IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.98 OF 2022

Humayun Suleman Merchant .. Applicant

Versus

Directorate of Enforcement & Anr. .. Respondents

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Mr.Vikram Chaudhari, Senior Advocate with Mr.Sajal Yadav, Mr.Anukul Seth, Mr.Harsh Ghangurde, Mr.Raj Raut and Ms.Hargun Sandhu i/b Mr.Shalabh K. Saxena for the Applicant.

Mr.Anil Singh, Additional Solicitor General with Mr.Aditya Thakkar, Mr.Shreeram Shirsat, Mr.Amandeep Singh Sra, Mr.Shekhar Mane, Ms.Nishi Singhvi, Mr.Virat Agarwal and Ms.Darshita Rai for the Respondent No.1/Directorate of Enforcement.

Ms.Rutuja Ambekar, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.

RESERVED ON : 17th OCTOBER, 2022
PRONOUNCED ON : 18th NOVEMBER, 2022

ORDER :-

1. By the present application, the applicant is seeking bail in PMLA Special Case No.7 of 2019 arising out of ECIR/MBZO-I/08/2019, on being charged for the offence punishable under Section 3 read with Section 4 of the Prevention of Money Laundering Act, 2002 (for short, **"the PMLA Act"**).

2. Heard learned senior counsel Mr.Vikram Chaudhari appearing for the applicant and the learned ASG, Mr.Anil Singh alongwith learned counsel Mr.Shreeram Shirsat for the Directorate of Enforcement. Learned counsel for the applicant would submit that the applicant came to be arrested on 22/10/2019 and since then continues to languish in the judicial custody. It is submitted that he is a septuagenarian and incarcerated for almost three years as on date and he also suffers from various ailments on account of his advanced age, which deserve him his release. Learned counsel would submit that one Iqbal Mirchi was accused of committing the schedule offences under Sections 302, 307, 120-B of IPC, Section 25 of the Arms Act and Sections 21 & 29 of the NDPS Act from 1992 to 1994 and against him, various FIRs were registered. It is submitted that the trial of the schedule offences is still pending. The arguments advanced is, in this case the ECIR is not provided with the complaint filed by the prosecution as well as it's supplementary complaint and this is a clear deviation from the procedure. It is submitted that after filing of ECIR on 26/09/2019, FIR No.322 of 2019 came to be registered at Kilpauk Police Station, Chennai on 18/10/2019, which is included in schedule offences and the accusation is,

some of the KYC documents of the son of the applicant were forged for opening certain bank account in IDBI Bank and for routing 6.60 crores from such account in 2010.

According to the learned senior counsel, the Directorate of Enforcement accused that Iqbal Mirchi generated proceeds from the schedule offences and purchased three properties. It is also alleged that out of 170 crores, the applicant received 45.50 crores in India and 5 crores received from Sunblink and transferred to the son of Iqbal Mirchi.

The learned senior counsel would submit that after perusal of the complaints/charge-sheets alongwith its voluminous annexures, no *prima facie* case, as postulated under Sections 3 and 4 of the PMLA Act has been made out against him. He would also submit that the alleged schedule offences have occurred a decade before, wherein the investigation in these offences have been almost completed and, therefore, there is no likelihood of any tampering of its case. It is also sought to be submitted that the role of the applicant surfaced for the first time in the year 2005, whereas the complaint alleged that the transaction of purchase of three properties was completed in 1989 and the schedule offences, which are alleged to have been committed by late Iqbal Mirchi, took place somewhere between 1992 to 1994 and there is no nexus between the schedule offences and proceeds of crime.

3. Based on this sketchy material, the applicant who is charged as accused No.10, according to the learned senior counsel, is accused of receiving money on behalf of Iqbal Mirchi and facilitating its payments to him through non banking channels. The allegation which he faces can be crystallized to a limited purpose of working for Iqbal Mirchi and finalizing the deal on his behalf with 'Joy Home Creations' and 'Sunblink Real Estate' and of intentionally and knowingly assisting him in laundering the proceeds procured through proceeds of crime. Another argument submitted is, the main accused Nos.1 to 3 are declared as economic fugitive offenders and some of the persons, who are named as accused were never arrested, whereas accused No.11-Ranjit Singh Bindra, accused No.12-Rinku Deshpande and accused No.13-Jayant Soni are also released on bail.

4. Per contra, learned Additional Solicitor General Mr.Anil Singh, representing the Directorate of Enforcement, would vehemently oppose the application and submit that on an earlier occasion i.e. on 16/09/2020, the application of the applicant was rejected by considering the merits of the matter

and against this order, the applicant had approached the Hon'ble Supreme Court, but has withdrawn the application. The argument advanced is, the present application is in form of a review application/petition and, therefore it cannot be entertained. It is also argued that there is no change in circumstance except that the applicant's age is on rise, but that by itself cannot be a sufficient ground to release him. It is also submitted that now the supplementary charge-sheet is also filed and there is every possibility of the applicant fleeing from the course of justice and, hence, the application deserve to be rejected in the peculiar facts though much reliance is placed upon a factor of his long incarceration.

