NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 78 of 2021

Order Reserved On : 27.01.2021

Order Delivered On : 10.02.2021

Babu Lal Agrawal, S/o Shri Ramkumar Agrawal, Aged About 54 Years, R/o Samarth, Opposite Timber Market, New Timber Market, Fafadih, Raipur (C.G.)

--- Applicant

Versus

Enforcement Directorate, Through- I.O., Enforcement Directorate (FEMA/ PMLA), Raipur.

--- Respondent

For Applicant :	Mr. Abhimanyu Bhandari, Mr. Somesh Tiwari, Mr. Chiroy Madan, Mr. Goutam Khetrapal, Mr. Sourabh Dangi, Mr. Krishna Tandon, Mr. Swajeet Singh Ubeja, Mr. Chiranjiv Kaushil, Advocates
For Respondent :	Dr. Saurabh Kumar Pandey & Mr. Anil S. Pandey, Advocates.
For Objector :	Mr. Devershi Thakur & Mr. J.K. Gupta, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV ORDER

10/02/2021

1. This is the second bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the

applicant, who has been arrested in connection with Crime No. ECIR/RPSZO/05/2013 (Previously numbered as ECIR/01/NGR/2011), registered at Enforcement Directorate, Sub-Zone Raipur (C.G.) (Transferred from Sub-Zone Nagpur) for the offence punishable under Sections 3 & 4 of the Prevention of Money Laundering Act, 2002 (for short “the PML Act”).

2. The first bail application of the applicant MCRC No. 8620 of 2020 was dismissed as withdrawn vide order dated 23.12.2020 with liberty to file duly constituted application.

3. It is submitted by learned counsel for the applicant that the applicant is innocent, who has been falsely implicated in this case. The applicant has been arrested on 09.11.2020 and placed under detention. There is no case against this applicant under Section 3 of the PML Act. The Adjudicating Authority constituted under Section 6 (1) of the PML Act, has exonerated the applicant by its report dated 14.05.2018, after considering the material in provisional attachment order and the original complaint, holding that the applicant is not involved in money laundering. The charge-sheet has been filed after completion of investigation.

4. It is further submitted that the offence under Sections 3 & 4 of the PML Act, was registered against this applicant as Crime No. ECIR/RPSZO/05/2013. The same matter has been presented before the Adjudicating Authority and the Adjudicating Authority has given its decision vide report dated 14.05.2018, giving clean

chit to the applicant. The applicant was also exonerated from the departmental proceeding by the State Government vide order dated 13.03.2012 (Annexure A/2). The Economic Offences Wing of Chhattisgarh filed a closure report before the Special Court on 21.11.2016. However, on request of Enforcement Directorate, the said closure report has been withdrawn by Economic Offences Wing.

5. Relying on the judgment of the Supreme Court in **Sanjay Chandra Vs. CBI**, reported in **2012 (1) SCC 40**, it is submitted that the maximum punishment, which can be imposed upon the applicant in case he is convicted, shall extend up to seven years. It is submitted that in case of **Radheshyam Kejriwal Vs. State of West Bengal & another**, reported in **(2011) 3 SCC 581**, it was held by the Supreme Court in para 38, that in case of exoneration, by the Adjudicating Authority, however on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue. In case of **Videocon Industries Limited & another Vs. State of Maharashtra & others**, reported in **(2016) 12 SCC 315**, the ratio laid down in the case of **Radheshyam Kejriwal (Supra)**, has been reiterated by the Supreme Court.

6. It is submitted that the Supreme Court has granted bail in **P. Chidambaram Vs. Directorate of Enforcement**, reported in **2019 SCC Online SC 1549**, wherein the applicant was not even

exonerated by the Adjudicating Authority, therefore, the applicant herein, has a better case and he is entitled for grant of bail.

7. It is further submitted that Section 45 of the PML Act although provides for stringent condition to be followed in the matter of grant of bail. The Supreme Court has very clearly held in **Nikesh Tarachand Shah Vs. Union of India & another**, reported in **(2018) 11 SCC 1**, that in pre-trial bail provision under Section 45 imposing twin stringent conditions under Section 45(1) for offences classified thereunder, held manifestly arbitrary, discriminatory and invalid. Hence, no denial of bail, can be made as per Section 45 of the PML Act.

