IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.330 OF 2022

Madan Gopal Chaturvedi ...Applicant
Vs.
Directorate of Enforcement,
Mumbai & Anr. ... Respondents

Mr.Aabad Ponda, Senior Advocate a/w Mr.Mayank Jain, Mr.Sebin Michal Joseph, Mr.Prathamesh Seth, Ms.Arundhati Saste and Mr.Mayur Mohite i/b SMJ Legal for the Applicant.
Mr.H.S. Venegaonkar, for the Respondent No.1.
Mr.Y. Y. Dabke, APP for the Respondent-State.

CORAM : C.V. BHADANG, J.
RESERVED ON : 18 FEBRUARY 2022
PRONOUNCED ON : 27 APRIL 2022

(Through Video Conference)

P.C.

. This is an application for bail. The applicant (Accused no 11) has been chargesheeted for the offence punishable under section 45 read with Section 3 and 4 of the Prevention of Money Laundering Act 2002 in PMLA Special Case No. 404/2021 arising out of ECIR/MBZO- I/39/2020. The applicant is a chartered Accountant by profession. The applicant was arrested on 23.01.2021 and since then is in custody barring his release on temporary bail from 06.12.2021 to 01.02.2022.

2. The aforesaid case is registered on the basis of a complaint dated 19.3.2021 by the first respondent Directorate of Enforcement Mumbai (ED for short) which in turn is based on an FIR dated 23.09.2020 under Section 409,420 120-B of IPC and Section 13(1) (d) and 13(2) of the Prevention of Corruption Act 1988. The said FIR was lodged by the Central Bureau of Investigation (CBI) Mumbai against officials of Yes Bank and M/s Housing Development and Infrastructure Limited (HDIL). The offence in the FIR is pertaining to alleged conspiracy between the officials of Yes Bank and the officials of M/s HDIL and the misuse of loan by M/s HDIL loans given by Yes Bank between 2011 to 2016 and thereby defrauding the investors.

3. The gravamen of the allegations in the complaint are that two office units bearing Nos. 502A and 502B forming part of the building known as Kaledonia at Andheri (East) Mumbai were transferred by registered sale agreements dated 29.06.2017 in favour of M/s Viva Holdings (Accused No. 10) which is a partnership firm of Mr. Mehul Thakur (Accused No. 9) for a consideration of Rs 34.36 Crores for which post dated cheques were issued which were never presented for encashment by the Vendors Mack Star Marketing Pvt Ltd. (Mack Star for short).

4. In short according to the prosecution the applicant was engaged in the preparation and the auditing of the Books of Accounts of Viva Group of Companies, including M/s Viva Holdings Ltd. He was aware of the fraudulent transaction of transfer of the two units of Mack Star in Kaledonia Building to M/s Viva Holdings without

payment of consideration. It is also alleged that the applicant has destroyed evidence by sale of the laptop in order to hide crucial information from the investigating agency in order to screen himself from punishment.

5. It may be mentioned that the said two units were provisionally attached by the ED vide order dated 08.02.2021 which was confirmed by the adjudicating Authority by order dated 10.09.2021 which is subject matter of challenge before the Delhi High Court. The High Court has stayed the attachment by order dated 25.10.2021.

6. In this case after investigation, a complaint is filed before the Special Court which is registered as PMLA Special Cae No. 404 of 2021.

7. The Bail Application No. 110/2021 filed by the applicant was rejected by the learned Special Court on 10.03.2021. The application for seeking release on default bail under section 167(2) of Cr.P.C. was rejected by the learned Special Court on 8.04.2021. Both these applications were filed during the pendency of the investigation and filing of the complaint. The applicant again approached the learned Special Court for bail, after filing of the complaint, claiming that the investigation *qua* the applicant is complete. That application is rejected on 23.10.2021. It is in in these circumstances that the applicant has approached this court for bail. As noticed earlier the applicant was on temporary bail from 6.12.2021 to 1.02.2022, on the ground of the health condition/treatment of his wife.

