



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: December 21, 2021

Decided on: January 07, 2022

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BAIL APPLN. 3156/2021

RAJEEV SHARMA

..... Petitioner

Represented by: Mr.Mohit Mathur, Sr.Advocate with
Mr.Avi Singh, Mr.Aditya Singh,
Mr.Shubham Singh, Mr.Anubhav
Singh, Mr.Karan Dhalla, Mr.Vinayak
Chitale and Mr.Harsh Gautam,
Advocates.

versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Represented by: Mr.S.V.Raju, Additional Solicitor
General with Mr.Amit Mahajan,
CGSC, Mr.Zoheb Hossain, Spl.
Counsel, Enforcement Directorate,
Mr.Mohd. Faraz, Spl. P.P. and
Mr.Vivek Gumani, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition, the petitioner seeks regular bail in ECIR/05/STF/2021 recorded by the respondent pursuant to the predicate offence(s) being FIR No. 230/2020 registered at P.S.Special Cell under Sections 3/4/5 of the Official Secrets Act and Section 120B IPC.

2. Learned counsel for the petitioner contends that the petitioner is a senior freelance journalist aged 61 years old, suffering from various ailments and has represented premier news agencies like United News of India



(UNI), The Tribune, Free Press Journal, Sakal Times and Enadu. The petitioner has also written various books and is a journalist accredited by Press Information Bureau, Govt. of India. The petitioner worked as a freelance journalist for Chinese newspaper i.e. Global Times from the year 2014 to 2016 and during this employment as a journalist, the petitioner used to send and receive emails from his aforesaid employer which are all easily available in public domain. In connection with the predicate offence being FIR No. 230/2020 registered at P.S.Special Cell, the petitioner was arrested for the offences punishable under Sections 3/4/5 of the Official Secrets Act on 14th September 2020 and was released on default bail in terms of Section 167(2) Cr.P.C on 4th December 2020 as the charge sheet/complaint had not been filed within the statutory period. On 26th February 2021, the respondent recorded the above-noted ECIR and directed the petitioner to join the investigation which he joined several times till 1st July 2021. The premises of the petitioner was searched and seizures affected, however, nothing except sixteen visiting cards were recovered. In the above-noted ECIR, the petitioner was arrested on 1st July 2021 for offences punishable under Sections 3/4 of PMLA and is in custody since then.

3. Learned counsel for the petitioner contends that the offences punishable under the Official Secrets Act not being the Scheduled Offences under the PMLA, ECIR recorded by the respondent and the arrest made pursuant to that as also the complaint filed is without any jurisdiction. It is further contended that even otherwise, as per the complaint of the respondent, the proceeds of the crime attributable to the petitioner amount to ₹48,20,788.50 paisa and in terms of Proviso to Section 45 of the PMLA de-hors the decision of the Hon'ble Supreme Court in (2018) 11 SCC 1 titled as Nikesh Tarachand Shah Vs. Union of India, the twin conditions as



applicable in Sub-Section (1), clauses (i) and (ii) will not be applicable as the proceeds of the crime even as per the respondent is less than ₹1 Crore. Further, even for arriving at the proceeds of the crime for a sum of ₹48,20,788.50 paise, an entry of ₹14 lakhs has been repeated. Reliance is also placed on the decision reported as 2021 SCC Online Kerala 395 titled M.Sivasankar Vs. Union of India. to contend that since the amount involved is less than ₹1 Crore, the Proviso to Section 45 of the PMLA would be applicable.

4. Thus, as held by the Gujarat High Court in the decision reported as R/Criminal Misc. Application No. 2774 of 2021 decided on 6th May 2021 titled as Pasumarthi Venkata Satyanarayana Sarma Vs.The Assistant Director, Enforcement Directorate, for grant of bail only three factors are required to be satisfied i.e. flight risk, tampering with the evidence and influencing the witnesses. The petitioner is citizen of India, his wife is a Professor in the JNU and he has roots in the society. There is no allegation that the petitioner has either tampered with the evidence or influenced any witness. The petitioner having been on bail for the offences under the provisions of Official Secrets Act from 4th December 2020 to 1st July 2021 and regularly joining the investigation, there is no material on record to show that the petitioner either tampered with the evidence or influenced the witnesses or is a flight risk.

5. It is contended that the material which was required to be collected has already been collected from the petitioner by the prosecuting agency and the trial is likely to take substantial time. Till date, no cognizance has been taken for the offences punishable under Sections 3/4/5 of the Official Secrets Act. The petitioner has given explanation for all his foreign trips and how the payments for the said trips were made, either from his account or from



his wife's account or by credit card. Contention of the respondent that the offence involved is a serious offence cannot be accepted because the offences under the Official Secrets Act are not notified as Schedule Offences under the PMLA. Further any alleged discrepancy in the Income Tax Returns also cannot be the basis for proceeding against the petitioner under Sections 3/4 of the PMLA, for the reason, offences punishable under the Income Tax Act are also not notified as Scheduled Offences under the PMLA.

