IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-3468-2022 (O&M)
Date of Decision:- 21.2.2022

Seema 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. Satya Pal Jain, Addl. Solicitor General of India with
Mr. Arvind Moudgil Senior Counsel, Govt. of India and
Ms. Jyotika Panesar, Advocate and Devinder Pal, Advocate
for respondent – E.D.

(proceedings conducted through video conferencing)

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GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of anticipatory bail in a complaint i.e. COMA/15/2017 dated 22.12.2017 (Annexure P-3) instituted by Enforcement Directorate, wherein a supplementary compaint (Annexure P-6) has been filed 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. 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 petitioner - 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	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 petitioner – 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 the petitioner Seema Garg and two other ladies namely Sangeeta Garg and Saiyrah Garg.

6. The learned counsel for the petitioner, while pressing upon his case for grant of anticipatory bail to the petitioner, has made the following submissions :-

(i) that the petitioner has duly associated with the investigation proceedings conducted pursuant to registration of ECIR wherein the name of the petitioner was also mentioned but was never made an accused at the time of instituting complaint against Raman Kumar Garg, Vinod Kumar Garg and Umesh Kumar Garg @ Arjun and that since no further evidence has come up before the Investigating agency, there was no occasion to file a supplementary complaint, which otherwise also is not maintainable under any provision of Cr.P.C.;

(ii) that filing of a supplementary complaint in terms of Section 44 of PMLA 2002 in the present case is infact a misuse of provisions of law inasmuch as the factum of deposit of an amount of ₹ 30 lacs in the firm of the petitioner cannot be said to be a revelation of new fact whereas Explanation (ii) to Section 44 (1) of PMLA 2002 clearly indicates that it is only upon some further evidence coming into notice of the Investigating Agency that a supplementary complaint may be filed. The learned counsel has drawn the attention of this Court to the said explanation which reads as follows :-

Explanation (ii) to Section 44(1)

"(ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not." *(emphasis supplied)*

(iii) that vires of Section 44 of PMLA 2002, in any case, is under challenge before Hon'ble the Supreme Court;

(iv) that although the property of the petitioner had initially been provisionally attached vide order dated 13.12.2017 passed by the Deputy Director and the said attachment had also been confirmed by the Adjudicating Authority vide order dated 28.5.2018 but the said orders were set aside by this Court vide order dated 6.3.2020 in an appeal by a Division Bench reported as *(2020) 2 RCR (Cri) 701 - Seema Garg Versus Deputy Director, Directorate of Enforcement* (Annexure P-4) and which would clearly show that even this High Court had not found favour with the case of the complainant as regards the allegations against the petitioner. That the aforesaid order dated 6.3.2020 (Annexure P-4) was also upheld by the Hon'ble Supreme Court inasmuch as the SLP filed by the Deputy Director, Director of Enforcement was dismissed vide order dated 30.4.2021 (Annexure P-5);

(v) that no complaint whatsoever had been filed against the petitioner till the date when the attachment was set aside by this Court on 6.3.2020 but shortly thereafter i.e. in March, 2021, the Enforcement Directorate filed a supplementary complaint so as to keep the pressure mounted on the petitioner and her family, despite setting aside of attachment proceedings;

(vi) that the amount in question had been transferred into the account of the firm of the petitioner by none else but her own son and that it is quite natural and normal for a son to monetarily help his aged parents and mere transfer of amount cannot lead to an inference that the petitioner was also conniving with co-accused in the alleged scam;

(vii) that since co-accused Umesh Kumar Garg @ Arjun is already on anticipatory bail and Raman Kumar Garg, who is the main accused, has been granted regular bail, the petitioner also deserves the same relief on grounds of parity;

(viii) that fetters imposed in the matter of grant of bail by Section 45(1) of PMLA 2002, are applicable only to trial Court and not to High Court and in any case would be attracted to a petition for grant of regular bail and not to a petition for grant of anticipatory bail; and

(ix) that since the petitioner is an aged lady, being aged 61 years, and that Section 45 of PMLA 2002, in any case, does carve out an exception in case of a woman for grant of bail and that neither the petitioner can be said to be the main accused nor there is any evidence to even infer that she had conspired or connived with the main accused, she deserves the concession of anticipatory bail particularly when she had already associated herself with the investigation.

