

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-27871-2022 (O&M)

Reserved on : 30.06.2022

Pronounced on : 01.07.2022

Bhupinder Singh @ Honey

...Petitioner

Versus

Enforcement of Directorate

...Respondent

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Bipan Ghai, Sr. Advocate with
Mr. Paras Talwar, Advocate,
Mr. Tushan Rawal, Advocate,
Mr. Deepanshu Mehta, Advocate &
Mr. Rishabh Singla, Advocate
for the petitioner.

Mr. Shobit Phutela, Advocate
for the respondent-Directorate of Enforcement.

ARVIND SINGH SANGWAN, J.

Prayer in this petition, filed under Section 439 Cr.P.C., is for grant of regular bail to the petitioner in case/FIR ECIR No. ECIR/JLZO/21/2021 dated 30.11.2021 for the offence under Section 3, punishable under Section 4 of the Prevention of Money Laundering Act, 2002 (*for short 'PMLA'*), District Jalandhar.

Learned senior counsel, appearing for the petitioner, has submitted that the petitioner is not involved in any other case; he is in

custody for the last about 05 months, that is w.e.f. 03.02.2022, and the investigation in all respect is complete; a formal complaint is already filed before the competent Court of law, therefore, the petitioner is no more required for any further custodial investigation.

Brief facts of the case are that on 20.05.2017, in an E-Auction conducted by the Mining Department, one Kudratdeep Singh was the successful bidder for Rs. 4.04 crores and was allotted a sand mine measuring 4.41 hectares in village Malikpur, District S. B. S. Nagar. Later on, finding that the location of the land is not clear, he got the same demarcated through Halqa Patwari on 16.08.2017 and found that the location of the land is on southern side of Satluj river and there is no proper passage from village Malikpur, where he was allotted the land and some illegal occupants in the village Dhulewal and Rod Majra in District Ludhiana are doing the illegal mining. On this account, Kudratdeep Singh represented various officials of the Mining and Industry Department as well as other higher authorities, however, his grievances were not redressed and on 06.02.2018, the General Manager-cum-Mining Officer, District Industry Centre, S. B. S. Nagar, Punjab suspended his mining license. Kudratdeep Singh filed a Civil Writ Petition before this Court, which was disposed of on 10.01.2020 by giving certain directions and he again filed a second writ petition praying that he may be permitted to surrender the mining site in village Malikpur as the same is not feasible at the spot. Thereafter, he did not perform any work at the said site.

Learned senior counsel further submitted that later on, FIR No. 26 dated 07.03.2018, under Sections 379, 420, 465, 467, 468, 471 of the IPC and Sections 21(1) & 4(1) of the Mines & Minerals (Regulation of

Development) Act, 1957 was registered against many persons with the allegations that when a team of the Mining Department and civil administration visited the spot, it was found that several mines have been excavated and illegal mining activities have been carried out at the spot and several machines like tipper/trucks, proclain machines, JCB machines etc. were seized by the department. As per the FIR, the sand mine was allotted to Kudratdeep Singh on a representation given by him that he is not conducting any mining, however, it was found that majority of the numbers allotted to him were on the other side of Satluj river in District Ludhiana and, therefore, the mining operations were suspended by the department itself. Later on, the police submitted the *challan* under Section 173(2) Cr.P.C. and Kudratdeep Singh was kept in Column No. 2, whereas the *challan* was presented against 56 persons.

Learned senior counsel further submitted that thereafter, the Directorate of Enforcement (*for short* 'ED') raided the premises of Kudratdeep Singh, petitioner Bhupinder Singh @ Honey and one Sandeep Kumar in January, 2022. From Kudratdeep Singh, no recovery of money was effected, however, a mobile phone was taken into possession. From petitioner Bhupinder Singh @ Honey, as per allegations, Rs. 8 crores (approx.) was recovered and from Sandeep Kumar, an amount of Rs. 1,99,17,200/- was recovered in cash. With regard to this money also, it is the case of the ED that this amount was given by the petitioner to Sandeep Kumar. It is further submitted that this recovery is effected on 18.01.2022, therefore, the same does not relate to the offence under FIR No. 26, which was registered on 07.03.2018.