8. The applicability of Section 45 of the PML Act, that has been struck down by the Supreme Court in **Nikesh Tarachand Shah (Supra)**, that has been followed by the High Court of Dehli in **D.K. Shivakumar Vs. Directorate of Enforcement**, reported in **2019 SCC Online Del 10691**. Counsel has also placed reliance in the matter of **Directorate of Enforcement Vs. Ratul Puri**, reported in **2020 SCC Online Del 97**, judgment of High Court of Madhya Pradesh in **Dr. Vinod Bhandari Vs. Asstt. Director**, reported in **2018 SCC Online MP 1559**, judgment of High Court of Patna dated **28.05.2020 in Criminal Miscellaneous No. 41413 of 2019** (**MOST. AHILYA DEVI @ AHILYA DEVI Vs. The State of Bihar & others**) and judgment of High Court of Bombay dated **06.06.2018** in **Bail Application No. 286 of 2018** (**Sameer M. Bhujbal Vs. Assistant Director & another**).

9. The applicant is ready to abide by all the conditions imposed upon him, in case he is granted bail and further the applicant has not misused his liberty since registration of case in the year 2013 until he was arrested on 09.11.2020. Hence, it is prayed that this applicant may be enlarged on regular bail.

10. Learned counsel for the respondent opposes the submissions made in that respect. It is submitted that the offence registered against the applicant, is of serious nature, which involves money laundering of the proceeds of crime, which is defined under Section 2(u) of the PML Act. The applicant, while on liberty, has made attempt to influence the investigation. In case of **Radheshyam Kejriwal (Supra)**, the Apex Court has held that the report of Adjudicating Authority is not binding on the proceeding for a criminal prosecution. Apart from that, in the case of prosecution under PML Act, there is a reverse burden of proof on the accused under Section 24 of the PML Act and until that burden is discharged, it shall be presumed that the offence has been committed by the accused.

11. It is further argued that Section 45 of the PML Act, it is still in force. The allegation against this applicant is of very serious nature that the applicant being an IAS officer, misused his position and power and made unlawful gain. Fake bank accounts were opened in the name of villagers and huge deposits were made in those accounts and the same amount was used for making investment in shell company- Prime Ispat Ltd. registered in the name of family members of the applicant.

Hence, the crime alleged to have been committed by the applicant is of huge scale and on the basis of elaborate planning, involving the huge amount of money.

12. It is further submitted that the applicant has not cooperated with the investigation. Although, there is a report of Adjudicating Authority, but the same is not final, which is under challenge before the Appellate Tribunal. Reliance has been place in the matter of **Union of India Vs. Hassan Ali Khan & another**, reported in **(2011) 10 SCC 235**, in which the Supreme Court cancelled the bail granted to the accused of PML Act, judgment of Orissa High Court dated **16.12.2013** in **CRLMC No. 114 of 2011** (**Smt. Janata & another Vs. Assistant Director**), wherein, the High Court refused to exercise the jurisdiction under Section 482 of the Cr.P.C. Judgment of Supreme Court dated **16.12.2015**, in **Criminal Appeal No. 1706 of 2015** (**Gautam Kundu Vs. Manoj Kumar**), in which, bail was refused to the accused of PML Act, judgment of High Court of Sikkim dated **17.09.2015** in **WP (Crl.) No. 01 of 2015** (**Eastern Institute for Integrated Learning in Management University Vs. The Joint Director & others**), in which, the High Court refused to exercise the jurisdiction under Article 226 of the Constitution of India for quashing the proceedings against the accused. Judgment of High Court of Bombay in **Chhagan Chandrakant Bhujbal Vs. Union of India**, reported in **2016 SCC OnLine Bom 9938**, in which, the Bombay High Court refused to exercise jurisdiction under Article 226 of the Constitution of India for quashing the

proceeding against the accused under the provision of the PML Act. Further reliance has been placed on the judgment of Supreme Court in **Directorate of Enforcement New Delhi Vs. Upendra Rai**, in **SLP (Cri) No. 5151/2020**, in which, the Supreme Court has granted stay on the operation of the impugned order passed by the High Court of Delhi granting bail in the case of **Upendra Rai** dated **09.07.2019**, Judgment of High Court of Patna dated **18.06.2020** in **Criminal Miscellaneous No. 73325 of 2019** (**Vidyut Kumar Sarkar @ Ashok Das Vs. The State of Bihar & others**), in which, prayer for grant of bail made by the accused, was denied by the High Court.