7. On the other hand, the learned State counsel, in reply to aforesaid contentions, has made the following submissions opposing grant of anticipatory bail to petitioner:-

(i) that since an amount of ₹ 30 lacs had been transferred out of the proceeds of crime by the main accused Raman Kumar Garg to the account of the petitioner and which was quickly dealt with and transferred on the very day the same were credited into the account of the petitioner by way of issuance of three self-cheques and one cheque in the name of Umesh Kumar Garg (₹ 5,45,000/-), the complicity of the petitioner is clearly evident;

(ii) that petitioner - Seema Garg cannot feign ignorance that the amount deposited in the account of her firm is proceeds of crime as she was actively associated with the affairs of the firm of her son inasmuch as her property had been used as a collateral to raise the loan limits;

(iii) that as per the scheme of the Act, particularly Section 24 of PMLA 2002, the burden of proof of innocence lies on the petitioner and the same has not been discharged and since her involvement is clearly evident, she does not deserve concession of anticipatory bail;

(iv) that explanation (ii) of Section 44 (1) of PMLA 2002 makes it amply clear that a supplementary complaint can be filed against a person whether or not such person is named in the original complaint;

(v) that Section 45 of PMLA 2002 imposes a bar against grant of bail unless the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence in question and that such accused is not likely to commit such offence again;

(vi) that the conduct of the petitioner in evading service of summons for one long year before the same could be served upon her shows that there is a tendency on her part to flee from justice; and

(vii) that initially the petitioner was not arrayed as an accused in the complaint filed against three other co-accused inasmuch as after recording of her statement on 23.11.2017, there was very little time with the investigating agency to verify the veracity of her statement inasmuch as the complaint against other co-accused was required to be filed urgently to avoid grant of default bail to said co-accused in terms of Section 167(2) Cr.P.C. as statutory period of 90 days for filing challan (complaint under Section 44 of PMLA 2002) was expiring shortly and infact compaint against co-accused was filed on 22.12.2018.

8. The learned State counsel has concluded that keeping in view the gravity of the offences and also the conduct of the petitioner and as well as of the co-accused, who are all related to the petitioner, no case for grant of anticipatory bail is made out. A prayer has, thus, been made for dismissal of the petition.

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

10. It is not in dispute that an amount of ₹ 30 lacs out of the amount of about ₹1.56 crores, alleged to have been received by the firm of the petitioner's son i.e. M/s Jaldhara Exports, as VAT refund on the basis of forged and fabricated documents, had been credited in the account of the petitioner's firm on 2013 and that on the same very day an amount of ₹29,97,000/- was withdrawn by way of three self-cheques and one cheque in favour of Umesh Kumar Garg. It is also not in dispute that the petitioner had associated herself with the investigation and her statement was recorded on 23.11.2017 and it was, thereafter, that the complaint came to be filed against three other accused namely Raman Kumar Garg, Vinod Kumar Garg and Umesh Kumar Garg @ Arjun on 22.12.2017 and that the petitioner was not arrayed as an accused in the said complaint though it was duly in the knowledge of the complainant that an amount of ₹ 30 lacs had been credited in her account out of the alleged proceeds of crime.

