IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-35565-2021 (O & M)
Reserved on : 15.03.2022
Date of decision: 22.03.2022

Vikram Kumar Seth

...Petitioner

Versus

Directorate of Enforcement, Jalandhar

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Sardavinder Goyal, Mr. Nitin Kant Setia, Mr. Sarwinder Goyal and Mr. Raj Kumar Selwan, Advocates, for the petitioner.

Mr. Satya Pal Jain, Additional Solicitor General with Mr. Sanjay Vashisth, Senior Panel Counsel for the respondent-ED.

HARNARESH SINGH GILL, J.

Through this petition, the petitioner seeks regular bail in case bearing ECIR No.JLZO/ECIR/03/2017 dated 07.11.2017, registered under Section 3 punishable under Section 4 of Prevention of Money Laundering Act 2002 (for brevity, 'PML Act').

Brief facts of the case, as noticed by the learned Judge, Special Court, PMLA, Jalandhar, while dismissing the bail application of the petitioner, are as under:

> *"3. The facts necessary for the disposal of the present bail application are that CBI, ACB, Chandigarh registered FIR No. RCCHG2015A0002 dated 15.01.2015, under Sections 120-B, 420, 467, 468, 471 IPC and Sections 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, against applicant-accused Vikram Kumar Seth and others, on the allegations that on the basis*

of forged and fabricated documents, they obtained loan from the banks. FIR No. 86 dated 30.07.2013 and FIR No. 61 dated 13.05.2013, under Sections 420,467,468,471,120-B IPC have also been registered against Vikram Seth and others, at Police Station Phagwara. Since. The offences under Sections 120-B,420,467,471 IPC and Section 13 of Prevention of Corruption Act are scheduled offences, hence the Directorate of Enforcement, Jalandhar registered the present ECIR under the Prevention of Money Laundering Act, 2002 (for short, PMLA, 2002) against the applicant-accused. It is alleged that during investigation by the Directorate of Enforcement, it is found that accused Vikram Seth is the mastermind of this fraud and he generated proceeds of crime by availing bank loans on the basis of forged documents and further diverted, siphoned off and parked those proceeds of crime in various movable and immovable properties. It is further alleged that accused 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 & company, M/s Unique Traders, M/s Quality Lime Product, M/s U.R.Sales Pvt. Ltd, M/s U.R.Enterprises and M/s M.K.Trasders, in his name and in the name of his family members, availed 19 loans from Bank of Baroda, G.T. Road, Phagwara and defaulted in repayment of these loans amounting to Rs.21.31 crore. It is further alleged that with the proceeds of crime, the accused purchased the following properties:-

i. Property measuring 4 kanals vide vasika no. 1170 dated 24.06.2021 at village Narangshahpur, Tehsil Phagwara, in the name of Smt. Veena Handa for Rs.18,50,000/-, out of which Rs..1,00,000/- was paid in cash and the remaining amount of Rs.17,50,000/- was paid from the account of M/s B.L.Seth Steel Ltd.

ii. A loan of Rs.30,00,000/- was obtained by the accused in his name from ICICI Home Loan against property bearing H. No. 524-B, Adarsh Nagar, Phagwara, and the payments to repay this loan was made by utilizing the loan *availed from BOB, Phagwara. An another loan amounting to Rs.6,00,000/- was obtained from ICICI Top Up loan and this loan was also repaid by utilizing the loan availed from BOB, Phagwara.*

4. It is further alleged that an amount of Rs.8,07,16,024/- was siphoned off by Seth group through net cash withdrawals and utilized the same in purchasing following properties:-

i. Property measuring 8.5 marlas vide vasika No. 814 dated 23.05.2012 at village Narangshahpur, Tehsil Phagwara, in the name of Smt. Sunita Seth, for a consideration of Rs.6,80,000/-.

ii. Property measuring 5.75 marlas vide vasika No. 813 dated 22.05.2012 at village Narangshahpur, Tehsil Phagwara, in the name of Smt. Anita Seth for a consideration of Rs.4,60,000/-.

iii. Property measuring 2 kanals 2.25 marlas vide vasika No. 3182 dated 29.12.2014 at village Naranshahpur, Tehsil Phagwara, in the name of smt. Veenda Handa, for a consideration of Rs.29,61,000/-.

iv. Property measuring 2 kanals 6 marlas vide vasika No. 2989 dated 12.12.2014 at village Narangshahpur, Tehsil Phagwara, in the name of Smt. Sunita Seth for a total consideration of Rs.32,20,000/-