8. I have heard Mr. Ponda, the learned Senior Counsel for the applicant and Mr. Venegaonkar the learned Special Prosecutor for the respondent. With the assistance of the parties, I have gone through the record.

9. It is submitted by the learned Senior counsel for the applicant that the applicant who is a Chartered Accountant by profession was appointed as the professional/non executive Director of Viva Home Finance Ltd in 2014 and Viva Finance and Investment Pvt Ltd in 2016 in order to meet the statutory requirements of National Housing Board (NHB) and the Reserve Bank of India (RBI). It is submitted that the aforementioned companies have small business operations and are not the part of the complaint filed by the ED. It is submitted that the applicant is not involved in the day-to-day management of the companies. He is neither the employee nor the Auditor for M/s Viva Holdings (Accused No. 10). He has no concern with Mehul Thakur (Accused No. 9) or Mack Star or with the transaction of the alleged purchase of the two units by M/s Viva Holdings from Mack Star without payment of consideration.

10. Although no parity is sought it is submitted that the Accused nos 12, 13 and 14 have been released on bail by the learned Special Court.

11. The applicant had reported to the ED during the investigation and his statement is recorded and nothing incriminating was found or recovered from his residence or office.

12. The investigation qua the applicant is complete and the complaint is filed. Thus, further incarceration of the applicant pending trial is not necessary or justified.

13. The applicant has no criminal antecedents and has deep roots in the society. There is no possibility of the applicant fleeing from justice or otherwise misusing the liberty. The applicant is ready and willing to abide by any condition that may be imposed by this court. The evidence in the case is of documentary nature which has already been seized/ obtained.

14. That the FIR does not name the applicant much less attributing siphoning of any funds or diversion of the alleged proceeds of crime by the applicant. The trail of money and the flow chart in the complaint does not show that any such proceeds of crime have been diverted to the applicant.

15. It is submitted that the applicant was arrested on the ground that he has not shown the two units in the balance sheet of M/s Viva Holdings. In the second remand application the stand was changed to claim that the applicant was hand in glove with the co accused. It is submitted that the applicant has been arrayed as an accused and has been arrested on vague grounds.

16. It is submitted that the investigating agency has not acted in a fair manner, inasmuch as some of the co-accused allegedly having greater role, have not even been arrested.

17. This application was heard and closed for orders. Subsequent to this, the learned Special Court has granted bail to the accused Sarang Wadhawan (accused No.2) by order dated 07.04.2022 placing reliance on the guidelines issued by the Supreme Court on 07.10.2021 and 16.12.2021, in *Satender Kumar Antil v/s. Central Bureau of Investigation and Anr.* (Misc. Application No. 5191 of 2021). It is pointed out that the accused Sarang Wadhawan was not even arrested during the investigation. The learned Senior counsel has placed reliance on certain decisions, in order to submit that such discriminatory attitude by the Investigating Agency has also been held to be a good ground for grant of bail.

18. The learned Spl. P.P. has submitted that there is a specific role played by the Applicant in the mater of concealment of the nature of transaction by which the two units in the Kaledonia building were shown to be transferred by Wadhawan, to M/s. Viva Holdings, which is beneficially owned by Mr. Mehul Thakur and others. The learned Spl PP submitted that the consideration for the said transfer was shown to be Rs.34.36 crores and the Applicant was aware that the consideration never passed as the cheques were not encashed by Mack Star. It is submitted that the Applicant was engaged in preparing and auditing the books of accounts of other Viva group companies also. It is submitted that the Applicant did not show the said assets or the proceeds thereof, in the balance sheet. In the submission of learned Sp. P.P. the applicant used to do the statutory audit work of the group companies. However the respective balance sheets along with schedule and audit reports, were got signed

from Ramchandra Rathi, a Statutory Auditor. It is submitted that the requirement of the twin conditions as prescribed by Sub-Section 1 of Section 45 of the Act have been held to be restored by a Division Bench of this Court sitting at Nagpur in Ajaykumar Chandraprakash Baheti v/s Directorate of Enforcement decided on 28.01.2022 in Criminal Application No. 1149 of 2021.

