

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3418 OF 2021

Anandrao Vithoba Adsul. ... Petitioner.
V/s.
Enforcement Directorate, Government of
India and another. ... Respondents.

Dr.Abhinav Chandrachud i/b. Sachin Thorat for the Petitioner.

Mr.Anil Singh, Additional Solicitor General with Mr.Shreeram
Shirsat, Ms.Smita Thakur, Mr./Amandeep Singh, Mr.Pranav Thakur
and Mr.Aakash Pathare for Respondent No.1.

Ms.M.H.Mhatre, APP for Respondent No.2- State.

CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.

DATE : 14 October 2021.

P.C. :

The Petitioner has approached this Court by filing this writ petition under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure seeking various reliefs. These are-direction to Respondent no.1 to provide copies of the ECIRs; for quashing ECIRs; for quashing the summons issued to the Petitioner; restrain Respondent no.1 from issuing further

Order is corrected by speaking to minutes order dated 21 October 2021.

summons, and for not taking any coercive action pursuant to the ECIRs. The Petitioner has prayed for interim relief that no coercive steps be taken against the Petitioner.

2. The Petitioner has been a member of Lok Sabha from Amaravati Constituency and Union Minister for the State Finance. Respondent No.1 is the Enforcement Directorate authorized under the Prevention of Money Laundering Act, 2002 (PMLA). Respondent No.2 in the State of Maharashtra.

3. The Petitioner filed FIR at N.M.Joshi Marg Police Station, Mumbai (later EOW 14/2014) on 18 June 2020 under sections 409, 420 and 120-B of Indian Penal Code. The FIR was filed in respect of irregularities in the loan disbursement by the City Co-operative Bank. On 9 February 2021, Respondent No.1- Enforcement Directorate issued a summons to the Petitioner concerning ECIR MBZO-I/02/2021. The summons was issued under section 50 of PMLA calling upon the Petitioner to appear in person or through an authorized representative on 9 February 2021. The Petitioner did not attend pursuant to this summons. Another summons was issued by Respondent No.1 on 18 March 2021 under section 50 of PMLA, calling upon the Petitioner to appear in person on 25 March 2021. The Petitioner did not appear before the Enforcement Directorate and sent a communication to the Respondent No.1 stating that the Petitioner cannot attend as the Petitioner has filed a writ petition in this Court against one Navneet

Kaur Rana (Member of Parliament), and the proceedings are going on. On 27 September 2021, the Respondent-Enforcement issued another summons under section 50 of PMLA, calling the Petitioner to appear in person on 27 September 2021. The Petitioner did not attend pursuant to the summons. The Petitioner was admitted to a private hospital at Borivali, Mumbai, on 27 September 2021, complaining of high blood pressure. In this fact situation, the present petition was filed on 29 September 2021.

4. The petition came upon 30 September 2021, and the Petitioner sought time to amend the petition, and it was adjourned to 1 October 2021. Then it came up on board on 1 October 2021. Again the Petitioner sought leave to amend the petition, and the petition was adjourned. Thereafter the petition has come up before us.

5. The Petitioner has originally prayed for quashing the proceeding bearing ECIR/MBZO/-I/02/2021, to set aside the summons dated 27 September 2021 and to restrain Respondent No.1 from issuing further summons and taking any coercive action against Petitioner pursuant to ECIR/MBZO/-I/02/2021. By way of the amendment, the Petitioner has sought direction to Respondent No.1 to provide copies of the ECIR in relation to the Petitioner, i.e. ECIR/MBZO/-I/02/2021 and ECIR/MBZO-I/09/2019 and quash these two ECIRs.

6. We have heard Dr.Chandrachud for the Petitioner, Mr.Singh, learned Additional Solicitor General for Respondent No.1 and the learned APP for the State.

7. The learned counsel for the Petitioner made three main submissions in furtherance of his prayers. The Petitioner contended that there is no predicate offence against the Petitioner, and as per the mandate under the PMLA, if there is no predicate offence registered against the Petitioner, the proceedings under the Act cannot proceed further as against the Petitioner. Secondly, the Petitioner ought to be given a copy of the ECIRs, without which the Petitioner is unable to take recourse to remedy under the law for the vindication of his rights. Thirdly, that the summons issued and the ECIRs are vitiated by malafides and malice, and where malafides and malice on the part of the authorities are demonstrated, this Court in the exercise of its writ and inherent jurisdiction should pass orders protecting the liberty of the citizens.

