IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-2115-2022 (O&M)
Date of Decision:- 21.2.2022

Vinod Kumar Garg ....Petitioner

Versus

Assistant Director, Directorate of Enforcement ....Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Jagmohan Bansal, Senior Advocate with
Mr. Mukul Singla, Advocate for the petitioner.

Mr. Lokesh Garg, Senior Panel Counsel for UOI, for the respondent.

(proceedings conducted through video conferencing)

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GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of regular bail in a complaint i.e. COMA/15/2017 dated 22.12.2017 (Annexure P-3) instituted by Enforcement Directorate against the petitioner and others for offence under Section 3 punishable under Section 4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to, in short, as *"PMLA 2002"*).

2. The allegations, in nutshell, are to the effect that M/s Jaldhara Exports, Ludhiana had shown export of ready-made garments to the tune of ₹33.36 crores to Bangladesh during the financial year 2012-13 and on the said basis had claimed a VAT refund of approximately ₹1.56 crores from Government but upon inquiry by custom authorities, it was found that all the bills

produced by the firm regarding export of garments etc. were forged and fabricated. In other words, the VAT refund of approximately ₹1.56 crores had been claimed solely on the basis of forged and fabricated documents and the said firm had never exported any garments worth ₹33.36 crores, as claimed to have been exported. On the basis of the aforesaid allegations, one FIR i.e. FIR No. 126 dated 26.7.2013 was instituted at Police Station Division No. 5, Civil Lines, Ludhiana for offences under Sections 177, 420, 465, 467, 468 and 471 IPC against Raman Kumar Garg, Proprietor of M/s Jaldhara Exports, Ludhiana and upon conclusion of investigation, a challan was filed against the said accused.

3. The accused, after receiving VAT refund of ₹ 1,56,76,160/- in the account of M/s Jaldhara Exports, Ludhiana, transferred the same through RTGS in the following accounts :-

(i) A/C No. 10722466000004, DCB Bank of Sangeeta Garg.

(ii) A/C No. 10722466000006, DCB Bank of Umesh Kumar Garg.

(iii) A/C No. 10722466000005, DCB Bank of Seema Garg.

(iv) A/C No. 10722466000007, DCB Bank of Saiyarh Garg.

4. An amount of Rs.70,000/- is stated to have been withdrawn by accused by way of a cheque on 26.3.2013 itself from the account of M/s Jaldhara Exports. Based on the said facts, "Enforcement Case Information Report" (ECIR) bearing No. ECIR/JLZO/06/2013 was registered on 14.8.2013 under provisions of PMLA 2002, by Jalandhar Zonal Office of Directorate of Enforcement. The matter was investigated by the Enforcement Directorate and a complaint was filed against accused namely Raman Kumar Garg S/o

Vinod Kumar Garg, M/s Jaldhara Exports, Vinod Kumar Garg and Umesh Kumar Garg @ Arjun in the year 2017. Subsequently, in March 2021, a supplementary complaint came to be filed against the co-accused Seema Garg, as well.

5. For the sake of convenience, the relevant facts may be stated chronologically as follows :-

26.7.2013	FIR registered against Raman Kumar Garg, Vinod Kumar Garg and Umesh Kumar Garg @ Arjun in respect of the allegations pertaining to a false claim made by Raman Kumar Garg, Proprietor of M/s Jaldhara Exports, Ludhiana of VAT refund to the tune of approximately ₹1.56 crores which had been received by his firm and upon receipt of the same had been transferred to bank accounts of other accused, who were all related to him.
14.8.2013	The Enforcement Directorate registered ECIR against the aforesaid three accused as well as against three ladies namely Smt. Saiyrah Garg @ Deepika Jain, Smt. Seema Garg and Smt. Sangeeta Garg on the allegations of laundering of the proceeds of crime i.e. ₹1.56 crore approximately, which Raman Kumar Garg had transferred from the account of the firm to the accounts of Smt. Sangeeta Garg, Umesh Kumar Garg @ Arjun, Smt. Seema Garg, Smt. Saiyrah @ Deepika Garg and Vinod Kumar Garg.
16.7.2015	Petitioner-Vinod Kumar Garg was arrested in the matter arising out of FIR. Bail granted to Vinod Kumar Garg in FIR case vide order dated 18.8.2015.
23.10.2017	Raman Kumar Garg was arrested in complaint under Sections 3 and 4 of PMLA 2002 on 23.10.2017. He was ordered to be released on bail by this Court vide order dated 7.5.2018.

