IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M-13806-2022
Reserved on: 30.08.2022
Date of Pronouncement: 19.09.2022

Suresh Seth

...Petitioner (s)

Versus

Union of India & others

…Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. R.K. Handa, Advocate and
Mr. Dharam Bir Bhargav, Advocate
for the petitioner(s).

Mr. Satya Pal Jain, Sr. Advocate for
Mr. ShobitPhutela, Advocate
for the respondent-ED.

Mr. R.S. Dhaliwal, Advocate for
Mr. Rajeev Anand, Advocate
for respondent-CBI.

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ANOOP CHITKARA, J.

Complaint No.	**Dated**	**Pending in Court**	**Sections**
3	22.9.2021	Special Court, CBI (PMLA),	44 and 45 of the Prevention of Money Laundering Act, 2002 as defined u/s 3 R/w Section 70 and punishable u/s 4 of the PMLA Act 2002.

1. The petitioner, incarcerated upon his arrest in the FIR captioned above, came up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) read with Section 482 CrPC and Section 45 of the Prevention of Money Laundering Act, 2002 (for short, "the PMLA Act") seeking bail.

2. The Directorate of Enforcement's case, in nutshell is that the accused Vikram Seth operated a few bogus entities in his name and also in the name of the family members, as mentioned in the complaint, which reads as follows: -

"(2). Brief summary of cause of action under Prevention of Money Laundering Act, 2002 (PMLA).

The complainant submits that the condition precedent to investigate the offence of Money Laundering by the Complainant/ Directorate of Enforcement is either an FIR or a Police Report u/s 173 of Cr.P.C. or a complaint, in respect of scheduled offences under the PMLA, 2002. The PMLA, 2002, is an act to prevent Money Laundering and to provide for confiscation of any property derived or obtained directly or indirectly from, or involved in any process or activity connected to proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property. Since Sections 120-B, 420, 467 and 471 of IPC, 1860, and Section 13 of the Prevention of Corruption Act, 1988, invoked in the above mentioned FIRS are scheduled offences under the Prevention of Money Laundering Act (PMLA). 2002 (hereinafter referred to as PMLA), and whereas section 2 (1)(y) of PMLA provides "Schedule offence" means (1) the offences specified under Part A of the Schedule or (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more; or (iii) the offences specified under Part C of the Schedule, enquiries were initiated under PMLA against the accused persons after recording brief facts of scheduled offences in ECIR po. ECIR/03/JLZO/2017 dated 07.11.2017. A brief summary of the investigation culminating in the filing of this Prosecution Complaint is as follows:

(2.1). Sh.Vikram Seth had operated bogus entities viz. M/s B.L. Seth Steels Ltd., M/s B.L. Seth Coal Sales Pvt. Ltd., M/s V. S. Traders, M/s V. S. Enterprises, M/s P. K. Enterprises, M/s Goel Sales Corporation, M/s Subhash Singh & Co., M/s Unique Traders, M/s Quality Lime Product, M/s R. Sales Pvt. Ltd., M/s U.R. Enterprises and M/s M. K. Traders in the name of himself and his family members viz. Suresh Seth (his brother), 129 Sunita Seth (his wife), Anita Seth (his sister-in-law), Shivam Seth (his son), Veena Handa (his sister), Anand Prakash Handa (his brother-in law), Meenakshi Handa (his niece).

(2.2). Sh. Vikram Seth had availed 19 loans from Bank of Baroda, G.T. Road, Phagwara, fraudulently through criminal conspiracy, cheating, forgery and using forged documents as genuine in the names of business entities opened in his name and in the name of his family members including loans in individual capacity and defaulted on those loans resulting into wrongful loss of public money to the Bank of Baroda, Phagwara to the tune of Rs. 21.31 Crores. FIR No. RCCHG2015A0002 dated 15.01.2015 was registered by CBI, ACB, Chandigarh, under Sections 120-B, 420, 467, 468, 471 of IPC, 1860 and Sections 13(1)(d) r/w 13(2) of the Prevention of Corruption Act were invoked against Sh. Vikram Seth and others.