8. As regards the first contention of the Petitioner that there is no predicate offence, it is not necessary to dwell at length on this aspect as the learned counsel for the Petitioner, after initially arguing on this point, subsequently, has accepted the position of law that it is not necessary for proceedings need to be taken further under the PMLA that the person needs to be named in the FIR lodged for the predicate offence. Suffice it to say that this contention of the Petitioner was based on the fact that the predicate

offence sought to be relied upon by Respondent No.1 in the FIR No.204/2020 filed by the Petitioner himself at N.M.Joshi Marg Police Station, and in this FIR, there is no allegation against the Petitioner. This FIR was transferred to Economic Offences Wing and numbered as EOW-CR-14/2020.

9. The offence for money laundering is defined under section 3 of PMLA. Explanation (i) to section 3 by the amending Act of 2019 has expanded the scope of offence of money laundering under section 3. Section 2(1)(y) defines Scheduled Offences. It is not disputed before us that CR-14/2020 is in respect of a scheduled offence. Regarding the contention that the Petitioner was not named in the FIR having been filed by himself, the learned Additional Solicitor General relied upon the decision of the learned Single Judge in the case of *Babulal Verma v. Enforcement Directorate*¹ and the decision of the Division Bench in the case of *Radha Mohan Lakhota v. Deputy Director, PMLA, Directorate of Enforcement*². As stated earlier, the learned counsel for the Petitioner has not disputed the proposition that even if a person is not named in the FIR in respect of scheduled offence, the proceedings under the PMLA can commence against such a person. The only contention of the Petitioner is that since the Petitioner himself has filed the FIR, if it is to be used against the Petitioner on the premise that it is a predicate offence, then there must be material that the Respondent No. 1 must demonstrate. The aspect of

1 2011 SCC Online Bom 392

2 2020 SCC OnLine Bom 1116

material will be addressed subsequently. Therefore, as regards the first contention based on the Petitioner not being named in the FIR, we do not need to adjudicate the same finally in view of the stand of the Petitioner.

10. The second issue that was contended before us is that the Petitioner ought to be supplied with a copy of the ECIRs. According to the Petitioner, the ECIR is the foundation of proceedings initiated under the PMLA and without the ECIRs are being supplied to the Petitioner, the Petitioner cannot effectively take recourse to legal remedies. It is also the contention of the Petitioner that the summons also does not give any details as to why the Petitioner is being called. As a sequitur to this prayer of supplying the copy of the ECIRs, Petitioner prays that the ECIR be quashed. According to the Petitioner, this issue is settled by the decision of the Apex Court in the case of *Ashok Munilal Jain v. Assistant Director, Directorate of Enforcement*³ which is followed by the Delhi High Court in the case of *Rajbhushan Omprakash Dixit v. Union of India*⁴. It is also contended that the Delhi High Court, in the decision of *Rajbhushan Omprakash*, has observed that the decision of this Court in the case of *Chhagan Chandrakant Bhujbal v. Union of India*⁵ is not good law. The Petitioner contends that the Supreme Court, in the case of *Ashok Jain*, has laid down a proposition that the provisions of the Code of Criminal Procedure as long as they are not inconsistent with

3 (2018) 16 SCC 158

4 (2018) SCC Online Delhi 7281

5 2016 SCC Online Bom 9938

the provisions of the PMLA will stand incorporated. This submission is further elaborated to contend that there is nothing in the PMLA that states that the copy of the ECIR is a secret document, and the same is akin to the FIR under the Code of Criminal Procedure which is a public document and must be shared. The learned ASG has relied upon the decision of the Division Bench of this Court in the case of *Charu Kishor Mehta v. State of Maharashtra*⁶ and the decision of the learned Single Judge of Madras High Court in the case of *Smt.Sudamani Dorai v/s. Joint Director of Enforcement*⁷. The learned ASG also contends that the applicability of the Code of Criminal Procedure and whether the ECIR can be equated to FIR is one of the issues in the group of matters fixed before the Supreme Court for hearing.

