IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.27822 of 2020 (O&M)
Date of Decision: 22.09.2020

Pirtpal Singh and another
......Petitioners

Vs

Director of Enforcement Government of India
.....Respondent

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

Present: Mr. D.S. Sobti, Advocate
for the petitioners.

Mr. Satya Pal Jain, Addl. Solicitor General of India &
Mr. Shobit Phutela, Advocate
for the respondent/UOI.

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RAJ MOHAN SINGH, J.

[1]. The case was taken up for hearing through video conferencing.

[2]. Petitioners seek anticipatory bail in case bearing ECIR No.05/CDZO/2017/4868 to 4871 dated 30.11.2017, Zone Chandigarh registered under Sections 120-B, 384, 420, 472, & 473 IPC at P.S. Phase 11, SAS Nagar, Mohali and Section 30 of the Arms Act at P.S. Mataur, SAS Nagar, Mohali culminating in the prosecution complaint No.COMA/01/2020.

[3]. Learned counsel for the petitioners submitted that a

raid was conducted by the officials of Enforcement Directorate at the premises of petitioner No.1's company i.e. M/s Seabird International Pvt. Ltd. on 10.10.2017. Other premises were also raided, which are given as under:-

(a) SCF No.75, Phase-X, Mohali;

(b) H.No.2155, Phase-X, Mohali;

(c) Flat No.705, Prime Rose Tower, Mayfair Apartment, Sector 70 Mohali; and

(d) SCF No.68, Phase-X, Mohali.

[4]. The allegations are that from Flat No.705, Prime Rose Tower, Mayfair Apartment, Sector 70 Mohali a toy pistol was recovered and from House No.2155, Phase-X, Mohali some counterfeit government authority stamps, counterfeit bank authority stamps, counterfeit stamps of Doctor, certain blank FD vouchers, cheque books and signed cheque books etc. were recovered. The Enforcement Team filed complaint to the Sr. Superintendent of Police, Mohali. Two separate verbatim complaints were also filed before the Police which resulted into two FIRs at two separate Police Stations against the petitioners. FIR No.118 was registered on 11.10.2017 under Sections 473, 384, 420, 120-B IPC at Police Station Phase 11, Mohali. FIR No.158 was registered on 11.10.2017 under Section 30 of the Arms Act at Police Station Mataur, Mohali.

[5]. The FIR No.158 dated 11.10.2017 was cancelled by the

Police and a cancellation report was submitted before the Judicial Magistrate Ist Class, Mohali. The Court has directed re-investigation in the case and the same is pending. In FIR No.118 dated 11.10.2017, petitioner No.1 was placed in column No.2 in the report under Section 173 Cr.P.C. Petitioner No.2 was challaned and the offences under Sections 384, 420 and 120-B IPC were deleted.

[6]. Learned counsel further submitted that offences under Sections 472 and 473 IPC as alleged against the petitioners are bailable in nature. On 10.10.2017 i.e. at the time of conducting raid, there was no scheduled offence against any of the petitioners. A petition bearing CRM-M No.396 of 2018 filed for grant of anticipatory bail by petitioner No.2 was disposed of vide order dated 27.08.2018 in view of statement made by learned State counsel that the non-bailable offences in terms of Sections 420, 384, 120-B IPC have been deleted and the challan has been presented only for the bailable offences.

[7]. Learned counsel further submitted that the ECIR in question was registered on 30.11.2017. The investigation was carried out by the Enforcement Directorate and the petitioners were joined in the investigation. There was no protection sought by the petitioners during currency of investigation in ECIR by the Enforcement Directorate. Petitioners were allowed to join the

investigation conducted by the Enforcement Directorate in ECIR dated 30.11.2017. The report was submitted in the form of challan on 23.06.2020. On the basis of aforesaid report, a complaint was registered by the Special Judge, CBI, Punjab, SAS Nagar, Mohali. Vide order dated 23.06.2020, order of summoning has been issued to the petitioners for the offence under Section 3 of Money Laundering Act punishable under Section 4 of the Act.

[8]. The properties of the petitioners i.e. (i) SCF No.75, Phase-X, Mohali; (ii) agricultural land measuring about 8 acres in the name of father of petitioner No.1 in village Chuharpur, Tehsil Samrala; (iii) SCF Nos.1/1C, 2 & 3 Phase 3-A, Sector 53, Mohali, belonging to petitioner No.1 and other friend; and (iv) a Car make Land Rover in the name of petitioner No.2 have been attached. According to learned counsel the estimated value of the aforesaid properties is over Rs.12 crores. Learned counsel further submitted that the properties were purchased prior to 2009 even before commencement of the Prevention of Money Laundering Act. The provisional order of attachment was confirmed by the adjudicating authority on 28.05.2019 and the prosecution complaint was filed on 23.06.2020. The Appellate Authority has already stayed the order passed by the adjudicating authority, confirming the attachment. Learned

counsel has attacked the attachment being void and *non est* due to lapse of 365 days as the prosecution complaint was filed after the prescribed limit.