(2.3). Sh. Vikram Seth and his family members/associates in connivance with the accused bank officials cheated the Bank of Baroda, Phagwara to the tune of Rs. 21.31 crore as those 19 loans were obtained through criminal conspiracy and obtained through forgery, submission of forged documents as genuine and thereby cheated the bank and induced delivery of property as explained in para 3 of the prosecution complaint.

(2.4) The loan amounts availed fraudulently through criminal conspiracy, cheating, forgery and using forged documents as genuine were not utilized for the intended purpose and were layered by routing through accounts of various associated firms/companies and other fraudulent firms by the accused persons through a web of transactions as explained in para 7.3 of this complaint and ultimately the funds were diverted and siphoned off. Sh. Vikram Seth entered into sham business transaction with those entities which were controlled by his acquaintances and friends. In addition to the above, Sh. Vikram Seth used to canvass that he was influential enough to obtain loans for those acquaintances through his connections with Bank of Baroda and used to engage himself in manipulating records showing inflated revenues and profits and thereby entitle those entities for loans beyond their genuine entitlements. It has also been found out during investigation, that upon disbursal of loans to those entities, he would demand and obtain commission ranging from 12% to 14%. The amounts thus obtained were thereafter diverted to be credited to any of the entities controlled by him or his close relatives in the guise of a commercial transaction.

(2.5). Out of the proceeds of crime, as defined in the Prevention of Money Laundering Act, 2002, so generated, some funds are directly or indirectly parked in immovable and movable assets as elaborated in Para 7.6 of this complaint.

(2.6). A large amount of funds have been siphoned off by Sh. Vikram Seth and others in the form of cash withdrawals as explained in para 7.4 of this complaint. As elaborated in the money trail, some cash withdrawals were found to be utilized for purchasing immovable properties.

(2.7). Further, a large amount of loan funds/ cash withdrawn from fraudulent loan accounts of Bank of Baroda were diverted by Sh. Vikram Seth for making repayment of those old loans which were earlier availed by the BL Seth group from other banks/financial institutions as elaborated in detail in para 7.7 of this complaint.

(2.8). Apart from the above mentioned 19 loans, in separate cases bearing F.I.R. No. 61/2013 dated 13.05.2013 and F.I.R. No. 86/2013 dated 30.07.2013, Sh. Vikram Seth along with others opened accounts of fake firms, created forged and fabricated mortgage through criminal conspiracy, cheating, forgery of valuable security for the purpose of cheating and by using forged documents as genuine thereby causing a wrongful loss of Rs.89.5 Lacs and Rs. 2.7 Crores respectively to the Bank of Baroda, Phagwara and wrongful gain to the accused persons.

(2.9). In para 7.6, 7.7 and 8 of this complaint, it is clearly established that Sh. Vikram Seth who has acquired, is in possession and project/claim title of aforesaid proceeds of crime, as untainted property, is actually involved in one or more of processes or acitivities related to the proceeds of crime, had committed the offence of money laundering within the meaning of section 3 of Prevention of Money Laundering Act, 2002, which is punishable under section 4 of the Act ibid.

(2.10). Thus, Sh. Vikram Seth by having involved himself in the generation of the PoC to the extent of Rs. 21.26 Cr. (as explained in Paras 3.7, 3.8.4 and 3.9.3 of this prosecution complaint) and after acquiring the said PoC, by getting the PoC placed in the various accounts of entities related/controlled by him or his relatives; and by him having deployed the PoC thus layered to discharge existing loans or purchasing/acquiring property, has projected the amounts used for retiring such existing loans as untainted property has fulfilled all the ingredients of the offence of money laundering as defined in section 3 of the PMLA, 2002. Other accused persons have also fulfilled all the ingredients of the offence of money laundering as defined in section 3 of the PMLA, 2002 as elaborated against their names in para 13 of this complaint."

3. As per the complaint, the specific role attributed to the petitioner Suresh Seth reads as under: -

"I. Bogus entities viz. M/s B.L. Seth Steels Ltd., M/s B.L. Seth Coal Sales Pvt. Ltd. And VS Traders were operated wherein he was a director/ proprietor.