11. In the case of *Ashok Jain*, the Enforcement Directorate had registered an ECIR based on a criminal case registered by the Central Bureau of Investigation. The Appellant therein had applied for bail under Section 439 of the Code of Criminal Procedure and, during the pendency of the appeal, filed another application praying for grant of statutory bail invoking provisions of Section 167(2) of Code of Criminal Procedure. These applications were rejected wherein the trial Court and the High Court held that Section 167(2) of the Code of Criminal Procedure does not apply to PMLA. Therefore, the question before the Supreme Court was in respect of applicability of Section 167(2) of the Code of Criminal Procedure. It

⁶ Cri WP No.2961/2015 dtd 29 July 2015

⁷ WP Nos.8383 and 8384 of 2013 decided on 4 October 2018

is in the context of this limited issue that the Apex Court rendered its decision. We do not find from this decision that there is any comment as regards the nature of the ECIR, whether it needs to be supplied, whether it is the public document, whether it can be equated to the FIR under the Code of Criminal Procedure. The learned ASG has pointed out to us that this issue is now pending before the Apex Court. As far as the issue that is before us as to whether ECIR can be considered as the FIR and not an internal document, this issue has been addressed and directly decided by the Division Bench of this Court in the case of *Charu Kishor Mehta*. In the case of *Charu Kishor Mehta*, a prayer was made to direct the Enforcement Directorate to supply the copy of the ECIR, and the Petitioner therein had moved at the stage of issuance of summons under Section 50 of PMLA. The Division Bench categorically observed that ECIR is an internal document of the Enforcement Directorate, and unlike FIR, it is not a public document. We, therefore, follow the decision of this Court in the case of *Charu Kishor Mehta*, wherein it is already held by the Division Bench that the ECIR cannot be considered as it is the FIR and a public document. Therefore, the contention of the Petitioner that the Respondents be directed to supply the copy of the ECIR in question to the Petitioner as being akin to an FIR cannot be accepted, and it is rejected. According to our respectful interpretation of the decision of the Apex Court in the case of *Ashok Jain*, the submission of the Petitioner that decision in the case of *Charu Kishor Mehta* is impliedly overruled cannot be accepted. Following the decision in

the case of Charu Kishor Mehta, we reject the prayer of the petitioner to direct Respondent no.1 to furnish the copy of the ECIR.

12. Now, we come to the next prayer of the Petitioner that is to quash the ECIRs. This prayer of quashing the ECIR and the summons issued to the Petitioner is based on two premises. First, that there is no predicate offence against the Petitioner, and therefore there is a statutory bar we have already dealt with. The second is on the ground of malafides and malice of the authorities on the part of Respondent No.1.

13. The Petitioner contends that the ECIRs filed against the Petitioner is out of political rivalry, malafide and are an abuse of power. According to the Petitioner, the Petitioner's political rival in the Amravati Reserved Constituency was one Navneet Kaur Rana. The Petitioner was defeated in this election, and Navneet Kaur Rana was elected. The Petitioner had filed a Writ Petition No. 3370 of 2018 challenging the Caste Validity Certificate given to Navneet Kaur Rana. According to the Petitioner, when the arguments commenced in Writ Petition No.3370 of 2018 on 4 January 2021, the husband of Navneet Kaur Rana, Mr. Ravi Rana, informed the press reporters that the Petitioner was going to file a complaint against the Petitioner and approached the Enforcement Directorate. According to the Petitioner, the summons issued on 9 February 2021 was pressure put on the Petitioner and as a counterblast to the Writ Petition filed by the Petitioner against Navneet Kaur Rana.

According to the Petitioner, the issuance of summons coincided with the dates of the hearing of Writ Petition No.3370 of 2018. On 16 March 2021, when the Petition came up for hearing on 18 March 2021, a summons was issued. On 8 June 2021, the Writ Petition No.3370 of 2018 was allowed by this Court, setting aside the caste certificate of Navneet Kaur Rana. On 22 June 2021, an interim order was passed by the Supreme Court in the Special Leave Petitions filed by Navneet Kaur Rana. When the SLPs were adjourned to 22 September 2021, raids were conducted by Respondent No.1 at the home of the Petitioner, his daughter and his sons. When the SLPs was adjourned to 29 September 2021, the summons was issued on 27 September 2021. According to the Petitioner, these facts, apart from the non-supply of ECIRs, will cumulatively show that there is an abuse of power by Respondent No.1 and the proceedings against the Petitioner are political vendettas. The Petitioner relies on the decision of the Supreme Court in the case of *Arnab Manoranjan Goswami v. State of Maharashtra*⁸ to contend that in such a situation, it will be the duty of this Court to interfere and stop the abuse of process of law.