11. However, this Court does find that Section 44 of PMLA 2002 duly provides for filing of a supplementary complaint against any other person in case it comes across some evidence against such person. No doubt, it was in the knowledge of the complainant that an amount of ₹30 lacs had been credited into the account of the firm of the complainant but the complaint filed

initially against the co-accused i.e. complaint dated 22.12.2017 (Annexure P-3) clearly shows there was specific recital therein to the fact that investigation of the case is still continuing and is in progress and that if the role of other co-accused is ascertained, who may have participated directly or indirectly in laundering of proceeds of crime, a separate supplementary complaint will be filed before the Court. Since it was only about a month prior to filing of the complaint (Annexure P-3) against other co-accused as the same had to be filed to avoid the expiry of period of 90 days from arrest of co-accused and consequently, the time afforded to the investigating agency to verify all the assertions against the petitioner was short, the omission to array the petitioner as an accused in complaint dated 22.12.2017 cannot be said to be any illegality. Though, the vires of Section 44 of PMLA 2002 may have been challanged in the Hon'ble Supreme Court but till date the said Section has not been struck off and as such, it was well within the rights of the complainant to avail of the provisions of Section 44 of PMLA 2002 to file a supplementary complaint against any other person, who may have been associated with the proceeds of crime. The contention made to this effect by counsel for the petitioner, this, is found to be sans merits and cannot be accepted.

12. The contention of the petitioner that the attachment of property of the petitioner has been set aside by this Court vide order dated 6.3.2020 (Annexure P-4) and that the same would help the petitioner or reflect on her innocence cannot be accepted inasmuch as attachment proceedings initiated under Section 5 of PMLA 2002 are in the nature of civil consequences which follow upon commission of a criminal offence and are independent

proceedings. A Division Bench of Kerala High Court reported as *2018(2) RCR (Criminal) 49 (Division Bench) Kavitha G. Pillai, W/o. Late Sivadasan Nair Vs. the Joint Director, Director of Enforcement, Government of India & Ors.*, while elaborating on nature of proceedings under Section 5 of PMLA 2002, held as follows:

> *" 60. .... The question here is whether the attachment and the forfeiture under Sections 5 and 8 are civil or criminal proceedings. As we shall see, they are civil: the Adjudicatory Authority's conclusions do not prove the guilt of an accused, nor are they a step-in-aid to the accused's conviction. The conviction depends on the prosecution's proving the predicate offence-attachment or no attachment."*

13. Given the nature of proceedings, which are independent civil consequences, setting aside of such proceedings would not *ipso-facto* affect continuation of criminal proceedings. In the present case, the order dated 6.3.2020 (Annexure P-4) vide which the attachment had been set aside does not express anything as regards the veracity of the allegations against the petitioner. Rather it has been held therein that the property attached had been purchased much prior to the alleged commission of offence and that the impugned order is bad as no reasons had been recorded therein to the effect that the property in question was likely to be concealed or transferred or dealt with in any manner. Thus, setting aside of attachment proceedings can not operate as any kind of bar for initiating or continuation of criminal proceedings against the petitioner.

14. The fact that summons for securing presence of petitioner could not be served upon petitioner for about one year cannot be said to work against the petitioner inasmuch as there is nothing to show that it was an intentional

evasion of summons. In any case, even the Investigating agency has taken its sweet time to proceed against the petitioner even after her statement had been recorded in the year 2017.

15. Coming to the contention as regards Section 45 of PMLA 2002, the learned counsel for the State has vehemently argued that provisions of Section 45 of the PMLA 2002 do apply to a petition for grant of anticipatory bail and as such the petitioner does not deserve the concession of bail inasmuch as there is sufficient evidence to show her involvement in the matter and that since co-accused Umesh Kumar Garg had attempted to flee from country, there is likelihood that the petitioner may also resort to such tactics, particularly when she had successfully evaded service of summons for one year. The learned counsel in order to hammer forth his aforesaid submission places reliance upon a recent judgement dated 4.01.2022 rendered by Hon'ble Supreme Court in *Criminal Appeal No.21 of 2022 The Assistant Director Enforcement Directorate vs. Dr. V.C. Mohan*.

