

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

CRM-M-23705-2022 (O&M)
Date of Decision:- 4.11.2022

Pranjil Batra

..... Petitioner

Versus

Directorate of Enforcement

..... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Vikram Chaudhri, Senior Advocate, with
Mr. Sajal Bansal, Ms. Hargun Sandhu and Mr. Kunal Sharma,
Advocates, for the petitioner.

Mr. Satya Pal Jain, Assistant Solicitor General of India with
Mr. Shobit Phutela, Advocate, for the respondent/ED.

* * * * *

GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of regular bail in respect of a complaint bearing no. COMA-2-2021 dated 22.1.2021 under Section 4 read with Section 70 of the Prevention of Money Laundering Act, 2002 (in short hereinafter referred to as 'the PMLA').
2. Since the petitioner was neither initially arrayed as an accused in the complaint nor when some FIRs were registered in Haryana and Hyderabad pursuant to which some ECIRs came to be registered by Enforcement Directorate, the sequence leading to arraying of the petitioner as an accused needs to be referred to, which is briefly stated herein-under:

8.9.2018 : FIR No. 358/2018 dated 8.9.2018 was registered at Police Station Sadar Fatehabad, District Fatehabad, Haryana for

offences under the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 against Radhey Shyam and Bansilal, Directors of M/s FMLC & others.

9.9.2018 : FIR No. 859/2018 dated 9.9.2018 was registered at Police Station, Hisar, Haryana under Sections 420, 406 and 506 IPC, against Radhey Shyam and Bansilal, Directors of M/s FMLC & others.

31.8.2019 : Pursuant to constitution of S.I.T., the matters were investigated by S.I.T. and charge-sheet no.2 dated 31.8.2019 was presented in FIR no. 859 and charge-sheet no. 4 dated 20.11.2019 in FIR no. 358 was presented.

9.10.2019 : During the course of investigation of the aforesaid cases, it had transpired that the accused involved in the said cases were also involved in some other FIRs lodged in the State of Telangana i.e. FIR No. 710/2018 dated 30.8.2018, Police Station Kukkatpally, Telangana, FIR No. 643/2018 dated 15.10.2018, Police Station Ramchandrapuram, Cyberbad, Telangana, FIR No. 541/2018 dated 4.9.2018 at Police Station Chandanagar, Telangana and FIR No. 768/2018 dated 14.9.2018, Police Station Mailardedpally, Telangana. The Directorate of Enforcement, Hyderabad, on the basis of FIR dated 30.08.2018, registered ECIR No.10/HYZO dated 20.03.2019 against Radhey Shyam, Bansilal, M/s FMLC & M/s Global Marketing Pvt. Ltd. Subsequently, the Directorate of Enforcement, Hyderabad, on account of FIRs registered by Haryana Police and on the basis of the residential address and office address of the companies, transferred the investigation to the Chandigarh Zonal Office. The ECIR was renumbered as ECIR/03/CDZO-II/2019 dated 09.10.2019. Later, the Chandigarh Zonal Office, Directorate of Enforcement took cognizance of scheduled offences and initiated investigation by recording ECIR/CDZO-II/02/2021, dated 11.01.2021 at Chandigarh.

22.1.2021 : The Enforcement Directorate filed complaint dated 22.1.2021 (Annexure P-1) before Special Court, Panchkula against Radhey Shyam, Bansi Lal and others wherein the petitioner was cited as a witness at Sr. No. 23 in the list of witnesses. It may here be mentioned that even in FIR No. 358 and FIR No. 859 registered in 2018, the petitioner had been associated as a witness only.

10.3.2022 : **Petitioner found to be involved and arrested** : Statement of petitioner was recorded on various occasions by the respondent/ED and thereafter upon finding his direct involvement and that he is a beneficiary of crores of rupees, arrested the petitioner on 10.03.2022 after recording his statement and produced before the court on 11.03.2022 and since then he is in custody and at present confined in jail at Ambala, Haryana.

7.5.2022 : **Supplementary challan filed and petitioner arrayed as an accused** : While the petitioner initially had been cited just as a witness at the time of presentation of complaint against co-accused Radhe Shyam, Bansi Lal and others being a software expert but upon finding his direct involvement, a supplementary complaint was filed against him wherein it is specifically alleged that he was part and parcel of the scam and had benefited to the extent of about ₹53 crores.