5. It is further alleged that accused also obtained a loan from Phagwara Primary Cooperative Agricultural Development Bank and invested the said loan amount in the development of Urmil enclave. It is further alleged that on 17.05.2012 and 18.05.2012 cash amounting to Rs.1,07,71,000/- was withdrawn from various loan accounts of BL Seth group and on 18.05.2012 cash amounting to Rs.80,59,472/- was utilized for making repayments of old loans obtained from The Phagwara Primary Co-operative Agriculture Development Bank Ltd, Phagwara. It is further alleged that loans amounting to Rs.28,00,000/-, Rs.19,00,000/- and Rs.15,00,000/- were obtained in the name of Suresh Seth from ICIC Bank against plots situated in Urmil Enclave, Hadiabad and the said loans were

> *repaid by utilizing the loan availed from BOB, Phagwara. It is further alleged that accused obtained loans from the banks by fraudulent means and utilized those loan amounts to repay the earlier loan installments. The accused also transferred two plots measuring 1 kanal each in the name of his son Shivam Seth, without any consideration. It is further alleged that during investigation it has been revealed that Shri Sumit Khanna and Smt. Rashi Khanna are partners of M/s R.S.Traders and the said firm made repayments of some of the loans availed by entities/persons of Seth Group. Thus, the Directorate of Enforcement, after thorough investigation, has arrested the accused in the present case for committing the offence punishable under Sections 3 and 4 of PMLA, 2002."*

Learned counsel for the petitioner have submitted that on 30.03.2021, the petitioner had tested Covid positive, due to which, he could not appear before the respondent-ED; that the present case is based on assumptions and presumptions; that the properties of the petitioner were attached by the the respondent-ED, and the said action is under challenge by the petitioner before the Adjudicating Authority, New Delhi; that the petitioner was arrested on 26.07.2021 on the pretext of not cooperating with the Enforcement Directorate and that he did not make himself available for investigation. It is further submitted that the petitioner had made himself available to the agency as and when called upon to do so and got his statement recorded nearly 4-5 times from 2019. It is also contended that the petitioner had already entered a compromise with the Bank and had paid an amount of Rs.2.5 crore to the Bank and in proportion to the amount, the Bank has vacated the charge on the respective properties and also issued NOCs regarding it. Still further, it is contended that the petitioner has been in custody since 26.07.2021 and there is no rational justification in retaining the petitioner behind the bar, as an under-trial. On this premise, the learned counsel pray that the petitioner be released on bail.

Learned counsel for the petitioner while referring to the judgment of a Coordinate Bench of this Court in CRM-M-51885-2021 - Sukhpal Singh Khaira Vs. Assistant Director, Directorate of Enforcement, decided on 27.01.2022, contends that the case of the petitioner is on the similar footing and, thus, prays for release of the petitioner on regular bail.

On the other hand, learned Additional Solicitor General, while opposing the submissions made by the learned counsel for the petitioner, submits that the petitioner is the king-pin of the alleged offence, and that the petitioner in connivance with the others had acquired huge movable and immovable properties, worth crore of rupees, by using the proceeds of crime, which he had procured as loans from various Banks on the basis of the forged documents and by committing cheating with the banks. It is further contended that the petitioner did not cooperate with the investigating agency and rather, had made every possible effort to thwart the investigation. While emphasizing upon Sections 45, 65 and 71 of the PML Act, it is submitted that the Hon'ble Supreme Court in Shivinder Mohan Singh Vs. Directorate of Enforcement, 2020 (3) RCR (Criminal) 195, has granted status quo against the order passed by the Delhi High Court, vide which regular bail was granted to the petitioner therein in a case registered under the provisions of the PML Act, holding that the law laid down therein shall not be treated as a precedent.

It is further submitted that that provisions of Section 45 of PML Act were struck down by the Hon'ble Supreme Court on 23.11.2017, but again amendment was brought on 19.04.2018 and the question of its constitutional validity is pending before the Hon'ble Supreme Court as different High Courts have taken divergent views on the issue whether the provisions of Section 45 are revived or re-enacted.

It is further submitted that under the provisions of Section 45 of the PML Act, 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 the limitation provided under Cr.P.C.

It is further contended that the petitioner does not qualify the twin test laid down under Section 45 of PML Act, as there is every possibility that he may leave the country, if granted the concession of bail.

Learned counsel for the complainant, while referring the judgment of the Hon'ble Apex Court in P. Chidambaram Vs. Directorate of Enforcement, (2019)9 SCC 68, contends that grant of bail in the economic offence will hamper the probe and the crime committed by the petitioner shaking the economic fabric of the society, the petitioner is not entitled to the grant of bail.

I have heard the learned counsel for the parties.

Section 45(1) of the PML Act, as enacted by the Parliament in the year 2002, would read as under:-

> "Section 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 punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless-
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> (i) the Public Prosecutor has been given a opportunity to oppose the application for such release; and
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> (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, may be released on bail, if the Special Court so directs:
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> 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-
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> (i) the Director; or
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> (ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government."