14. The learned ASG submitted that the Respondent No.1—Enforcement Directorate under mandate under the provisions of PMLA to carry on an investigation when the authority on the basis of material in his possession has reason to believe that offence under Section 3 of the Act is committed and at this preliminary stage

⁸ (2021) 2 SCC 427

therefore if the authorities are proceeding in furtherance of their statutory duty and power merely by connecting few dates malafides cannot be alleged. The learned ASG has relied upon the decision of the Supreme Court in the case of *Sheonandan Paswan v. State of Bihar*⁹ to contend that such argument is only a diversion and cannot take away the focus from the core issue regarding the reason why the investigation is necessary. The learned ASG has also relied upon the decision of the Supreme Court in the case of *M/s.Neeharika Infrastructure Pvt.Ltd. v. State of Maharashtra*¹⁰ on the scope of interference of the High Court in an investigation.

15. The order passed in the Writ Petition filed by the Petitioner against Navneet Kaur Rana is placed before us. We note therein that apart from Petitioner, one more petitioner had filed a petition for the same relief of challenging the caste certificate and consequently the election of Navneet Kaur Rana. Thus the Petitioner was not the only person who had challenged the caste certificate of Navneet Kaur Rana. Secondly, the position is settled and even accepted by the learned Counsel for the Petitioner that any person can set the criminal law in motion. Thirdly, the argument of the Petitioner that the proceedings were counterblast to the Writ Petition filed by the Petitioner against Navneet Kaur Rana by her husband Ravi Rana overlooks the need to establish that the Respondent No.1 - Enforcement Directorate was acting under the dictate of Ravi Rana and that the officers of Enforcement Directorate were acting out of

⁹ (1987) 1 SCC 288

¹⁰ AIR 2021 SC 1918

malice at the behest of Ravi Rana. These would be allegations against the officer of the Enforcement Directorate acting malafides. No officer of the Enforcement Directorate who has allegedly acted under the dictate of Ravi Rana by name has been joined or even named in the Petition. Merely by hinting that the husband of Navneet Kaur Rana belongs to the ruling dispensation, the requirement of establishing malafides as a legal ground is not satisfied. The Court cannot go by general perception and assumptions. The burden is heavy on those who allege malafides to prove them. In the case of *Sheonandan Paswan*, the Supreme Court was considering the factual position where the prosecution against the Respondent therein was initiated by his successor government after the Respondent went out of power. The Supreme Court observed that such facts by themselves cannot support the inference that initiation of prosecution is actuated by the political vendetta or malafides because it might be possible there might be the material justifying the initiation of prosecution. Therefore, the Petitioner cannot create a case of malafides by simply suggesting that the Petitioner had filed proceedings against a member of the ruling dispensation and the contention that the action by the Enforcement Directorate is vitiated by malafides is too far fetched to accept in the facts of this case because there is no material placed before us except hints, to accept it as a legal ground of challenge.

16. Once we conclude that malafides are not proved, then there is no ground on which we can interfere and stall the

proceedings under the PMLA. Though it is true that the Supreme Court, in the case of *Arnab Goswami*, has observed that this Court has powers in a given case to powers to pass orders protecting the citizens from abuse of process of law.,the question of whether there was an abuse of process of law will ultimately depend on the facts of each case. Further, the decision in the case of *Arnab Goswami* has been explained and expounded further by the bench of three learned Judges of the Supreme Court in the case of *M/s.Neeharika Infrastructure Pvt.Ltd.* The Supreme Court, after taking a review of the earlier law on the subject right from the decision of privy council in *Emperor Vs. Khwaja Nazir Ahmed*¹¹, has held that there is a statutory right on the part of police to investigate the circumstances of an alleged cognizable crime should not be ordinarily interfered by the exercise of the inherent jurisdiction of this Court. This decision is being further followed by the Supreme Court in the case of *State of Bihar v/s. JAC Saldhana*¹². The Supreme Court has observed that investigation into the crime is the prerogative of the police, and excepting rare cases, the judiciary should not enter in the arena of the investigation. The Supreme Court in *M/s.Neeharika Infrastructure Pvt.Ltd.*, after reviewing the law, concluded that the Courts would not stall any investigation into the cognizable offence in which the police have a statutory right and duty to investigate save and except cases where non-inference would result in a miscarriage of justice. The judicial process should not be used, except in rare cases, to quash prosecution at the inception. Considering this law on the

