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(Via Video Conference)

CRM 3549 of 2021

In the matter of: An application for bail under section 439 of the Code of Criminal Procedure filed on 22.04.2021 in connection with ML Case No. 01 of 2021 arising out of ECIR/KLZO-II/01/2021 dated 03.02.2021 under Sections 3/4 of the Prevention of Money Laundering Act, 2002.

**Preet Kumar Agarwal
Vs.
The Directorate of Enforcement,
Eastern Region, CGO Complex**

Mr. Milan Mukherjee, Id. sr. adv.
Mr. Niladri Sekhar Ghosh,
Mr. Amujibar Ali Naskar,
Ms. Sreemoyee Mukherjee
.... for the petitioner

Ms. Debjani Ray
Mr. Sumitava Chakraborty
... ... for the Enforcement Directorate

This is an application under Section 439 of The Code of Criminal Procedure, 1973.

According to learned counsel appearing for the petitioner, the petitioner was arrested from Hyderabad on 9th March, 2021 after being released by the Chief Judicial Magistrate, North 24 Parganas by an order dated 20th August, 2018. Counsel submits that the petitioner had been arrested previously on 6th April, 2018 by the Customs Authorities and was served with a detention order by the Government of India under the provisions of the COFEPOSA proceeding arising out of the same allegations. It is submitted that petitioner had, thereafter, been released by an

order dated 16th August, 2018 of the Advisory Committee of the Government of India on the ground that there was no sufficient cause for detention of the petitioner. The petitioner was also granted bail on 20th August, 2018 by the CJM, North 24 Parganas. Counsel submits that the petitioner had already been in custody for 55 days and will be liable to be released under Section 167 (2) of the Cr.P.C. on 8th May, 2021.

Learned counsel appearing for the Enforcement Directorate who opposes the present application submits that the E.D. has chased several Bank Accounts which have been used by the petitioner to divert property under The Prevention of Money-Laundering Act, 2002 (PMLA). Counsel submits that the Investigating Authority is presently in the process of unearthing several facts which would reveal that the petitioner and the other accused are habitual offenders. Counsel further submits that the petitioner has not cooperated with the Authorities and several incriminating documents have been recovered during search and seizure and that there is a high chance that the petitioner will abscond if released on bail. Counsel placed reliance on the provisions of the PMLA with particular emphasis on Section 45 of the said Act – “Offences to be cognizable and non-bailable”.

Upon hearing learned counsel and upon going through the materials on record, this Court has taken note of several important facts. First, the petitioner was arrested on 6th April, 2018 and was released by an order dated 16th August, 2018 of the Advisory Board, Central Economic Intelligence Bureau in

relation to offences under COFEPOSA. Second, the order of the CJM, North 24 Parganas, by which the petitioner was released on bail clearly records that the petitioner was in custody since 6th April, 2018 during which the prosecuting agency had sufficient opportunity for custodial interrogation of the petitioner. The order further records that since one of the co-accused was released on bail, further detention of the petitioner was not deemed to be necessary for the purpose of investigation. Third, the grounds on which the petitioner was arrested on 9th March, 2021 appear to be the same grounds for which the petitioner was arrested on 6th April, 2018. This would appear from Annexure 'P-6' to the application which sets out the ground for arrest of the petitioner under Section 19 of the PMLA pursuant to an order of the Assistant Director of the Enforcement Directorate. Fourth, the contention with regard to overarching importance of Section 45 of the PMLA has considerably been diluted by *Nikesh Tarachand Shah vs. UOI & Ors.*; (2018) 11 SCC 1. The relevant paragraphs of the Report show that the Supreme Court was of the view that Section 45 of the PMLA would have to be struck down as being manifestly arbitrary and providing a procedure which is not fair or just and would violate Articles 14 and 21 of the Constitution of India.

If the special provisions of the PMLA, including Section 45 thereof, are seen as having been diluted or struck down as being unconstitutional by the Supreme Court, this Court must take recourse to Section 439 of the Cr. P.C. for the purposes of the

present application. The contention of the Enforcement Directorate that the petitioner is a habitual offender or is likely to tamper with evidence or influence witnesses is not apparent from the records and can only be presumed if the petitioner had committed the same/similar offence after being released from custody or detention. The other relevant consideration is that despite today being the 56th day of the 60-day timeframe under Section 167 (2) of the Cr.P.C., the Enforcement Directorate has not filed any complaint against the petitioner since the time of his arrest on 9th March, 2021. The other important consideration is that the Enforcement Directorate has not shown good grounds to satisfy this Court that custodial interrogation of the petitioner is necessary in the facts of the case. The apprehension that the petitioner might flee from the clutches of the E.D. can sufficiently be dealt with by imposing suitable conditions against the order prayed for. There is also no evidence of the petitioner having misused his liberty after grant of bail after 20th August, 2018. The copy of the order of the Division Bench of the Delhi High Court shows that the order of detention under COFEPOSA of two of the co-accused was set aside by an order dated 27th August, 2018 in W.P. (CRL) 1971/2018 and W.P. (CRL) 1977/2018.

Having regard to the facts and circumstances as stated above, this court is of the view that the petitioner should not further be kept in custody. The petitioner shall accordingly be released on bail upon furnishing a bond of Rs.20,000/- (Rupees Twenty Thousand only) with two sureties of like amount each, one

of whom must be a local resident to the satisfaction of the learned Judge of the Special Court, under the PMLA. Since an apprehension has been expressed by the E.D. that the petitioner may abscond upon release, the petitioner will deposit his passport with the learned Judge of the Special Court. Since the petitioner lives in Hyderabad, Telangana, the petitioner shall deposit his passport within four days from the date of this order. The petitioner will be at liberty to apply for return of his passport from the appropriate forum in fit circumstances. The petitioner shall also meet the Investigating Officer once every week or whenever summoned for investigation. The Investigating Officer will consider sufficient safeguards in the course of investigation for maintaining safety protocols during pandemic period. The petitioner shall also not intimidate the witnesses or tamper with evidence in any manner whatsoever. In the event the petitioner fails to appear before the Investigating Officer or the trial court without any justifiable cause, the trial court shall be at liberty to cancel the petitioner's bail without further reference to this Court.

The application for bail is disposed of in terms of the above.

All parties shall act in terms of the copy of this order downloaded from the official website of this Court.

(Moushumi Bhattacharya, J.)