II. Bank loans from Bank of Baroda, Phagwara, were availed by him fraudulently through criminal conspiracy, cheating, forgery and using forged documents as genuine in the names of business entities operated in his name and in individual capacity and he defaulted on those loans resulting into wrongful loss of public money.

III. The loan amounts availed fraudulently through criminal conspiracy, cheating, forgery and using forged documents as genuine were not utilized for the intended purpose and were layred by routing through accounts of various associated firms/companies and other fraudulent firms by the accused persons through a web of transactions as explained in para 7.3 of this complaint and ultimately the funds were diverted and siphoned off causing wrongful gains to him, his family members and others and resulting into a financial fraud.

IV. Out of the proceeds of crime, as defined in the Prevention of Money Laundering Act, 2002, so generated, some funds are directly or indirectly parked in immovable and movable assets in his name/ in the name of his business concerns and in the name of his family members as elaborated in Para 7.6 of this complaint.

V. A large amount of funds have been siphoned off through the accounts in his name/ in the name of his business concerns in the form of cash withdrawals as explained in para 7.4 of this complaint. As elaborated in the money trail, some cash withdrawals were found to be utilized for purchasing immovable properties.

VI. Further, a large amount of loan funds/ cash withdrawn from fraudulent loan accounts of Bank of Baroda were diverted for making repayment of those old loans which were earlier availed by the B L Seth group from other banks/financial institutions as elaborated in detail in para 7.7 of this complaint and he has actively participated in diversion of funds.

VII. It is clear that Sh. Suresh Seth who has acquired, is in possession and project/ claim title of proceeds of crime in his name and in the name of business concerns in his name, as untainted property, is actually involved in one or more of processes or activities related to the proceeds of crime, had committed the offence of money laundering within the meaning of section 3 of Prevention of Money Laundering Act, 2002, which is punishable under section 4 of the Act ibid.

VIII. Thus, Sh. Suresh Seth by having been the Director of M/s B.L Seth Steels Ltd. and M/s B.L Seth Coal Sales Pvt. Ltd; and by being the Proprietor of M/s V.S. Traders, during the period (January to May, 2012), when the loan were granted based on the forged documents, had acquired POCS to the extent of Rs. 7 Crores, Rs. 90 Lacs, Rs. 7 Crores, 8.33 lacs and Rs. 50 lacs and after obtaining the said amounts either for the companies mentioned above or his proprietary concern or as a housing loan was

> actually involved in possession of amounts totally Rs. 15.48 Crores and had been in control of the entities mentioned above and integrated the loans obtained through scheduled offences and thereby concealed the POCS and projected such POCS to the extent of Rs. 15.48 Crores as untainted. Thereby, Sh. Suresh Seth has committed the offence of money laundering by fulfilling all כי the necessary ingredients to constitute the offence U/s 3 of the PMLA.

4. Learned counsel for the petitioner has argued that the petitioner is entitled to bail on parity with Vikram Seth, who was the main accused and has been released on regular bail by a coordinate bench of this Court.

5. This argument is premature because, as per the affidavit of the Assistant Director, Directorate of Enforcement, Jalandhar, dated 24th August 2022, Vikram Seth was granted bail after the custody of eight months. The second objection to the bail on parity is that Vishal Seth, son of the petitioner Suresh Seth fled the country, and as such, there is an apprehension that in case the petitioner is granted bail, he would also try to flee, and he is a flight risk.

6. This argument is redundant simply because the petitioner's son is abroad, and without any clear-cut finding as to whether he is a fugitive or has gone abroad for some purpose, no such adverse inference can be drawn against Vishal Seth. Even if it is correct, it would not be implied that the petitioner would also be a flight risk unless such a person is a citizen of the said country or has the capacity and financial capability to support their sustenance abroad. In the absence of any such data and averment, this argument is not sustainable.