[9]. Learned counsel further relied upon the source and details vide which the properties were acquired. He submitted that an amount of Rs.7,56,40,000/- is alleged to have been generated by the petitioners through commission of scheduled offences. 51 students are alleged to have been sent abroad in the provisional attachment. Learned counsel submitted that seven students namely Guriqbal Singh Kharoud, Bachittar Singh, Jagwinder Singh, Kajal, Vivek Bakshi, Navjot Singh Grewal and Jagdeep Singh Chahal paid their fee directly to the University/College without involving the petitioners. The University/College has to pay the commission to M/s Seabird International Pvt. Ltd., which has not been paid due to the situation created by the Enforcement Directorate by filing the present case. 13 students did not seek any assistance from the petitioners and they have no relationship whatsoever with the petitioners or M/s Seabird International Pvt. Ltd. Petitioners are not their agents, nor any paper work was done by the petitioners in terms of applying for Visa or admission process etc. in any manner. The students are Harjinder Singh, Gurpartap Singh Saggu, Gagandeep Singh Sidhu, Amanpreet Singh, Jaswinder

Kaur, Surinder Singh, Jaskaran Singh, Jaspreet Singh Dandiwal, Gurkirat Singh Shergill, Balraj Singh, Khushpreet Singh, Arshdeep Singh and Gurinder Singh. The University in Australia has certified that the aforesaid students have no agency in the name of the petitioners.

[10]. Learned counsel further submitted that M/s Seabird International Pvt. Ltd. has received the amount from 21 students. The entire money has been transferred to the University. Petitioner has given a table showing the entries made for the corresponding account numbers. One student namely Sonamjeet Kaur Randhawa whose name has been mentioned in the provisional order of attachment had given a sum of Rs.12 lakhs to M/s Seabird International Pvt. Ltd. and got her Visa and left for Australia. She had changed her college and asked for refund. An amount of Rs.11,50,000/- had been refunded to her through RTGS in the account of her father namely Sh. Inderjit Singh. Three students paid an amount of Rs.16,20,000/- for availing services towards IELTS training, IELTS Test, Air Tickets, boarding, lodging i.e. accommodation, transportation from the Airport, counselling and Admission process from M/s Seabird International Pvt. Ltd. These students paid their fee directly to the Australian college. The names of these students are Anmoldeep Singh, Navsangeet Singh

Sangha and Sukhanpreet Singh.

[11]. Learned counsel further submitted that seven students paid their respective air travel, visa application fee, accommodation fee, insurance and tuition fee to M/s Seabird International Private Limited. Air travel, visa processing and insurance have been paid by the M/s Seabird International Pvt. Ltd., but because of the case filed by the Enforcement Directorate, tuition fee and accommodation charges have not been transferred by M/s Seabird International Pvt. Ltd and the account with Australian college has not been settled, but the payment will be released in due course after settling the accounts and commission.

[12]. Learned counsel further submitted that M/s Seabird International Private Limited used to provide services to the students in the form of IELTS training, admission in College or University, career counselling, travel arrangements, transportation, accommodation, assistance in paying tuition fee and other fee in the Colleges/Universities, arrangement of overseas health insurance cover, visa lodgement process and pre-departure orientation of the study abroad.

[13]. By referring to the aforesaid events, learned counsel further submitted that the petitioners have not committed any offence as the transactions are relating to documents which are

genuine and are evident on record. Reconciliation of the entries would show that the petitioners have maintained the record with precision and accuracy. The alleged recovery of counterfeit stamps/papers have not been used by the petitioners in any manner. Enforcement Directorate has already seized of the documents.

[14]. As against the alleged amount of Rs.7,56,40,000/- allegedly generated by the petitioners by collection from the students, the Enforcement Directorate has attached properties of the petitioners over Rs.12 crores, though order of attachment has been stayed by the Appellate Authority. The alleged recovery of counterfeit stamps/papers from H.No.2155, Phase-X, Mohali has nothing to do with the petitioners. The statement of land lady of that house has already been recorded in the inquiry.

[15]. Learned counsel further submitted that Look Out Circular (LOC) was issued against the petitioners and they were detained at Chandigarh International Airport and Indira Gandhi International Airport, New Delhi. Petitioners are involved in the business of foreign education and it is their routine pratice to travel abroad in connection of their business. Petitioners had no intimation of any Look Out Circular as they had been regularly attending the investigation before the Enforcement Directorate

since 2017. The Look Out Circulars were issued only from 12.04.2018 to 11.04.2019. Even prior thereto the petitioners were joining the investigation before the Enforcement Directorate. Even after detaining the petitioners and questioning them, they were let off by the Enforcement Directorate and were never arrested even during the course of investigation in the case of ECIR dated 30.11.2017.