19. I have carefully considered the rival circumstances and submissions made. According to the prosecution, it was revealed during the course of investigation that Rakesh Wadhawan and Sarang Wadhawan ('Wadhwans' for short) have illegally and fraudulently transferred several properties of Mack Star in Kaledonia Building to different buyers. The gist of the allegation is that these units are sold by Wadhawans without any money being received by Mack Star or only meager part, being received by Mack Star. Insofar as the present applicant is concerned, it is claimed in para 6.10 of the complaint that the applicant was an associate of Mehul Thakur. The applicant in his capacity as a Chartered Accountant for Viva group of companies has actively assisted Mr. Mehul Thakur in transferring the properties of Mack Star to Viva Holding. In short, it is alleged that the applicant was aware of both the sale agreements dated 29.06.2017 with regard to the sale of the office units bearing No. 502-A and 502-B in Kaledonia Building to Viva Holdings, wherein Mack Star as a Developer had issued receipts of the payment, which were part of the said agreements. In effect, the allegation against the applicant, is that he "knowingly ignored", the fact regarding non-encashment of the cheques, mentioned in those sale agreements. Secondly, it is contended that the applicant gave his wrong residential

address and thirdly he intentionally deleted all the data from his phone, including whatsapp chat, call logs, messages, etc. in his efforts to hide the crucial information from the investigation which could have been otherwise relevant for investigation in the matter of money laundering against the co-accused. Fourthly, the allegation is that he claimed to have sold his laptop as a scrap for a sum of Rs.300/- without taking any backup, which according to the prosecution is highly suspicious and dubious. Insofar as the charges under the PMLA in para 14.11 of the complaint is concerned, again the allegation is that he knowing ignored the fact regarding non-encashment of the cheques by Mack Star. It is necessary to note that there are no allegations in para 14.11 about the applicant having illegally prepared the balance sheet. The learned Senior Counsel for the applicant submitted that the balance sheet for Viva holding for the year ended of 31.03.2018 (page 170 of compilation) in which in schedule E investment in office is indeed shown as Rs.39,03,20,330/-. It may be mentioned that primary allegations are about the alleged conspiracy between the officials of Yes Bank and the officials of HDIL of misuse of loans given by Yes bank during the period from 2011 to 2016. The role of the applicant, if any, is subsequent to the two agreements dated 29.06.2017. At the cost of repetition, it is necessary to emphasise that the only role is that the applicant “knowingly ignored” the non-encashment of the cheques by Mack Star. The other two allegations are about furnishing of an incorrect address and the deletion of the data from the mobile phone and the sale of laptop in order to destroy evidence.

20. In this case, the Investigating Agency did not arrest Sarang Wadhaawan and as a result thereof, Sarang Wadhawan could secure bail from the Special Court by order dated 07.04.2022. The investigation qua the applicant is complete. The necessary seizure of the documents have been made. The two units have been attached. Thus, I do not find any justification to detain the applicant behind bar pending trial which may take some time for its conclusion. The later aspect has also been acknowledged by learned Special Judge in the order dated 07.04.2022. I find that the twin conditions in Section 45(1) are satisfied in this case. In the circumstances of the case, I do not find it necessary to make detailed reference to the cases cited, at the risk of prolixity.

21. In the result, the following order is passed:

ORDER

(i) The Application is allowed. The Applicant be released on bail on execution of a PR Bond in the sum of ₹ 1,00,000/- with one or two solvent sureties in the like amount to the satisfaction of the Special Court.

(ii) The Applicant shall undertake to remain present before the Special Court during the course of the trial, unless exempted.

(iii) The Applicant shall surrender his passport, if not already done before the Special Court.

(iv) The Applicant shall cooperate with the Investigating Agency in the further investigation, if any.

(v) The Applicant shall not directly or indirectly make any attempt to contact or to influence the prosecution witnesses or to otherwise tamper with the prosecution evidence/witnesses.

(vi) In the event of breach of any of the conditions, the bail is liable to be cancelled.

(vii) Bail bonds to be furnished before the learned Special Court.

C.V. BHADANG, J.