Learned senior counsel has next argued that during

investigation, even Sandeep Kumar has been let off by the ED and the disclosure statement of the petitioner was recorded in custody that the money recovered from Sandeep Kumar in fact belongs to the petitioner and a total of Rs. 9,97,52,700/- is shown to have been recovered from the petitioner. It is further submitted that the investigation of the ED further suggests that there were total 09 partners, who had obtained Malikpur sand mine contract along with Kudratdeep Singh, however, petitioner Bhupinder Singh @ Honey was not one of the partners in the said firm.

Learned senior counsel further argued that in order to connect the petitioner with the said offence, ED recorded the statement of Kudratdeep Singh that the petitioner used to help him whenever there was a dispute between the partners and would also help in supervising the mining activities as a common friend.

It is further argued that during investigation, ED exaggerated the earning of the petitioner by an imaginary calculation that the slips, issued by the Mining Department for one day, depicted mining of about 902 Metric tons sand per day and by multiplying it with 153 days, the same was taken to be 1,38,113 Metric tons of sand and held that the petitioner has earned Rs. 10,68,34,000/- by illegal mining. It is further submitted that despite the fact that no recovery was effected from Kudratdeep Singh, whom the mining lease/license was allotted, a fictitious figure of Rs. 10 crores from illegal mining has been calculated by the ED and the recovery of the said amount cannot be termed as proceeds of crime in reference to FIR No. 26, which was registered way back on 07.03.2018.

It is next argued on behalf of the petitioner that even no offence under Sections 379, 420, 465, 467, 468 and 471 of the IPC is made

out against the petitioner as three slips recovered from the tipper/two drivers, at the time of the raid conducted on 06.03.2018, were found to be fake by the Mining Department and the same were given by Kudratdeep Singh as per final report submitted under Section 173 Cr.P.C. as petitioner is not an accused in said FIR.

Learned senior counsel further submitted that since the petitioner is not an accused in the aforesaid FIR and no *challan* has been presented against him, the petitioner has been falsely implicated in the present case. Further it is submitted that till date, there is no verification by ED regarding three slips from the department whether the said slips are genuine and ED has wrongly drawn an inference that the same are fake slips.

It is further argued that no offence under the Mines & Minerals (Regulation of Development) Act, 1957 falls within the scheduled offence under the PMLA, therefore, the prosecution of the petitioner is illegal. Further it is submitted that it is wrongly investigated by ED that the petitioner, being partner of M/s Provider Overseas Consultant Pvt. Ltd., has diverted the proceeds of crime to this firm for earning more money and Kudratdeep Singh and Sandeep Kumar were also the Directors of the said company, although ED could not find any trail of money in said firm, therefore, ED changed the version of the petitioner by recording his statement that Rs. 6/7 crores were recovered by him during the past six months from Rakesh Chaudhary and Mohan Pal Singh for facilitating them in their mining related works and remaining Rs.3/4 crores were received by him for arranging transfer of the employees of the Punjab Govt. through his political connections. Learned senior counsel submitted

that the petitioner has already filed an appeal before the adjudicating authority under the Act and the matter is subjudice and, therefore, at this stage, it cannot be held that the amount recovered was proceeds of crime.

Learned senior counsel has next argued that if the statement of the petitioner, which was recorded while in custody and is yet to be proved during trial, is taken to be correct on the face of it, the same contradicts the version of ED that it relates to FIR No. 26, registered on 07.03.2018, whereas the statement of the petitioner was recorded on 18.01.2022 and there was no FIR of illegal mining against the petitioner or against aforesaid two persons from the year 2019 to 2022, therefore, ED could not investigate the crime, for which no FIR regarding predicate offence has been registered.

Learned senior counsel further argued that in fact the petitioner has been roped in by ED, which has even tried to add provisions of Prevention of Corruption Act (*for short* 'PC Act'), without there being any FIR of predicate offence under the PC Act and the reason for the false implication of the petitioner is that he is the nephew of Mr. Charanjit Singh Channi, the then Chief Minister of the State of Punjab and when during investigation, nothing was found to substantiate the allegations under the PC Act, the same was dropped.