3. The learned counsel representing petitioner, while pressing for grant of bail, submitted that the petitioner had merely been an employee of the company of co-accused and was handling the software used by the company to maintain its accounts and other business related information and was neither any Director or share-holder in the company. It has been submitted that whatever amount he had received or had been credited in his account was on account of his professional remuneration, being a software expert.

4. It has further been submitted that the Enforcement Directorate is resorting to pick and choose and that out of the 24 accused, 11 were entities and the remaining 13 were individuals and out of the said 13 individuals, 11 were never arrested and have been granted bail whereas the petitioner has been kept behind bars since the last about 8 months. It has been submitted that since trial in its normal course is not likely to conclude in immediate future, given the fact that as many as 73 prosecution witnesses have been cited, the petitioner cannot be kept behind bars indefinitely.
5. The learned counsel has further submitted that the petitioner weighs 153 kilograms and has various medical issues and is presently having precarious health which is deteriorating by the day and in these circumstances, his further custody could prove fatal to his health and life.
6. Opposing the petition, the learned counsel representing the Enforcement Directorate has submitted that the petitioner has played a pivotal role in the commission of offences inasmuch as he had been managing and handling the software which helped the accused to siphon off an amount of about ₹3000 crores which had been invested by innocent investors and since even the petitioner had benefited to the tune of ₹53 crores, his complicity is clearly evident. The learned State counsel has further submitted that the State is fully responsible for providing necessary medical treatment, as may be required, by any under-trial/prisoner and that infact the same is being provided to the petitioner and he is being taken to hospital, as and when required and as such, the medical condition of the petitioner cannot be made a ground for his release on bail, given the fact that Section 45 of PMLA imposes stringent conditions for grant of bail.

7. This Court has considered rival submissions addressed before this Court.
8. In the instant case, as per the evidence collected during investigation, the co-accused Radhe Shyam and Bansilal floated a Ponzi multi-level marketing scheme through their companies M/s Future Maker Life Care Pvt. Ltd., M/s FMLC Global Marketing Pvt. Ltd. and M/s Fair Deal Import & Export Division. The basic scheme of the companies was to allure investors while promising lucrative returns. Upon such investors introducing more people to invest in the company holding out similar representations of hefty benefits, a larger return was promised. The accused persons tried to give their ponzi scheme a colour of a legitimate 'direct marketing company' by selling membership packages in the form of a kit consisting of a suit length and 'health & beauty' products, etc. However, the said items i.e 'health & beauty' products etc. were of sub-standard quality and were shown to the products being sold so as to avoid detection by law enforcement agencies of being a company into illegal business. The actual aim was to associate as many members as possible so as to earn maximum commission for all top-ranking members in the pyramid scheme and infact the accused Radhe Shyam and Bansilal, through this Ponzi multi-level marketing scheme, were able to allure and cheat around ₹33 lacs gullible persons across India and raised deposits amounting to about ₹3,000 crores.
9. As per the evidence collected during investigation, including the information retrieved from petitioner's laptop, a major component of the amounts so collected by ponzi companies run by Radhe Shyam and Bansilal and also through their associates was transferred to various bogus entities/ shell

companies through bank transfers/RTGS/NEFT bank transactions, in the guise of business transactions or was withdrawn as cash.

10. Although the petitioner, who claimed that he was merely looking after computer software of the company, had initially been cited as a witness but when investigating agency laid its hands on evidence to the effect that he and other members of his family had benefited of crores of rupees which could not be justified, his complicity became evident. Upon analyzing the bank account No.50200010255233 of M/s Future Maker Lifecare Pvt. Ltd. maintained with HDFC Bank, Hisar, it was revealed that a substantial amount of ₹15,37,87,088/- was transferred to the bank accounts in name of relatives of petitioner namely Poonam Batra w/o Pranjil Batra; Veena Sondhi (mother-in-law of Pranjil Batra); Rahul Sondhi (Brother-in-law of Pranjil Batra); Suman (wife of Rahul Sondhi) & Rudal Prasad (employee of Pranjil Batra). During investigation, the petitioner was found to be maintaining six accounts wherein an amount of ₹4,71,68,931/- was found. The petitioner who was looking after the computer software of the company can not feign ignorance about the illegal and fraudulent activities of the company which had collected about ₹3000 crores out of which the petitioner also benefited of a substantial amount. The details of these transactions were found in laptop of petitioner.
11. Though the learned counsel for the petitioner tried to justify his receipts of approximately ₹53 crores as professional fee but upon query made by this Court as regards the income-tax returns for previous years indicating such huge receipts, no satisfactory information could be furnished. The petitioner apparently had been trying to hoodwink the investigation into believing that

he was merely a paid employee of the company being run by Radhey Shyam and Bansi Lal.