[16]. At last, learned counsel submitted that no chargesheet has been issued against petitioner No.1 for any scheduled offence. The chargesheet under Sections 472 and 473 IPC issued against petitioner No.2 involves bailable offences. The alleged pistol was found to be a toy pistol and the Police has already submitted a cancellation report in FIR No.158 dated 11.10.2017, however the Court has ordered reinvestigation in the case. During course of investigation in ECIR case dated 30.11.2017, the Enforcement Directorate never felt necessity to arrest the petitioners. Now after filing of complaint and after issuance of summoning order dated 30.06.2020, the Enforcement Directorate all of sudden thought it appropriate to arrest the petitioners. Petitioners have already joined the investigation during the period from 30.11.2017 to 23.06.2020.

[17]. On the other hand, Mr. Satya Pal Jain, Addl. Solicitor General of India duly assisted by Mr. Shobit Phutela, Advocate

for the respondent/Enforcement Directorate opposed the petition on the ground that the petitioners are involved in the case of money laundering, wherein they have generated the proceeds of crime to the tune of Rs.7.56 crores as a result of criminal activities including fabrication of documents by the use of fake counterfeit stamps of government authorities like Executive Magistrate, Tehsildar, Banks and fake letter heads of Punjab National Bank. All the same were used for procurement of Visas of the students, who were not otherwise eligible for grant of Visas. The investigation has revealed that M/s Seabird International Private Limited used fake documents for obtaining visas for the students. The amount collected from the students has been used for buying the movable and immovable properties and for payment of loans of its directors. The documents used for obtaining visa in favour of ineligible students are stated to be fabricated and forged by the petitioners.

[18]. Learned counsel further submitted that the Special Judge, CBI, Punjab, SAS Nagar, Mohali has declined the anticipatory bail on the ground that the offences involved in the FIR are scheduled offences under the Prevention of Money Laundering Act. The Enforcement Directorate has proceeded to register ECIR and conducted the investigation. On completion of

investigation, a complaint has been filed in the Court in which summoning order has been passed. Petitioners have been summoned, who instead of appearing before the Court have preferred the anticipatory bail. The allegations in the complaint are the matter of trial and the same cannot be commented upon at this stage. Concededly the petitioners were detained at Chandigarh International Airport and Indira Gandhi International Airport, New Delhi after issuance of Look Out Circular. In view of above, if they are released on anticipatory bail, they may misuse the concession of bail and there is possibility of their fleeing from justice.

[19]. Having considered the submissions made by learned counsel for the parties, I find that ECIR case was registered on 30.11.2017. The investigation was culminated only on 23.06.2020 and thereafter complaint was filed in the Court. During the period from 30.11.2017 to 23.06.2020, the petitioners were joined in the investigation by the Enforcement Directorate in the proceedings of ECIR. The Enforcement Directorate never sought the arrest of the petitioners in any manner. They were allowed to join the investigation repeatedly. The properties of the petitioners have been attached. The proceeds of crime are estimated as Rs.7.56 crore. The estimated value of the properties attached would come out to be more than the

proceeds of the crime.

[20]. FIR No.158 dated 11.10.2017 has not been proceeded with. The cancellation report was filed, but the Court has ordered re-investigation in the case. The toy pistol is alleged to have been recovered in the said FIR. In FIR No.118 dated 11.10.2017, challan has been presented only under Sections 473 and 474 IPC against petitioner No.2 which are bailable in nature.

[21]. In ECIR case dated 30.11.2017, the petitioners were never sought to be arrested for more than 2½ years during pendency of the investigation by the Enforcement Directorate. The petitioners have been summoned by the Court after completion of investigation in ECIR case. The allegations are related to documentary evidence. The petitioners have already submitted their version during course of investigation in ECIR case dated 30.11.2017.

[22]. Petitioners have not misused their liberty during course of investigation in ECIR case dated 30.11.2017. The petitioners have enjoyed the implied protection during course of investigation in the said ECIR case. 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 protection. 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."

[23]. Section 45(1) of the Prevention of Money Laundering Act 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 aforesaid Act, imposing twin stringent conditions for the offences classified thereunder was held to be arbitrary, discriminatory and invalid.

[24]. Evidently, in the investigation of ECIR case dated 30.11.2017, the petitioners were never sought to be arrested for about 2½ years, rather they were allowed to join the investigation by the Enforcement Directorate and provisional order of attachment of their properties was also made. Petitioners could have been arrested under Section 19 of the Act, but the same was not done by the Enforcement Directorate, therefore, petitioners are directed to appear before the Special

Judge, CBI, Punjab, SAS Nagar, Mohali within a period of ten days from today. On doing so, they shall be admitted to bail by the Court subject to its satisfaction. Petitioner are also directed to surrender their passports and would also file an undertaking before the Court that in the event of any scheduled programme to go abroad, they would seek prior permission of the Court in accordance with law. The Court would be at liberty to grant or refuse such permission in accordance with law without being influenced by any statement of fact recorded hereinabove.

[25]. With the aforesaid directions, the present petition is disposed of.

(RAJ MOHAN SINGH)
September 22, 2020 **JUDGE**
Atik
Whether speaking/reasoned Yes/No
Whether reportable Yes/No