It is further argued that even the statement of the petitioner was recorded under Section 50 of the PMLA on 03.02.2022, in which the petitioner has given explanation with regard to his income tax returns from 2015 onwards, balance sheets of M/s Provider Overseas Consultant Pvt. Ltd. and M/s Sunrise Infra. Question No. 3 and the answer to it read as under:

“Question 3: Please tell me the source of your income from 2017-2018?

Answer: For the last 2 years I have been leasing JCB and other heavy machinery used for mining work and using it for mining work in the mining quarry. I still have four such machines at lease which are working at Jindapur Mining Site, which belongs to Rakesh Chaudhary. These machines have been working on Jindapur Mining site for the last one and a half year, from which I earn around Rs. 2 lakh per day from these machines. These machines are used in mining site for the purpose of sand extraction and to load truck/tippers. I get around Rs.2000 for loading a truck. These machines use to load about 150 trucks and some trolleys in a day. The running cost of these machines is Rs. 1 lakh per day, This way I save Rs. 2,00,000/- in a day.

Apart from these I also have a truck for 2 years which I bought from Gurjot Singh resident of Patiala in 2020. In addition to this truck I have 9-10 truck tippers and 4-5 tractors on lease which are used in transporting materials from Crushers and mining sites. I save Rs. 1.25 lakh a day from these trucks / tippers. I undertake that I will submit a copy of the agreements of machines, truck tippers and Tractors within 7 days to your office. Apart from these I will also submit copies of the weighment slips received during transportation. Iqbal Singh, resident of Salapur, District Ropar, looks after all the work of my tractor, tipper and trolley. In addition, I state that during search conducted on 18.01.2022, In the statement, in question number 6, the annual income was mistakenly stated as Rs 6 lakh.”

Learned senior counsel further argued that the petitioner has properly explained that the money recovered from him was in fact earned

by providing different type of machineries to mining sites and he never obtained any money for the transfer of any employee of the Govt. of Punjab. Further submitted that in fact in a statement dated 06.02.2022, the petitioner has also explained that Rakesh Chaudhary and his friend Mohan Pal Singh wanted some favour from Chief Minister but the Chief Minister, instead of giving favour, reduced the price of sand and due to this, both of them got annoyed.

Learned senior counsel further argued that ED could not found any evidence to connect the then Chief Minister of Punjab, therefore, on 31.03.2022, ED filed a formal complaint before the competent Court of law only against the petitioner and Kudratdeep Singh only. It is further submitted that in para 3.1 of this complaint, again there is a reference of FIR No. 26 dated 07.03.2018 as well as three weighment slips dated 16.03.2018, which were allegedly found to be fake.

It is further submitted that though in the FIR No. 26, *challan* was presented against 56 persons, however, in the complaint, only Kudratdeep Singh was arraigned as accused despite the fact that he was found innocent by the Punjab Police in 2018 itself and later on, his mining lease/license was also suspended on 06.02.2018 but ED has not taken into consideration all these documents showing that Kudratdeep Singh was innocent and the petitioner was neither named in the FIR nor the *challan* was presented against him.

Learned senior counsel has referred to reply filed by ED before the Court of Sessions, where regular bail application was filed by the petitioner, to submit that the role of the petitioner as given in para 6 of the reply is that he is a childhood friend of Kudratdeep Singh @ Lovie and

assisted him in arranging funds through his friends for the purpose of making payment in relation to Malikpur sand mine. In para 6.2, it is stated that in the statement dated 04.03.2022, Kudratdeep Singh @ Lovie stated that the petitioner used to supervise the mining operation. In para 6.3, there is a reference of three statements of the petitioner dated 08.02.2022, 09.02.2022 and 10.02.2022, where the petitioner has stated that he assisted Kudratdeep Singh @ Lovie in handling mining related work with concerned Govt. Department like Mining Department, Ropar, Nawanshahr and in taking some inputs from police officials as well as officials of the Mining Department regarding weighment slips. It is further stated in para 6.4 that as per statement dated 21.02.2022 of Harinder Singh @ Pinka, he used to communicate with the petitioner through Whatsapp/Email with regard to Malikpur mining site and in para 6.5, there is a reference to the statement dated 18.02.2022 of Subash Bath that the petitioner was looking after the mining affairs of Kudratdeep Singh @ Lovie. Further in para 6.6, there is a reference of recovery effected from the three residences of the petitioner and it is stated that the petitioner could not produce any legitimate source of the seized cash, which was much below the income shown in his income tax returns from 2017 to 2021. The net conclusion of the investigation is given in para 6.14 and 6.15, which are reproduced herein below:

