In the High Court for the States of Punjab and Haryana
At Chandigarh

CRM-M-49397-2021 (O&M)
Date of Decision:-31.5.2022

Vinod Kumar 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. Anurag Sharma, Advocate and
Mr. Adarsh Aggarwal, Advocate for the petitioner.

Mr. Lokesh Narang, Senior Standing Counsel,
Government of India for the respondent.

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GURVINDER SINGH GILL, J.(Oral)

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered vide complaint No.COMA/03/2018 dated 7.12.2018 titled' Directorate of Enforcement Versus Ramesh Mehan and other' under Section 3 punishable under Section 4 of Prevention of Money Laundering Act, 2002.

2. The allegations, in nutshell, are that Punjab Police had registered FIR No.221 dated 14.11.2013, Police Station Division No.5, Ludhiana under Sections 177, 420, 465, 467, 468, 471 and 120-B of Indian Penal Code, wherein it is alleged that Ramesh Mehan and his son Rajeev Mehan has wrongly availed

VAT refund amounting to Rs.74,36,067/-. Pursuant to lodging of the aforesaid FIR, the petitioner was arrested on 17.7.2015. The Assistant Director, Directorate of Enforcement, on the basis of FIR No.221 dated 14.11.2013, registered ECIR No.9 dated 6.12.2013. The accused Vinod Kumar Garg had been granted bail by this Court in FIR No.221 dated 14.11.2013 vide order dated 1.10.2015 passed in CRM-M-29452 of 2015. The respondent investigated the matter and found that VAT refund amounting to Rs.74.36 lakhs has been wrongly credited in the account of Yourk International (Proprietor Sh. Ramesh Mehan). The aforesaid amount was further transferred in the account of 'M/s Shreyas International' of which Rajeev Mehan son of Sh. Ramesh Mehan is the Proprietor. A sum of Rs.44 lakhs out of the aforesaid VAT refund of Rs.74.36 lakhs was found to have been transferred in the account of 'M/s Jaldhara Cotspin Private Limited' of which Raman Kumar Garg and Brij Lal Garg are Directors. Brij Lal Garg is father of petitioner and Raman Kumar Garg is son of petitioner. The respondent further found that a sum of Rs.2.56 lakhs was transferred in the account of petitioner on 4.5.2013. On the basis of investigation, the respondent filed complaint dated 6.12.2013 before learned Special Judge, wherein Ramesh Mehan, Rajeev Mehan, Brij Lal Garg, Raman Kumar Garg and petitioner Vinod Kumar Garg were arrayed as accused.

3. Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in the present case solely on account of the fact that he happens to be father of co-accused Raman Kumar Garg and son of Brij Lal Garg, who both are Directors of 'M/s Jaldhara Cotspin Private Limited'.

4. Learned counsel for the petitioner further submitted that the company being run by petitioner's son and father had been doing well and that his son, in order to financially help the petitioner, had been transferring some amount and that the allegations in the present case are that the petitioner had benefited to the tune of Rs.2.56 lakhs out of the total amount of Rs.74,36,067/- and that an amount of Rs.2.56 lakhs is a small amount, which had been transferred for the purpose of his maintenance and to meet with other routine expenses.

5. On the other hand, learned State counsel has submitted that the petitioner is a habitual offender and that he had previously been involved in another case i.e. in complaint No.COMA/15/2017 dated 22.12.2017, under Section 3 punishable under Section 4 of Prevention of Money Laundering Act (hereinafter referred to as '*PMLA 2002*') and that even recently the petitioner has been involved in FIR No.06 dated 16.2.2022 Police Station CBI, ACB, Chandigarh under Sections 120-B, 419, 420, 467, 468, 471, 406 and 409 of Indian Penal Code. Learned counsel has further submitted that, in any case, keeping in view the Bar imposed by Section 45 of PMLA Act, the petitioner does not deserve the concession of bail.

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

7. It is not in dispute that the petitioner himself is not a Director of 'M/s Jaldhara Cotspin Private Limited' and that it is his son and father, who are the Directors.

8. Though learned counsel for the respondent has submitted that the proceeds of crime amount to the tune of Rs.8.7 lakhs had been transferred in the bank account of petitioner Vinod Kumar Garg, but a perusal of the reply filed by

the respondent shows that it is infact an amount of Rs.2.56557 lakhs, which had been transferred into the bank account of petitioner Vinod Kumar Garg. It will be debatable as to whether the said amount had been received by the petitioner while being aware that the same was proceeds of crime or not.

9. As far as applicability of Section 45 of PMLA 2002 is concerned, the said provisions though stringent in nature were amended w.e.f. 19.4.2018, wherein an exception was carved out in cases where the amount in question is less than Rs.1 crore. The present complaint was instituted in December 2018. In other words, the instant complaint had been instituted after the amendment had been carried out and thus the applicability of Section 45 of PMLA 2002 would be subject to exception that the amount in question is more than Rs.1 crore.

10. Though learned counsel for the respondent has vehemently argued that conduct of the petitioner, who had earlier been involved in two other cases and had also remained absent, would not warrant the grant of concession of bail but keeping in view the amount alleged to have been received by the petitioner in the present case and also his age (63 years) and also that the petitioner has been behind bars since the last about 8 months, this Court is of the opinion that further detention of the petitioner would not be justified.

11. The petition, as such, is accepted and 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.

31.5.2022 **(Gurvinder Singh Gill)**
pankaj **Judge**

Whether speaking /reasoned Yes / No
Whether Reportable Yes / No