7. Till the time of filing of the complaint, the Enforcement Directorate chose not to arrest the accused. It was only when the concerned trial Court summoned the accused, as they failed to put in an appearance, the court issued bailable and non-bailable warrants, which led to the arrest of the accused Vikram Seth and in the interregnum also of Suresh Seth. Thus, it is clear that ED filed the complaint without arresting any of the accused, and on the contrary, now, when the petitioner has come up before this court seeking bail, the same Enforcement Directorate is vehemently opposing the bail. The stand is not only contrary to the reasons for opposing bail. In the affidavit dated 24th August 2022 filed by Assistant Director, Enforcement Directorate, it has been averred explicitly in paragraph 2 that the accused have committed the offence of money laundering, which is a serious offence, being an economic threat to the national interest. It reads as under: -

> "2. That the accused petitioners have committed the offence of Money Laundering which is a serious offence being economic threat to national

interest and it is committed by the white collar offenders who are deeply rooted in society and cannot be traced out easily. These kind of offences are committed with proper conspiracy, deliberate design with the motive of personal gain regardless of the consequences to the society and economy of Country. So the accused petitioner being white collar offenders are not entitled for any relief from this Hon'ble Court.

3. That in the instant case, the accused/ petitioners were not arrested during investigation, however, upon investigation, complaint was filed before the Hon'ble Special Court, PMLA and after taking cognizance, the accused were summoned to face trial but the accused/bail applicants have not put in appearance nor joined the trial. High Court in the case of The Hon'ble 'Arun Sharma Vs. Union of India' reported in 2016 (3) RCR (Criminal) 883 has held that arrested during when the accused, who was not investigation nor produced in custody as envisaged under section 170 Cr.P.C. upon issuance of process either by summons warrants, appears before this Hon'ble Court on his own volition would be entitled to furnish bail bonds and surety bonds but here in the present case, the accused have not appeared in the Court in pursuance of summons and bailable warrants of arrest but have chosen to stay away from the Court. It is further submitted that, one of the accused, Vishal Seth who is son of the petitioner, Suresh Seth had already fled the country, there is clear apprehension that if therefore, the accused/ applicants are granted bail they will also try to evade the clutches of law by concealing themselves in a similar manner. Therefore, the accused/petitioners are not entitled to any relief from this Hon'ble Court.

4. That the order of granting bail to co-accused Vikarm Seth in not applicable on parity basis qua accused petitioners as the bail was granted to Vikram Seth after he was in custody for about 8 months whereas the accused petitioners have not appeared in the Court in pursuance of summons and bailable warrants of arrest but have chosen to stay away from the Court proceedings intentionally."

8. Be that as it may, now the Enforcement Directorate's counsel has strenuously opposed the bail, which argument is corroborated by the stand taken in the prayer clause of the reply, wherein it has been specifically prayed for dismissal of the petition in the interest of justice. Even in the detailed reply filed by the Assistant Director, Directorate of Enforcement, Jalandhar on 9th May, 2022, the Enforcement Directorate explicitly opposed the bail on merits. Firstly they opposed the bail on the ground that despite notices, the accused person evaded service and as such, they are flight risk and secondly, even on merits, which emerges out from paragraph no.3 of the reply, which reads thus:-

> "36……..It is further submitted that the accused is a person of high status and a highly influential and there is high risk that the accused will hamper with the investigation and try to influence the witnesses."

9. Given the decision of the Directorate of Enforcement not to arrest all the accused, coupled with the nature of allegations attributed to each accused, the case of

every accused in the FIR stood on a different footing and decided independently of the other.

10. The sly manner in which the accused Vikram Kumar Seth and the petitioner Suresh Seth, along with their associates and accomplices, in each other's assistance and with knowledge acquiesced the funds, and systematically siphoned of the money, and laundered it through bogus and false entries in account books, and thereby deceived, and swindled the financial institution, prima facie points towards the commission of the offence under section 3, punishable under section 4 of the Prevention of Money Laundering Act, 2002.

11. The gravity of offence does not entitle the petitioner bail at this stage. In the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case for bail at this stage. However, it shall be open for the petitioner to file new bail application on the grounds of parity based on the order passed in CRM-M-35565-2021, Vikaram Kumar Seth v. Directorate of Enforcement, decided on 22-03-2022, after completing the custody period equal to that undergone by Vikram Seth. The dismissal of this petition shall not come in the way while considering the fresh petition(s).

12. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

Petition dismissed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

19.09.2022
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Whether speaking/reasoned: Yes
Whether reportable: No.