5. With the able assistance of the respective counsel, I have perused the complaints/charge-sheets filed on record. I have also gone through the earlier order passed by me on 16/09/2020, where the applicant sought his release on bail with the argument being advanced that the arrest of the applicant is not in conformity with Section 19 of the PMLA Act, as he was arrested on mere suspicion and there is no sufficient cause for his arrest. Another argument was the advanced age of the applicant, being 70 years and he being vulnerable on account of the Covid pandemic.

At the relevant time, the decision of ***Nikesh Tarachand Shah Vs. Union of India***[1] was the focal point and one of the submissions advanced was, the rigours of grant of bail in the second provision under Section 45(2) of the PMLA Act has been set aside as unconstitutional by the Hon'ble Supreme Court.

The argument advanced at that time was also vehemently opposed by learned counsel Ms.Kantharia representing the Directorate of Enforcement and she focused herself on the role attributed to the applicant in the entire act of money laundering and the applicant was accused of acting as an agent of the main accused, having knowledge that the money being rolled out is the tainted money. She accused Iqbal Memon @ Iqbal Mirchi of being involved in various illegal activities and generating enormous amount of proceeds of crime from the illegal activities, which was used by him to purchase the immovable properties in his name and in the name of his family members and his close associates, which properties were subsequently taken as gift in favour of his son and wife, completing the money laundering cycle. It was specifically argued that the proceeds of crime were layered and

1 2018 (11) SCC 1

laundered by way of investment in several properties in the country as well as abroad, in cities like Dubai, London, Turkey etc., pointing out that the crime has now crossed the boundaries of the country. The applicant was accused of playing a key role in the entire transaction and from the material, it was pointed out that he is responsible for dealing with the properties of crime of the main accused by operating on the forefront and acting as pseudo for Iqbal Mirchi and after he absconded, he finalised the dealings on his behalf.

6. With the material placed before me, I had specifically recorded as under :-

> "18 The complaint placed on record trace the same to various scheduled offences which forms the predicate offences registered against Iqbal Mirchi. The offences registered under the relevant provisions of the IPC and under the NDPS Act,would fall within the schedule offences in Part-A of Schedule of PMLA. It is in the backdrop of these predicate offence, case of Money Laundering has been registered for investigation by the Directorate on 26th September 2019. The investigation lead to various criminal activities in form of schedule offences wherein huge amounts were amassed through smuggling of drugs and arms, extortion and by bodily offences punishable under the Indian Penal Code. The amount of proceeds so generated from the illegal acts have been laundered and layered and integrated in many properties and in particular, the three properties in the city of Mumbai. The manner in which the tainted money came to be layered and integrated into the real estate and business venture has been traced by the DRI while investigating the PMLA case.
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> The submission of the learned senior counsel that the applicant was not an accused in the predicate offence, is of no consequence. Money Laundering takes place when a person directly or indirectly attempts to indulge or knowingly

assist or knowingly participates and gets involved in any process or activity connected with the proceeds of crime, which include its concealment, possession, acquisition or use or projecting it as untainted property. From the material contained in the complaint, the applicant is said to have the knowledge from the very beginning when a transaction was entered into for replacing the tenants in a property which was purchased by Iqbal Mirchi from the proceeds of the crime. From then, till the final agreement was entered into with Sunblink Real Estate Pvt.Ltd, the applicant has been an active participant in the entire process which was carried out with the connivance with Iqbal Mirchi and the witnesses have stated that the applicant has been to London for attending various meetings with Iqbal Mirchi. He has assisted the main accused with investment of the tainted property into the real estate. It is not necessary to reflect exactly from which schedule offence the property was purchased, as is the submission of the learned senior counsel for the applicant. It is suffice for the time being to establish a link in the purchase of property with the preceding criminal involvement of the main accused in the activity which would fall within the purview of scheduled offences. The property transaction was not complete in the year 1989 as is sought to be canvassed by the learned senior counsel since it is his submission that the said property was purchased from Sir Mohd. Yusuf Trust managed by Accused no.8 for an amount of Rs.6.6 lakhs and the transaction was complete on 28th November 1989. The complaint contain sufficient material collated by the Directorate of Enforcement that the purchase of property of the Trust was used as a sham and when Iqbal Mirchi was declared as an absconder and when his property was sought to be attached conniving with the Trust, the release orders were obtained by showing that the Trust did not receive the entire consideration and the property was not physically handed over to Iqbal Mirchi. On the contrary, subsequent thereto, the tenants were planted by the applicant and Iqbal Mirchi and the tenancy rights of the original tenants sacrificed by settling with them by paying the amount by the main accused. Ghost tenants were planted and as a consideration for their settlement, huge amounts have been received by the applicant. The applicant has received consideration for the role played by him in the entire transaction."

