondent in CRM-M No.21330 of 2019 titled 'Avtar Singh vs. Assistant Directorate of Enforcement, PMLA Jalandhar, para no.7 reas as under:-

> *"Para 7:- That the contents of his Para require no reply except that the petitioner may be required to join investigation in future, in case any fresh fact/issue needs investigation. However, presence of accused before Investigating Officer is not immediately required for further investigation."*

[20]. Interim protection was granted to the petitioners by this Court after filing of the complaint. The complaint came to be filed only 31.08.2018 and thereafter order of summoning was passed on 02.11.2018. Statements of the petitioners have already been recorded and they have shown their readiness to join the proceedings as and when called upon to do so by the Investigating Agency. Prosecution has already attached 33

properties for total value of Rs.2,62,46,148/- and two Hotels namely Hotel Marc Royale-I and Hotel Marc Royale-II have also been attached. Value of those, as per complaint itself comes out to be about Rs.70 crores even as per distressed value.

[21]. In ***CRM-M No.28490 of 2018*** titled '***Dalip Singh Mann and another vs. Niranjan Singh, Assistant Director, Director of Enforcement, Govt. of India***' decided on 01.10.2015, the Division Bench of this Court has considered the controversy, when Section 45 of the PMLA was in operation. It was held that during investigation of the money laundering case, the petitioners therein were never arrested by the Enforcement Directorate in exercise of its powers under Section 19 of the Act and the assets created by the petitioners with the alleged aid of proceeds of crime have already been seized/attached, then rigour of Section 45(1)(ii) of the Act would be attracted only while considering the bail plea of an accused, who has been arrested by the E.D. under Section 19 of the Act. The ratio of aforesaid case helps the cause of petitioners for confirmation of interim anticipatory bail granted in their favour.

[22]. Taking into consideration the totality of facts and circumstances of this case, the interim orders dated 19.04.2019 30.04.2019 and 10.05.2019 passed in CRM-M Nos.12488, 19330 and 21330 of 2019 respectively, are made absolute.

[23]. All the petitions stand disposed of accordingly.

February 13, 2020 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No