IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2820 OF 2021

Mohammed Hussain Hanif Shaikh .... Applicant
Versus
1. Directorate of Enforcement, &
2. The State of Maharashtra .... Respondents

Dr. Sujay Kantawala, Advocate a/w. S.K. Dubey, Princekumar Dubey, Sujit Sahoo & Aditya Talpade, for the Applicant.

Mr. Hiten S. Venegaokar, Counsel for Respondent No.1-ED.

Ms. Sharmila S. Kaushik, APP for Respondent No.2-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 4th FEBRUARY, 2022
[Through Video Conferencing]

P.C. :

1. The applicant is seeking anticipatory bail in connection with the investigation concerning the PMLA Special Case No.6/2018.

2. Heard Dr. Sujay Kantawala, learned counsel for the applicant and Shri Hiten Venegaokar, learned Counsel for Respondent No.1.

3. A case under the Prevention of Money-Laundering Act, 2002 (for short, 'PML Act') was instituted by filing a complaint on 22.6.2018, which was registered as PMLA Special Case No.6/2018 before the Designated Court under the PML Act, Greater Mumbai. It was a result of investigation carried out by the Enforcement Directorate (for short, 'ED') in respect of ECIR/MBZO/03/2017. The complaint was filed against six accused. Accused No.1 Mohammed Farooqe Mohammed Hanif Shaikh @ Farooqe Shaikh and accused No.2 Mohammed Gous Mohammed Hanif Shaikh are the applicant's brothers. There are other accused, namely, accused No.3 Murarilal Jhunjhunwala and accused No.4 Anup Jhunjhunwala. Accused Nos.5 and 6 are two private companies.

4. The prosecution case, as far as the present applicant is concerned, is more effectively reflected in the affidavit-in-reply filed on behalf of respondent No.1. Therefore, the allegations in the prosecution case in that behalf will be referred to at the appropriate place of this order.

5. Learned counsel Shri Kantawala appearing for the applicant made following submissions :

i. The complaint is filed by respondent No.1 on 22.6.2018. There is no reference to either the applicant's name or his role. The main allegations are directed against his brothers i.e. accused Nos.1 & 2. The order issuing process against those accused was passed on 26.6.2018. In that order, the allegations are restricted to accused Nos.1 & 2. The role of accused Nos.3 & 4 is also mentioned. Even in that order, there was no reference to the applicant's name or role.

ii. Accused Nos.3 & 4 are granted bail by the Special Judge for PMLA vide order dated 14.1.2019. The observations made in that order were that : the accused Nos.3 & 4 were not arrested pending the investigation under Section 19 of the PML Act. They had appeared before the said Court in pursuance of the summons issued. There was no material to show that the accused Nos.3 & 4 had made any attempt to flee from justice. The bail was for securing the presence of accused Nos.3 & 4 for the trial. In view of the fact that accused Nos.3 & 4 were not arrested pending the investigation, they had made out the case for bail.

Shri Kantawala submitted that even the present applicant has cooperated with the investigation and has not attempted to flee away from justice. Therefore, on the same considerations the applicant also deserves to be released on anticipatory bail.

iii. Accused No.1 Mohammed Farooqe Mohammed Hanif Shaikh @ Farooqe Shaikh is the applicant's brother, who was allowed to look after his wife under police escorts. This order was passed by the Division Bench of this Court in Writ Petition No.2829/2019 on 6.6.2019, which was continued upto 2.7.2019 by the said Division Bench vide order dated 25.6.2019. Thereafter, this relief was continued by the Hon'ble Supreme Court vide order dated 3.7.2019.

Shri Kantawala submitted that said arrangement is continuing till today and, therefore, the applicant, who is not even named in the complaint filed by respondent No.1, need not be arrested.

iv. Shri Kantawala submitted that when the applicant had preferred application for anticipatory bail before the Special

Court on 7.5.2019, the learned SPP appearing on behalf of the ED had made a statement, on instructions of the Officer of the ED, that the ED would not arrest the applicant till filing of the reply.