¹¹ AIR 1945 PC 18

¹² (1980) 1 SCC 554

subject and considering the facts of the case which we have narrated above, we do not find that this case can be considered as an exceptional case to hold that the initiation of proceedings under PMLA and the ECIRs filed against the Petitioner are either abuse of powers or are malafide. We have not been shown how in any manner, the proceedings by the Respondent No.1 can be considered as beyond jurisdiction or outside the ambit of the PMLA.

17. This brings us to the prayer of the Petitioner that the Petitioner should be protected as the Petitioner is likely to face arrest in the hands of the Enforcement Directorate, and it is only because the Petitioner is currently in the hospital that the Enforcement Directorate has not taken the Petitioner in custody and the Petitioner cannot stay further in the hospital and therefore, this Court in the exercise of its extraordinary jurisdiction can grant the protection even though it may be akin to grant of anticipatory bail. The learned ASG strongly opposes and submits that if so advised, the Petitioner can avail of statutory remedies, and no exercise of extraordinary jurisdiction of this Court is warranted. The learned ASG submitted that the conduct of the Petitioner should also be considered when the Petitioner did not appear pursuant to the summons and when the officers of the Respondent No. 1 - Enforcement Directorate went to the residence of the Petitioner, he had no medical complications and by calling an ambulance admitted himself to the hospital, and it is out of deference that the Respondent No.1 has not taken any further action.

18. The prayer by the Petitioner that Respondent No.1 be restrained from taking the Petitioner in custody is nothing but prayer for a grant of anticipatory bail. The contention of the Petitioner that without having copies of the ECIRs, the Petitioner cannot approach the competent court with a prayer for anticipatory bail under section 438 of Cr.P.C. is misplaced. The Petitioner apprehends his arrest, and section 438 of Cr.P.C. provides a statutory remedy for such a contingency. In the case of *Neeharika Infrastructure Pvt.Ltd.*, the Apex Court has observed that when the entire material is not before the High Court, the High Court should restrain itself from passing any interim order not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under section 438 of Cr.P.C. to the competent court. At this stage, we refer to the argument mentioned earlier that Respondent No.1 demonstrated what material is against the Petitioner since the Petitioner is the one who has filed the FIR regarding predicate offence. The learned ASG has shown the file containing the statements recorded in furtherance of ECIRs. Considering that the Petitioner has a statutory remedy under section 438 of Cr.P.C. and any observation by us on the merits of the matter against the Petitioner will prejudice the Petitioner in case the Petitioner approaches the competent court for anticipatory bail; we refrain from elaborating the same in this order. However, since this point was argued before us, all we state is that it cannot be said that there is no material against the Petitioner. Furthermore, having concluded after

examining the facts that exercise of jurisdiction under section 226 of the Constitution of India and 482 of Cr. P.C is not warranted. There is no question of granting any such relief as sought for by the Petitioner as it would be contrary to the observations made by the Supreme Court in paragraph 23(xvi) of the decision in the case of *M/s.Neeharika Infrastructure Pvt.Ltd.*

19. To conclude, therefore, having considered the grounds urged by the Petitioner in the invocation of Article 226 of the Constitution and Section 482 of Cr.P.C., we find that the Petitioner has failed to make out a case for interference. As regards the protection from arrest is concerned, the Petitioner has a remedy under the Cr.P.C. In these circumstances, the Writ Petition is rejected.

20. Needless to state that if the Petitioner approaches the competent court under section 438 of Cr.P.C., the court will decide the matter on its own merits and in accordance with the law.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)