The afore quoted provisions imposed two conditions before bail could be granted to a person accused of an offence punishable for a term of imprisonment for more than three years under Part A of the Schedule attached to the PML Act. As per these conditions, before grant of bail, 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 order release of the accused on bail only after recording a 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. The constitutional validity of the aforesaid provisions imposing the twin conditions for grant of bail, came up for consideration of the Hon'ble Supreme Court in Nikesh Tarachand Shah Vs. Union of India and another, (2018)11 SCC page 1, and the Hon'ble Supreme Court, after holding that the prescribed twin conditions for release on bail were violative of Articles 14 and 21 of the Constitution, declared Section 45(1) of the PML Act, as unconstitutional, to that extent.

The operative part of judgment of the Hon'ble Supreme Court, would read as under:-

> "45. Regard being had to the above, we declare Section 45(1) of the Prevention of Money Laundering Act, 2002, insofar as it imposes two further conditions for release on bail, to be unconstitutional as it violates Articles 14 and 21 of the Constitution of India. All the matters before us in which bail has been denied, because of the presence of the twin conditions contained in Section 45, will now go back to the respective Courts which denied bail. All such orders are set aside, and the cases remanded to the respective Courts to be heard on merits, without application of the twin conditions contained in Section 45 of the 2002 Act. Considering that persons are languishing in jail and that personal liberty is involved, all these matters are to be taken up at the earliest by the respective Courts for fresh decision. The writ petitions and the appeals are disposed of accordingly."

As per the learned Additional Solicitor General, after such decision, the defect on the basis of which the Supreme Court had declared Section 45(1) of the PML Act to be unconstitutional, was cured and consequently the twin conditions prescribed in Section 45(1), stood revived.

A Coordinate Bench of this Court in Sukhpal Singh Khaira's case (supra), has noticed that that the issue whether the amendment carried out is revival or resurrection, is pending adjudication before the Hon'ble Apex Court. The said fact has not been disputed by the learned counsel for the respondent. The relevant extract from the said judgment in Sukhpal Singh Khaira's case (supra), would read as under:-

> "29. However, it is clear from the above, that there are divergent views expressed by the Hon'ble Apex Court, with respect to the resurrection, or revival of twin conditions, as contained in Section 45 of the PML Act, upon a validating amendment being made thereto, post the verdict in **Nikesh Tara Chand's case (supra)**. Obviously, this Court is left with no alternative but to, in view of the above discussion, rather grant, than deny bail to the applicant, as the rule is of grant of bail, than of denial of bail. Moreover, when no evidence has been adduced, at this stage, by the prosecution, that in the event of grant of bail to the bail applicant-petitioner, there is any likelihood of his fleeing from justice, and, tampering with the prosecution evidence."

Another Coordinate Bench of this Court in CRM-M-35662-2021, titled as 'Shiv Lal Pabbi Vs. Directorate of Enforcement', decided on 27.10.2021, has dealt with the similar issue and released the petitioner therein on bail.

It is well settled principle of law that when the investigation is complete and the charge-sheet is filed in the Court, conclusion of the trial is likely to take a long time, a person/accused like the petitioner, who is aged about 53 years, 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.

After considering the entire matter and in particular that investigation is the case is complete and a complaint has already been filed by the E.D.; the petitioner has been in custody since 26.07.2021 and that the properties of the petitioner have already been attached, this Court is of the opinion that the present petition deserves to be allowed. Ordered accordingly. However, the grant of bail to the petitioner, is subject to the following conditions:

(i). The petitioner shall furnish personal and surety bonds, in the sum of Rs.Two Lakh, with one or two solvent local sureties in the like amount, before, and, to the satisfaction of the learned trial Court/Duty Magistrate.

(ii). Till the petitioner complies with the process of furnishing sureties, the applicant is directed to be released on furnishing cash bail of Rs.Two Lakh, and, the petitioner shall comply with the formalities of furnishing sureties within a period of six weeks from his actual release from jail.

(iii) The petitioner shall submit his residential address along with proof of his staying there to the respondent, and, in the event of change of address, shall update the same before, and, to the satisfaction of the learned trial Court concerned.

(iv) The petitioner shall surrender his passport with the investigating agency, if not already surrendered, before, the learned trial Court concerned.

(v) The petitioner shall remain present before the Special Court concerned, on the fixed dates without fail unless and until prevented for medical reasons.

(vi) The petitioner shall not leave the jurisdiction of this High Court without obtaining the prior permission of the trial Court.

(vii) Needless to state that the respondent shall be at liberty to take recourse as available under law, if the bail applicant violates any of the conditions imposed, as aforesaid.

(viii) The petitioner shall not tamper with the evidence and/or prosecution witnesses.

However, any observations made in this order, shall not effect the decision, on merits of the trial.

22.03.2022 **(HARNARESH SINGH GILL)**
parveen kumar **JUDGE**

Whether reasoned/speaking? Yes/No
Whether reportable? Yes/No