7. Recording that, *prima facie,* material exists to point out the involvement of the applicant in the serious economic

offence, even the factor of his age was held not to be a mitigating one. The specific observation in the said order is specifically relied upon by learned ASG Mr.Singh, which read to the following effect :-

> "There are serious allegations levelled against the applicant and which are prima facie supported by sufficient material available with the DRI. The pre-requisite for arrest as contemplated in Section 19 of the PMLA Act, 2022 is fully satisfied. There is sufficient material with the arresting authority and reasons to believe that the applicant is guilty of offence of Money Laundering."

8. Once again an attempt was made by the applicant to secure his release by filling criminal Bail Application No.1613 of 2021, which was withdrawn on 13/07/2021, as the counsel appearing for the applicant sought permission to withdraw the application by reserving the liberty to approach the Sessions Court.

The Sessions Court, once again considered the application of the applicant, being 7th in number, and the Court arrived at the same conclusion, on once again perusing the material placed before it and the following observations of the concerned Court are of great significance :-

> "18. I am constrained to note that, all the maximum grounds which were already heard and rejected by the Court are being agitated again and again. The Hon'ble Supreme Court has noted such conduct of accused and demonstrated

the role of the Court while dealing with such application in the case of **Virupakshappa Gouda and Ors., Vs. The State of Karnataka and Ors., (2017) 5 SCC 406,** and held as, "The Trial Judge had not been guided by the established parameters for grant of bail. He had not kept himself alive to the fact that twice the bail applications had been rejected and the matter had travelled to this Court. Once this Court has declined to enlarge the Appellants on bail, endeavours to project same factual score should not have been allowed. It is absolute impropriety and that impropriety call for axing of the order." In this background I have already noted how maximum grounds in this application were already rejected by my Ld. Predecessor and the Hon'ble High Court, yet being canvassed again and again. Therefore, point No.1 is answered in the negative and following order is passed :-

ORDER

Bail Application (Exh.83) stands rejected."

9. The observations made by me in the earlier order as well as by the learned Sessions Judge, in my considered opinion, still hold good despite the decision of the Hon'ble Apex Court in the case of ***Vijay Madanlal Choudhary & Ors. Vs. Union of India & Ors. (Special Leave Petition (Crl.) No.4634 of 2014)***[2], where a Three Judges' Bench, headed by Hon'ble Shri Justice A. M.Khanwilkar, once again interpreted the twin conditions enumerated in Section 45(1) not to be violative of Articles 14 and 21 of the Constitution of India.

10. I have gone through the said judgment delivered on 27/07/2022, where the provision in form of twin conditions was exhaustively deliberated in light of the earlier decision of

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the Apex Court in case of ***Nikesh Shah*** (supra) and a disagreement was expressed with the observations contained therein and conclusively Section 436A was directed to be construed as a statutory bail provision by holding that, the grant of bail in respect of general offences have to be considered on the basis of objective discernible judicial parameters as delineated by this Court from time to time, on case-to-case basis and conclusively held as under :-

> "412. As a result, we have no hesitation in observing that in whatever form the relief is couched including the nature of proceedings, be it under Section 438 of the 1973 Code or for that matter, by invoking the jurisdiction of the Constitutional Court, the underlying principles and rigors of Section 45 of the 2002 must come into play and without exception ought to be reckoned to uphold the objectives of the 2002 Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money- laundering."

11. In the light of the pronouncement in case of ***Vijay Choudhary*** (supra), I do not think that the earlier order, refusing bail to the applicant on the basis of the material in the complaint, loses its sanctity.

There being no change in circumstance, I am not convinced to take a different view, which I have recorded in my first order. Successive bail applications, except when change in circumstances justify it's consideration, are to be deprecated. The applicant has also filed an application, seeking discharge but it is informed that no relief is granted in his favour. As far as the status of the special case is concerned, it is at the stage of framing of charge and by requesting the learned Additonal Sessions Judge, seized of the PMLA Special Case, to make every endeavour to conclude the trial expeditiously, I am not persuaded to entertain the application once again, when on earlier occasion it was rejected by considering the merits in the complaint and by referring to the role assigned to the applicant and once again on perusal of the same material, I am not persuaded to arrive at the different conclusion.

Hence, the application is rejected.

(SMT. BHARATI DANGRE, J.)