23.11.2017	During the course of investigation by the Enforcement Directorate, statement of Seema Garg was recorded.
22.12.2017	Upon conclusion of investigation by the Enforcement Directorate pursuant to registration of ECIR, a complaint was instituted against Raman Kumar Garg, Vinod Kumar Garg and Umesh Kumar Garg @ Arjun under provisions of Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (Annexure P-3).
March 2021	A supplementary complaint filed against Seema Garg and two other ladies namely Sangeeta Garg and Saiyrah Garg.

6. The learned counsel for the petitioner has submitted that in the present case, the petitioner - Vinod Kumar Garg had been arrested on 16.7.2015 in respect of the FIR in question i.e. FIR No. 126 dated 26.7.2013 under Sections 177, 420, 465, 467, 468, 471 IPC registered at Police Station Division No. 5, Civil Lines, Ludhiana and was ordered to be released on bail on 18.8.2015 and that since the sentence as can be imposed in respect of offence under Section 467 IPC can extend to life imprisonment, therefore, the petitioner in the present case, who has already undergone 4 months of custody and where the maximum sentence cannot exceed 7 years deserves the concession of bail. It has further been submitted that the petitioner, in any case, is not the main accused who had committed the alleged fraud and since the said main accused namely Raman Kumar Garg is already on regular bail, the petitioner deserves the same concession on grounds of parity.

7. The learned counsel has further referred to several instances where persons accused in some other cases have been released on bail after they had been

in custody for a period of barely 2-4 months. The following instances have been referred :-

Sr. No.	Case details	Particulars	Period of custody
1	CRM-M-35662-2021	Shiv Lal Pabbi Vs. Directorate of Enforcement	2.5 months
2	CRM-M-51885-2021	Sukhpal Singh Khaira Vs. Assistant Director, Directorate of Enforcement	3 months
3	CRM-M-14509-2017	Parminder Kumar Vs. Assistant Director, Directorate of Enforcement	4 months

8. On the other hand, the learned State counsel while opposing the petition has submitted that since offences under PMLA 2002 are serious offences and weaken the economy of nation, no leniency can be shown to the petitioner particularly in view of his conduct. The learned counsel has submitted that the petitioner had evaded his service for about 4 years and was ultimately declared a proclaimed offender and that there is every likelihood that the petitioner, if granted bail, will flee from justice. It has been submitted that since co-accused Umesh Kumar Garg had attempted to go abroad without seeking permission of Court, therefore there is likelihood that petitioner may also flee from country. The learned State counsel has further submitted that since an amount of ₹70,000/- was withdrawn by petitioner on 26.3.2013 from the account of M/s Jaldhara Exports on the very day it had been deposited in account of M/s Jaldhara Exports, his complicity is clearly evident. The learned State counsel has submitted that keeping in view the stringent provisions of Section 45 of PMLA 2002, no case for grant of bail is made out.

9. I have considered rival submissions addressed before this Court.

10. It is not in dispute that an amount of ₹70,000/- out of the amount of about ₹1.56 crores alleged to have been received as VAT refund on the basis of forged and fabricated documents by the firm of the petitioner's son i.e. M/s Jaldhara Exports on 26.3.2013, had been withdrawn by the petitioner on 26.3.2013 by way of a cheque issued in his name. However, the said amount of ₹70,000/- is too small a fraction of the amount of ₹1.56 crore, which is alleged to have been received as VAT refund by the petitioner's son Raman Kumar Garg on the basis of forged and fabricated documents. The cheque for withdrawal of amount of ₹70,000/- was issued by none else but by petitioner's real son. A son can well be expected to financially support his aged parents. It will certainly be debatable as to whether the petitioner was aware of the fact that the amount so withdrawn by him was ill-gotten wealth of his son and was "proceeds" of crime committed by his son. The rigors of Section 45 of PMLA 2002 may not come into play for the above-mentioned reasons i.e. the *mens rea* being debatable. The fact that co-accused Umesh Kumar Garg had attempted to go abroad at some stage after having been granted bail cannot be interpreted to mean that all members of his family would resort to similar conduct. As such, at this stage it cannot be said that the petitioner who is aged 63 years is likely to flee from justice or that if granted bail, he will commit any such offence again. It is no doubt correct that the petitioner had been declared a proclaimed offender but having regard to his age and also the amount stated to have been withdrawn by petitioner is rather a meager amount and his *mens rea is* debatable, further

detention of the petitioner, who has been behind bars since last 4 months in these times of spread of pandemic COVID-19, would not be justified.

11. The petition, as such, is accepted and the petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

12. It is, however, clarified that none of the observations made above shall be taken to be an expression on merits of the main case.

21.2.2022 **(Gurvinder Singh Gill)**
kamal **Judge**

Whether speaking /reasoned Yes / No
Whether Reportable Yes / No