12. Section 45 of the PMLA 2002 imposes stringent conditions in the matter of grant of bail. Section 45 (post amendment in 2018) reads as under:

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.

(1-A) 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 [***] of 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 authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfillment of conditions under section 19 and subject to the conditions enshrined under this section.

13. Section 45(1) of PMLA 2002, as noticed above, imposes twin conditions before bail could be granted to a person accused of having committed an offence punishable under the PMLA. As per section 45(1) PMLA, the Public Prosecutor was required to be given an opportunity to oppose the plea for bail and that where the Public Prosecutor opposed such plea, the Court could grant bail only after recording satisfaction that there were reasonable grounds to believe that the person to be released was not guilty of the offence he was accused of and that while on bail he was not likely to commit any offence.
14. It may here be mentioned that the constitutional validity of provisions of section 45 PMLA 2002, imposing the twin conditions for grant of bail, which were also there before amendment of section 45 PMLA in 2018, was questioned before Hon'ble the Supreme Court in Nikesh Tarachand Shah vs. Union of India (2018)11 SCC 1 and the Supreme Court, after holding that the prescribed twin conditions for release on bail were violative of Articles 14 and 21 of the Constitution of India, declared Section 45(1) of the PMLA, to that extent, to be unconstitutional.
15. Subsequently, Section 45(1) of the PMLA was amended w.e.f. 19.04.2018. whereby the words "punishable for a term of imprisonment of more than three years under Part A of the Schedule" as occurring in Section 45(1) before being declared unconstitutional by the judgment of the Supreme Court in Nikesh Tarachand Shah's case (supra) were substituted with the words "under this Act". The validity and interpretation of amended provisions later came to be examined by Hon'ble Supreme Court in Vijay Madanlal Choudhry and others vs. Union of India 2022(10) Scale 577, and

the Supreme Court, while upholding the amended provisions of Section 45 PMLA, wherein the twin conditions in the matter of grant of bail were incorporated in the same manner as had been existing before amendment, held as under:

“135. We are conscious of the fact that in paragraph 53 of the *Nikesh Tarachand Shah*, the Court noted that it had struck down Section 45 of the 2002 as a whole. However, in paragraph 54, the declaration is only in respect of further (two) conditions for release on bail as contained in Section 45(1), being unconstitutional as the same violated Articles 14 and 21 of the Constitution. Be that as it may, nothing would remain in that observation or for that matter, the declaration as the defect in the provision [Section 45(1)], as existed then, and noticed by this Court has been cured by the Parliament by enacting amendment Act 13 of 2018 which has come into force with effect from 19.4.2018. We, therefore, confined ourselves to the challenge to the twin conditions in the provision, as it stands to this date post amendment of 2018 and which, on analysis of the decisions referred to above dealing with concerned enactments having similar twin conditions as valid, we must reject the challenge. Instead, we hold that the provision in the form of Section 45 of the 2002 Act, as applicable post amendment of 2018, is reasonable and has direct nexus with the purposes and objects sought to be achieved by the 2002 Act to combat the menace of money-laundering having transnational consequences including impacting the financial systems and sovereignty and integrity of the countries.”

16. Thus it is apparent that despite the Supreme Court having declared that the twin conditions for release on bail as prescribed by un-amended provisions of Section 45(1) of the PMLA, were violative of Articles 14 and 21 of the Constitution of India and thus unconstitutional in *Nikesh Tarachand Shah's*

case (supra), the validity of amended provisions of section 45(1) of PMLA was upheld by Hon'ble Supreme Court in a subsequent case i.e. Vijay Madanlal Choudhry's case(supra). In other words the twin conditions prescribed in Section 45(1) stood revived with amendment in 2018.