“6.14 Therefore, in view of the above, it has been clearly established that applicant used to assist Sh. Kudratdeep Singh @ Lovie in mining activities at Malikpur mine, used to handle works of Malikpur mining site on behalf of Kudratdeep Singh @ Lovie, used to co-ordinate/liaison with various government departments, used to assist in

illegal sand mining activities by obtaining early raid alerts. Applicant was found to be in possession of fake weighment slips pertaining to Malikpur mining site and was in possession of illegitimate cash suspected to be proceeds of crime which is relatable to illegal mining activities in relation to scheduled offence.

6.15 Thus, Applicant was found actually involved in the offence of money laundering and has committed offence of money laundering defined under section 3 of the Prevention of Money Laundering Act, 2002, which is punishable under section 4 of the Prevention of Money Laundering Act, 2002.”

Learned senior counsel has referred to ***(2020) 13 Supreme Court Cases 791, P. Chidambaram vs. Directorate of Enforcement*** to submit that Hon’ble Supreme Court has granted bail in a complaint filed by ED by observing as under:

“23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstance while considering

the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case to case basis on the facts involved therein and securing the presence of the accused to stand trial.

24. In the above circumstance it would be clear that even after concluding the triple test in favour of the appellant the learned Judge of the High Court was certainly justified in adverting to the issue relating to the gravity of the offence. However, we disapprove the manner in which the conclusions are recorded in paragraphs 57 to 62 wherein the observations are reflected to be in the nature of finding relating to the alleged offence. The learned senior counsel for the appellant with specific reference to certain observations contained in the above noted paragraphs has pointed out that the very contentions to that effect as contained in paragraphs 17, 20 and 24 of the counter affidavit has

been incorporated as if, it is the findings of the Court. The learned Solicitor General while seeking to controvert such contention would however contend that in addition to the counter affidavit the respondent had also furnished the documents in a sealed cover which was taken note by the learned Judge and conclusion has been reached.”

Learned senior counsel has lastly argued that the petitioner is not maintaining good health as he is suffering from heart problems and even in custody, he was examined by the jail doctor and he needs urgent medical treatment and has relied upon the medical prescription issued by the Medical Officer, Central Jail, Kapurthala.

Learned counsel, appearing for the respondent-ED, has filed the custody certificate, according to which, the petitioner is in judicial custody for the last 04 months and 18 days. Learned counsel for the respondent-ED has referred to Section 2(u) of the PMLA, which reads as under:

“Proceeds of crime means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.”

Learned counsel for the respondent-ED has further argued that under the provisions of Section 45 of the PMLA, no person accused of any offence under the PMLA shall be released on bail or on his own bonds 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 accused is not guilty of such offence and that he is not likely to commit any offence while on bail. It is further submitted that limitation of granting bail as specified in sub-Section (i) is in addition to limitation provided under the Criminal Procedure Code.

Learned counsel for respondent-ED has further submitted that offence under PMLA is a stand alone offence and a person need not necessarily be booked of a scheduled offence and even can be prosecuted under Sections 5 and 8 of the PMLA, if he is found in possession of the proceeds of crime.

In reply, learned senior counsel has submitted that as per custody certificate, the petitioner is a first offender and is in substantive judicial custody of about 05 months as he was arrested on 03.02.2022 and since a complaint has already been filed, no purpose will be served by keeping him in judicial custody anymore as the conclusion of trial is likely to take a long time.