13. It is submitted that in case of **State of Gujarat Vs. Mohanlal Jitamalji Porwal & another**, reported in **(1987) 2 SCC 364**, it has been held by the Supreme Court that in case of economic offence, strict approach is recommended. In case of **Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation**, reported in **(2013) 7 SCC 439**, prayer for grant of bail to the accused was refused on the ground of pendency of investigation and the magnitude of the crime committed. In case of **Rohit Tandon Vs. Directorate of Enforcement**, reported in **(2018) 11 SCC 46**, it has been held by the Supreme Court, that White Collar crimes/ Economic offences, having deep-rooted conspiracies and involving huge loss of public funds, should be viewed seriously and considered grave offences, in which, the Supreme Court has denied bail to the applicant. Judgments in **M/s Obulapuram Mining Company Pvt. Ltd. Vs. Joint Director & others** (**Writ

Petition No. 5962 of 2016) and **M/s Bramhani Industries Ltd. Vs. Joint Director & others** (**Writ Petition No. 11442 of 2016**), decided on **13.03.2017**, have also been relied upon. It is submitted that in such cases, the grant of bail is not a rule. There is chance that this applicant may influence the witnesses, hence, it is prayed that the applicant may not be granted bail.

14. Mr. Devershi Thakur, Advocate appeared on behalf of the objector- Kundan Singh Thakur, who has no direct concern with the present case, even then, the submission has been made by learned counsel for the objector, that the objector was petitioner in WP(PIL) No. 53 of 2018, in which, Division Bench of this Court has ordered for registration of FIR with respect to the corruption of public funds. It is submitted that this applicant is one of the persons, who had filed Review Petition No. 43 of 2020 against that order and the same has been dismissed again by the Division Bench of this Court, which has not been challenged. Reference of this decision and the review petition, has been made only to demonstrate that the applicant has criminal antecedent, therefore, he is not entitled for grant of bail.

15. In reply, learned counsel for the applicant submits that firstly, the objector has no *locus standi* to make any objection in the present case, as he is not at all concerned. It is submitted that the Adjudicating Authority has, while considering PAO, in which, the same material was present, which is the basis of the prosecution of the applicant in this case, has exonerated the applicant from charge of money laundering. It is again submitted

that Section 24 of the PML Act, comes into play at the stage of trial. The judgments that have been cited by the respondent side, in which, bail has been denied to the accused persons, are not applicable in the present case. The submission that the applicant has attempted to tamper with the evidence or has influenced the investigation is false, baseless and imaginary, therefore, the applicant has entitlement for grant of bail.

16. I have heard counsel for the parties and perused the records.

17. Crime No. 06/2010 was registered against the applicant by the ACB and on that basis, FIR No. 05/2013 was registered by the respondent. The brief facts of the case is this, that the applicant in the capacity of IAS officer, has made unlawful gain and then, with the help of his brother, who is Chartered Accountant namely Sunil Agrawal, 446 bank accounts were opened in name of villagers of village- Kharora, Motimpur Kala, Chingaria & Mandheipur. Huge amounts were deposited in these bank accounts and the same amounts were used for investment in the shares of M/s Prime Ispat Ltd., Raipur. The property of M/s Prime Ispat Ltd., is property of his brother and family members and on this basis, offence has been registered against this applicant under Section 3 & 4 of the PML Act.

18. Considered on the submissions. On the basis of the report of Adjudicating Authority dated 27.06.2018 in which, it has been held that the properties of M/s Prime Ispat Ltd., which has been attached by the PAO, is not involved in the money laundering. It

is the submission of the respondent side, that this report is under challenge before the Appellate Authority, but for the present, there is no order of the Appellate Authority, setting aside or varying the report of the Adjudicating Authority. Another report of the Adjudicating Authority dated 14.05.2018 has also been submitted for perusal of this Court and as per this report, there is clear finding that the property under seizure by PAO in the name of the applicant, are not involved in money laundering, regarding which, again there is no order of the Appellate Authority present, either confirming the order or setting aside the same.