He submitted that the same statement and protection continued till decision of the anticipatory bail application before that court, till it was rejected on 30.10.2021. Thereafter, this Court (Coram: Nitin W. Sambre, J.) had extended same protection on 25.11.2021 till the next date; and thus the said protection is continuing till today.

v. The applicant has cooperated with the investigation. His statement is also recorded by respondent No.1. Therefore, his custodial interrogation is not necessary.

vi. Shri Kantawala submitted that the allegations against the applicant are that Rs.3,18,00,000/- were given by accused No.2 Mohammed Gous Mohammed Hanif Shaikh (i.e. his brother), who was named in the complaint. Said amount was used in purchasing a flat by the applicant in the applicant's wife's name.

vii. The applicant is suffering from medical ailments. His only one kidney is functioning. He has to look after his aged mother and a child.

viii. Shri Kantawala further submitted that the issue of limitation for granting bail under Section 45 of the PML Act is pending before the Hon'ble Supreme Court.

Shri Kantawala relied on the order of the Hon'ble Supreme Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and another**[1]

6. Shri Venegaokar opposed this application. He made following submissions :

i. As far as reliance on **Satender Kumar Antil**'s case (supra) is concerned, Shri Venegaokar submitted that those guidelines are issued by the Hon'ble Supreme Court for deciding the bail applications post issuance of process where the investigating agency has not chosen to arrest the accused during investigation. He submitted that this is not such a

1 Passed on 16.12.2021 in Miscellaneous Application No.1849/2021 in SLP (Crl.) No.5191/2021 (Hon'ble Supreme Court)

case in the present case as the investigating agency does want to arrest the applicant during the course of investigation before filing of the complaint against him and consequently before issuance of process against the applicant. Therefore, the reliance on the **Satender Kumar Antil**'s case (supra) is misplaced.

ii. Shri Venegaokar also submitted that consideration of parameters of Section 45 of the PML Act would come in the picture once the applicant is arrested. The present case is for anticipatory bail.

iii. Though, the complaint is not filed against the present applicant; as mentioned in the complaint, the investigation is still continuing and the material against the applicant was collected during that part of the investigation. The material collected is very serious and, therefore, his custodial interrogation is necessary.

iv. He submitted that though the CBI or any other agency has not arrested the applicant in the present offence, the ED has independent powers to arrest him.

v. As far as merits of the matter are concerned, Shri Venegaokar relied on the affidavit-in-reply wherein the allegations against the applicant and the material collected are crystallized.

7. I have considered these submissions. The case of respondent No.1 is mentioned in paragraph No.4 of the affidavit-in-reply. It is mentioned that large amount was remitted from the accounts of thirteen companies, namely, (i) M/s Apolla Enterprises, (ii) M/s. Stelkon Infratel Pvt. Ltd. (SIPL), (iii) M/s Kundan Trading, (iv) M/s. Disney International, (v) M/s. Anek Trading Pvt. Ltd., (vi) M/s. Lubeez Enterprises, (vii) M/s Lemon Trading Company, (viii) M/s Pawan Enterprises, (ix) M/s Padilite Traders, (x) M/s Fine Touch Impex, (xi) M/s Azure Enterprises, (xii) M/s Seabird Enterprises, and (xiii) M/s Iconic Enterprises. The total remittance was to the tune of Rs.2252,82,03,940/-. The specific case against the present applicant is that he is involved in opening and operation of the bank account of M/s Fine Touch Impex, M/s Azure Enterprises, M/s Seabird Enterprises and M/s Iconic Enterprises; and an amount of Rs.727.37 Crores were remitted

overseas from those accounts. All these are fictitious entities.

8. The prosecution case is that all these companies are fictitious companies and only their names were used in opening bank accounts and for producing false bills showing import from various foreign entities. By submitting those false and forged documents this huge amount was remitted to the foreign entities.