After hearing learned counsel for the parties, I find merit in the present petition for the following reasons:

- (a) The primary objection raised by learned counsel for the respondent-ED is that the petitioner does not qualify the triple test laid down under Section 45 of the PMLA. The said three conditions laid down under Section 45 are that the public prosecutor should be given an opportunity of hearing, which has been given in the present case; secondly, if the public prosecutor opposes the application, a reasoned order be passed that the person is not guilty of offence and not likely to commit

offence while on bail and thirdly that in addition to provisions of PMLA, the provisions of Cr.P.C., regarding grant of bail, shall apply. Section 45 (1) (ii) is akin to Section 37 of the NDPS Act, wherein the Court, while granting bail, has to form an opinion. In a case under the NDPS Act, it is easy for an accused, who has been released on bail to repeat such offence, however, in a case under the PMLA like the present case, it is not easy for an accused to commit the offence again as he will always be in radar of E.D.

- (b) It is the admitted case of ED that after registration of the aforesaid FIR in 2018, a complaint has been filed by ED in 2022 i.e. after a period of about 04 years and in the intervening period, there was no further complaint or FIR regarding illegal mining to suggest that the petitioner is a habitual offender and is involved in any other case even prior to registration of the aforesaid FIR, especially when he is not named either in FIR No. 26 or report submitted under Section 173(2) Cr.P.C.
- (c) As per own investigation of ED, the petitioner was helping Kudratdeep Singh @ Lovie, who was allotted the lease license, in his mining work and there is no direct allegation against him that he was looking into the finance of the Kudratdeep Singh @ Lovie, therefore, the Court is convinced that the petitioner qualify the triple test laid down under Section 45 of PMLA as the

Court has nothing to presume adverse to the conduct of the petitioner and since all the documents are already in the custody of the investigating agency, therefore, there is no possibility for the petitioner to tamper with the same.

- (d) A perusal of the ECIR dated 30.11.2021 reveals that the same is registered under Sections 420, 467 and 471 of the IPC with reference to FIR No. 26 dated 07.03.2018 as scheduled offence, however, nothing could be found regarding the role of the then Chief Minister and the proceedings under the PC Act were dropped.
- (e) Even there is a force in the arguments raised by learned senior counsel regarding the timing of registration of the FIR i.e. after 04 years of the registration of FIR No. 26 dated 07.03.2018, is due to political reasons especially in view of the fact that the same has been registered after the uncle of the petitioner took over as Chief Minister of the State of Punjab and also in view of the fact that from 2018 till 2022, neither any further FIR was registered nor any proceedings were initiated by ED.
- (f) In view of the judgment of Hon'ble Supreme Court in ***P. Chidambaram's*** case (supra), there is no absolute bar in granting regular bail to an accused facing trial under the PMLA as the allegations are yet to be proved and the petitioner has raised a probable defence that he

has already filed an appeal before the appropriate authority to explain and prove that the recovery effected from him is not the proceed of crime and the final adjudication is yet to be made by the appropriate authority.

- (g) It is well settled principles of law that when the investigation is complete and charge sheet is filed in the Court, conclusion of trial is likely to take a long time, a person/accused like the present petitioner, who is aged about 36 years old, can be released on bail, subject to his furnishing bail/surety bonds and with a condition that his passport shall remain deposited with the Court/Prosecuting Agency and he will not leave the country without seeking prior permission of the Court.
- (h) As per record of the Medical Officer, Central Jail, Kapurthala, the petitioner is under treatment for his heart ailments and he needs further treatment from specialized doctors, which itself is a ground for releasing the petitioner on bail.
- (i) Even otherwise, the petitioner is in custody since 03.02.2022 and in judicial custody w.e.f. 11.02.2022, as per custody certificate filed in Court, and a period of about 05 months has lapsed, therefore, the petitioner cannot be kept in judicial custody for unlimited period in the light of judgment in *P. Chidambaram's* case (supra).

Accordingly, it is held that the petitioner qualifies the triple test under Section 45 of the Act and, therefore, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to following conditions:

- (i) The petitioner will furnish bail and two sureties to the satisfaction of the trial Court/Illaq Magistrate, out of which, one surety will be a local surety.
- (ii) The passport of the petitioner will remain in the custody of the prosecuting agency or the trial Court and the petitioner will not leave India without prior permission of this Court.
- (iii) The petitioner will furnish an undertaking that he will appear before the Investigating Agency as well as the trial Court as and when he is required and in case, he defaults in appearance, it will be open for the prosecution to apply for cancellation of his bail.

01.07.2022

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No