17. Measuring the facts of the present case in context of section 45 of the Act, the evidence collected by the investigating agency particularly the information found stored in laptop of petitioner and also the bank accounts of the petitioner and of other members of his family wherein crores of rupees has been credited which remains unexplained, leaves no doubt about complicity of the petitioner. Further, having regard to the stakes and the amount involved, there is likelihood that the petitioner, in case released on bail will flee from justice. It may here be mentioned that much before the arrest of the petitioner, a “Look-Out Notice” had been issued on 6.12.2021 as it was apprehended that he may flee from country. Thus, it can be safely be said that the twin conditions prescribed by section 45 of the Act do not stand satisfied.

18. However, the matter also needs to be examined with respect to the exceptions to the stringent provisions, carved in section 45 of the Act itself.

The relevant extract from section 45 is reproduced herein-under:

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:**

(emphasis supplied)

19. It is the specific case of the petitioner that he is suffering from serious co-morbidities and on account of the same his health is fast deteriorating. The petitioner relies upon a medical report dated 25.8.2022 (Annexure A-1) of Jail Doctor which is reproduced herein-under:

“ MEDICAL CONDITION OF PRISONER PATIENT PRANJIL BATRA S/O
MADAN MOHAN BATRA, AGE 38 YEARS,/MALE

Medical condition of above mentioned prisoner patient is submitted as under:

1. That UT prisoner patient namely Pranjl Batra S/o Madan Mohan Batra Age 38 years had been incarcerating in Central Jail Ambala since 18.03.2022.
2. That the said prisoner patient is suffering from CAD, Hypertension, Diabetes Mellitus-II.
3. That the said prisoner patient is undergoing his treatment from Heart Centre, Civil Hospital, Ambala Cantt and Jail Hospital, Ambala for aforesaid diagnosis.
4. That the aforesaid prisoner patient's B.P (Blood Pressure) and RBS (Random Blood Sugar) remains uncontrolled due to his disease of obesity (Weight 153kg).
5. That usually the Blood pressure and Random Blood Sugar of said prisoner patient goes very high & down (on/off).
6. The physical health condition of said prisoner patient is deteriorating considerably.
7. That keeping in view his deteriorating physical health condition with complaints of bleeding from his per rectum, the said prisoner patient was referred to Trauma Centre, Civil Hospital Ambala City on 20.08.2022 in emergency, where he was got admitted by the Specialist Doctor of the aforesaid Medical Institute.

8. That the said prisoner patient was discharged from the same Medical Institute on 27.08.2022.
- 9 All the aforesaid information is based on availability of Medical Treatment Record of aforesaid prisoner patient.”

Sd/- Medical Officer
Central Jail, Ambala.

20. A perusal of above reproduced medical report shows that the petitioner is an obese person weighing 153 kilograms having erratic hypertension and diabetes issues. Additionally he is found to be having Coronary Artery Disease(CAD). Though, it appears that he was taken to Civil Hospital, Ambala and was provided treatment, where he he also remained admitted but the Doctor, in the aforesaid certificate, has in unambiguous terms opined that the physical health condition of said patient is deteriorating considerably.
21. Obesity, as in the case of the petitioner, who weighs 153 kilograms is not just a symptom but is itself a disease which becomes root-cause of several other diseases. With such co-morbidities, the response, the resistance, the resilience and the capacity of the body to fight ailments and recuperate efficaciously, decreases substantially. The jail doctor or for that matter, a civil hospital may not be fully equipped to handle a patient having multiple ailments who apart from medical treatment may require a certain level of monitoring, care and attention which ordinarily is not available in jail. Considering the co-morbidities of the petitioner, it can safely be said that he falls in the exception of being “sick” as carved out in Section 45 of the Act, so as to be entitled to be released on bail. The petitioner, otherwise has been behind bars since the last about 8 months. Supplementary complaint already stands presented against him. There is no occasion for his custodial

interrogation now at this stage. The co-accused Radhe Shyam and Bansi Lal were released on bail immediately upon their appearance in Court pursuance to issuance of summons for their appearance.

22. In view of the discussion made above, particularly the precarious medical condition of the petitioner, the petition merits acceptance and is hereby accepted. 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.
23. It is, however, clarified that none of the observations made above shall be taken to be an expression on merits of the main case.

4.11.2022

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No