9. The affidavit further mentions as to how the money was transferred to the accounts of these fictitious companies. All the aforementioned companies concerning the present applicant were maintaining their accounts with Punjab National Bank, Mandvi Branch. They have received huge RTGS transfers from Shri Renuka Mata Multi-State Cooperative Urban Credit Society Ltd., Ahmednagar (for short, 'said Credit Society'). The three persons, namely, Farooque Akbar Ali Mistry, Imran Abdul Rehman Khan and Mohammed Gaus Abdul Hamid Qureshi had transferred huge amounts from their accounts maintained with the said Credit Society.

10. The statement of Vikas Chavan, who was Branch

Manager of the said Credit Society shows that in the account of Farooqe Akbar Ali Mistry, cash was deposited by one Altamesh and Sameer. Once it was deposited, RTGS transactions were made to the bank accounts on the same day; and in case of delay, one person named "Shekhawat" used to come to the branch office and used to threaten the officers of making complaints to higher officials. According to the investigation, this "Shekhawat" is none other than the present applicant.

11. The statement of Mohammed Gaus Abdul Hamid Qureshi shows that he was knowing the present applicant since the childhood. The applicant offered him a job in the year 2014. This witness used to accompany others for collecting cash from Angadia and further depositing it in the said Credit Society. He has specifically stated that collection and deposit was made as per the instructions of the present applicant and the account was also opened in the said Credit Society as per the instructions of the present applicant.

12. The statement of another witness Ashfaq Qureshi mentions that he was working with the present applicant. He was

given one mobile phone and that phone number was used for opening account in the said Credit Society. He has stated that the applicant used to ask him to arrange for four to five persons having PAN card and Aadhaar card for his business purpose. He has also stated that the cash was collected and was deposited in the said Credit Society at the instance of the present applicant.

13. Similar is the statement of witness Ashfaq Qureshi. He was also given cell-phone by the applicant which was used in opening account for Azure Enterprise and Fine Touch Impex. He has specifically stated that the cash was brought to the applicant's office at Crawford Market. The applicant was doing all the paper work and was taking the account holders to the bank for opening accounts. The account holders were chosen by the applicant. The applicant had instructed this witness to introduce the applicant as "Sameer" to the account holders.

14. There are statements of persons who were associated with those entities. The names of those entities were used for the purpose of opening accounts. Those entities existed only on paper. Those persons, namely, Neeraj Singh, Kiran Kholombe, and D.H.

Nikam have identified the applicant in the test identification parade and they identified him by the names "Sahil", "Abdul" and "Shekhawat".

15. Thus, on merits, the prosecution case is very clear and very serious against the present applicant. He was collecting huge cash from various sources. He was depositing it in said Credit Society. After that, on the very day that amount was transferred through RTGS to the bank accounts in the names of those entities which existed only on papers; and thereafter by producing forged documents, huge foreign remittances were made.

16. The *modus operandi* is showing deep involvement of the applicant. The amount involved is huge. Therefore, obviously, his custodial interrogation is necessary to find out the further details. This cannot be done without his custodial interrogation. The source of this huge cash and its ultimate foreign connection needs to be found out.

17. The order passed in favour of the other co-accused will not come to the aid of the applicant.

18. As far as the legal aspects are concerned, the submissions of Shri Venegaokar in respect of **Satender Kumar Antil**'s case (supra) are correct and, therefore, it would be of no help to the learned counsel for the applicant.

19. The issue of limitations for grant of bail mentioned under Section 45 of the PML Act is pending before the Hon'ble Supreme Court. However, today I am considering the necessity of the applicant's arrest and his custodial interrogation.

20. In this view of the matter, based on the above discussion, no case for grant of anticipatory bail is made out. Hence, the application is rejected.

21. At this stage, learned counsel for the applicant prays for continuation of the interim relief. However, considering the seriousness and enormity of the offence, it is not possible to extend the interim relief. Therefore, even that prayer is rejected.

(SARANG V. KOTWAL, J.)

Deshmane (PS)