16. In order to consider the aforesaid submission, Section 45 of PMLA 2002, needs to be borne in mind which reads as follows :-

> **45. Offences to be cognizable and non-bailable.—**
>
> (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence under this Act shall be released on bail or on his own bond unless—
>
> (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
>
> (ii) where the Public Prosecutor opposes the application, the ***Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail***:

Provided that a person who is under the age of sixteen years or ***is a woman*** or is sick or infirm or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees, ***may be released on bail, if the special court so directs***:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—

(i) the Director; or

(ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.

(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.

(2) The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

Explanation – For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorized under this Act are empowered to arrest an accused without warrant, subject to the fulfilment of conditions under section 19 and subject to the conditions enshrined under this section." ***(emphasis supplied)***

17. A perusal of Section 45 of PMLA 2002 does show that some kind of fetters on grant of bail have been imposed inasmuch as before granting bail the Court is to be satisfied that there are reasonable grounds for believing that such person is not guilty of the offence alleged and that if released on bail

such person is not likely to commit such offence again. Though, the learned counsel for the petitioner argued that these conditions are applicable only while considering grant of regular bail and not anticipatory bail but said controversy has recently been dealt with by Hon'ble Supreme Court in <u>*Dr. V.C. Mohan's case (supra)*</u> wherein it has been held as follows:

> *"Mr. Dama Seshadri Naidu, learned senior counsel appearing for the respondent invited our attention to the dictum in paragraph 42 of the judgment in Nikesh Tarachand Shah vs. Union of India & Anr. reported in (2018) 11 SCC 1. The observations made therein have been misunderstood by the respondent. It is one thing to say that Section 45 of the PMLA Act to offences under the ordinary law would not get attracted but once the prayer for anticipatory bail is made in connection with offence under the PMLA Act, the underlying principles and rigors of Section 45 of the PMLA Act must get triggered — although the application is under Section 438 of Code of Criminal Procedure. As aforesaid, the High Court has not 3 touched upon this aspect at all."*

18. The aforesaid judgment leaves no manner of doubt that provisions of Section 45 of PMLA 2002 apply with full force to a petition filed for grant of anticipatory bail as well and would be applicable even to petition filed in High Court. However at the same time, a proviso to Section 45 of PMLA 2002 itself carves out some kind of exception for leniency in cases of women. The first proviso to Section 45(1) of PMLA 2002 reads as under:

> " *Provided* that a person who is under the age of sixteen years or <u>***is a woman***</u> or is sick or infirm or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees, <u>***may be released on bail, if the special court so directs.***</u>"

19. It is not in dispute that the petitioner is a lady aged 61 years. It is a case where an amount of ₹30 lacs had been credited in the account of the firm of the petitioner by the firm of her son. It will be debatable as to whether the amount credited in the account of her firm was credited while she was fully aware that the said amount is part of 'proceeds' of crime committed by her son or as to whether she had connived and conspired with her son. It is otherwise not unnatural for a son to deposit amount or pass on some amount to his/her parents. In case, such parent is absolutely unaware of the means by which the said amount had been earned, it will not be fair to hold that such persons were also conniving with their son or daughter. The petitioner had otherwise duly associated with the investigation of the case and her statement had been recorded on 23.11.2017. The investigation is already complete as a supplementary complaint upon conclusion of investigation has already been filed. In these circumstances, there is no occasion for any custodial interrogation. There is nothing to suggest that the petitioner would flee from justice. As such, the case of the petitioner can safely be said to fall in the first proviso to Section 45(1) of PMLA 2002, being a lady, aged 61 years, so as to entitle her to grant of bail.

20. In these circumstances, this Court is of the opinion that it is a fit case for grant of anticipatory bail. The petition, as such, is accepted and it is ordered that the petitioner in the event of her arrest shall be released on bail subject to her furnishing personal bonds and surety bonds to the satisfaction of trial Court. The trial Court would be at liberty to impose any such condition as deemed appropriate to ensure regular appearance of the petitioner during

proceedings of trial and would be competent to cancel bail in case any such condition is violated.

21. 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