19. In the case of **Radheshyam Kejriwal (Supra)**, the Supreme Court has held in paragraph 38, is as under:-

> "38. The ratio which can be culled out from these decisions can broadly be stated as follows :
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> (i) Adjudication proceeding and criminal prosecution can be launched simultaneously;
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> (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
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> (iii) Adjudication proceedings and criminal proceeding are independent in nature to each other;
>
> (iv) The finding against the person facing prosecution in the adjudication proceeding is not binding on the proceeding for criminal prosecution;
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> (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20 (2) of the Constitution or Section 300 of the Code of Criminal Procedure;

> (vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceeding is on technical ground and not on merit, prosecution may continue; and
>
> (vii) In case of exoneration, however, on merits where allegation is found to be not sustainable at all and person held innocent, criminal prosecution on the same set of facts and circumstances can not be allowed to continue underlying principle being the higher standard of proof in criminal cases."

20. The ratio laid down in paragraph 38(vii) has been stressed upon by the applicant side. The opinion of the Apex Court has been further expressed in paragraph 39, which is as under:-

> "39. In our opinion, therefore, the yardstick would be to judge as to whether allegation in the adjudication proceeding as well as proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceeding is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceeding, the trial of the person concerned shall be in abuse of the process of the court."

21. It would not be appropriate to comment upon the facts of the present case and the case that was presented before Adjudicating Authority, but the same appear to be connected. As argued by both the sides, the question of applicability of the stringent conditions under Section 45 of the PML Act, has been

decided by the Apex Court in the case of **Nikesh Tarachand Shah (Supra)**. Paragraph 54 of this judgment is relevant, which is reproduced hereunder:-

> "54. Regard being had to the above, we declare Section 45 (1) of the Prevention of Money Laundering Act, 2002, insofar as it imposes two further conditions for release on bail, to be unconstitutional as it violates Articles 14 and 21 of the Constitution of India. All the matters before us in which bail has been denied, because of the presence of the twin conditions contained in Section 45, will now go back to the respective Courts which denied bail. All such orders are set aside, and the cases remanded to the respective Courts to be heard on merits, without application of the twin conditions contained in Section 45 of the 2002 Act. Considering that persons are languishing in jail and that personal liberty is involved, all these matters are to be taken up at the earliest by the respective Courts for fresh decision. The writ petitions and the appeals are disposed of accordingly."

22. Hence, on the basis of the ratio laid down in **Nikesh Tarachand Shah (Supra)**, the consideration for grant of bail in such a case, has to be made in accordance with normal procedure. It has been held by the Supreme Court in **Sanjay Chandra (Supra)**, that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue of grant of bail. However, the gravity of offence as expressed, is required to be kept in view

of the Court is related to the term of the sentence that has been prescribed for commission of such offence.

23. Reliance of the respondent side in **Hassan Ali Khan (Supra)**, was a matter of bail cancellation, in which, the Apex Court has held that the cancellation of bail depends upon the post-bail incidents indicating misuse of bail privileges. Judgment of Apex Court in **Gautam Kundu (Supra)**, was passed prior to the ratio laid down by the Apex Court in **Nikesh Tarachand Shah (Supra)**, rejecting bail under Section 45 of the PML Act, hence, the same cannot be followed in the present case. High Court of Delhi has pleased to grant bail in the case of **Upendra Rai (Supra)**. Although, the same has been stayed by the Supreme Court, but challenge to the bail order, has not yet been decided.

24. Under the present scenario, the applicant has the report of Adjudicating Authority in his favour, which has not been varied or set aside by the Appellate Authority so far. There is no specific report present to show that the applicant has tampered with the investigation or made any manipulation during pendency of investigation/ enquiry since year 2010. There is no reason to hold that the applicant may abscond in case, he is granted bail. The maximum punishment, which can be imposed is upto seven years. The applicant is in judicial custody since 09.11.2020 therefore, this appears to be no further requirement of his detention for custodial interrogation or for any other purpose of investigation. It is submission of the applicant side that the

charge-sheet has been filed, which has not been admitted by the respondent side.

25. After considering on the submissions from both the sides and looking to the facts of the case that are present in the case so far, I am of the view that it would be proper to grant bail to the applicant at this stage, hence, I feel inclined to grant bail to the applicant in this case.

26. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed.

27. It is directed that the applicant shall be released on bail on his furnishing a personal bond in the sum of Rs. 2,00,000/- with two sureties of Rs. 1,00,000/- each, in the like sum to the satisfaction of the concerned Court, for his appearance as and when directed.

Certified copy, as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Arun