6. Learned Additional Solicitor General of India has taken this Court through the relevant paragraphs of the complaint filed to contend that the petitioner is involved in a very serious and grave offence punishable under Official Secrets Act. It is contended that even if the provisions of the Official Secrets Act are not mentioned as Scheduled Offences under the PMLA, however, still, because the complaint is also for offences punishable under Sections 120B IPC and 411 IPC, proceedings under Section 3/4 of the PMLA have been rightly invoked. Even, based on the Proviso to Section 45(1) of the PMLA, it is the discretion of the Court to grant bail to an accused and the accused cannot claim bail as a matter of right. The word used in proviso to Section 45 of the PMLA is 'may' thus the accused does not get a right of bail but only gets a right for being considered for grant of bail. Reliance is placed on the decision of (1999) 4 SCC 621 State of Kerala vs. Babu & Ors. Petitioner is involved in a serious offence of espionage and was secretly giving the locations of the Indian Army to the enemy. It is contended that the petitioner gathered the information which could be either by theft or by criminal breach of trust and in either case, the same would invoke offence punishable under Section 411 IPC and the same being a Scheduled Offence, the petitioner can be proceeded with it on a complaint



under PMLA. The petitioner is supported by Chinese nationals and thus, there is every likelihood that he will flee from the country. Since the petitioner was passing information qua the Indian Army, the same is a far more serious offence than an economic offence. Considering the allegations against the petitioner in the charge sheet filed under the provisions of Sections 3/4/5 of Official Secrets Act and Section 120B IPC, the charges are very serious and far worse than an economic offences.

7. Rebutting the arguments of the learned Additional Solicitor General, learned Senior Counsel for the petitioner contends that the articles written by the petitioner are as 'South Asia Monitor' of a Malaysian company which has not been made an accused. The other two co-accused alleged are not accused in the predicate offence and since the petitioner satisfies the requirements under the triple test for grant of bail, the petitioner be released on bail. As regards the contentions of the respondent that offences punishable under Sections 120B and Section 411 IPC having been invoked, the same being notified as Scheduled offences under the PMLA, the respondent has validly proceeded under the provisions of Sections 3/4 of PMLA, it is stated by learned counsel that Section 120B IPC has not been invoked substantively but along with the offences punishable under Sections 3/4/5 of the Official Secrets Act. Reliance is placed on the decision of the Hon'ble Supreme Court in Opto Circuit India Limited Vs. Axis Bank, CrI.Appeal No. 102/2021 decided on 3rd February 2021. Further, even on a query raised from the concerned Ministry in relation to the so-called information published by the petitioner, the reply by the concerned department is that the information is not classified and provisions under Sections 3/4/5 of the Official Secrets Act cannot be also invoked.

8. In the complaint filed by the respondent against the petitioner



alleging offences punishable under Sections 3/4 of the PMLA, it is stated that FIR No. 230/2020 was registered on 13th September 2020 against Rajeev Sharma, a journalist residing in Pitampura and he was arrested on 14th September 2020. On his disclosure, one Nepalese national Sher Singh @ Raj Bohara and a Chinese national Qing Shi, who were working with one MZ Mall Pvt. Ltd. being run by Chinese nationals, were arrested. Section 120B IPC in the case being a Scheduled Offence, the investigation was taken up by the respondent after recording of the ECIR/05/STF/2021 on 26th February 2021. It is alleged that in the investigation in FIR No. 230/2020 registered at P.S.Special Cell, a secret information was received that the petitioner was going to supply the secret information to some unknown persons near Press Club of India, Raisina Road and the petitioner was apprehended at Main Mathura Road, Pillar No. 172, near Metro Station, Patel Nagar. It is claimed that the petitioner during interrogation revealed that he supplied confidential information to certain persons namely George Michael and Xou who were Chinese Intelligence Officers and obtained good remuneration for the same.

9. From the search carried out at the house of the petitioner, one magazine New India Samachar, one magazine Geojet Insights, folder containing policies, acknowledgment photocopy of Aadhar card and PAN card, bank statements, ITR form, appointment letter from media Watch Communications SDN BHD, some confidential documents and one Laptop-Dell were recovered and seized. During interrogation, according to the petitioner, his handler George used to send the money to him through India based shell companies namely MZ Mall and MZ Pharmacy situated at Mahipalpur being run by Chinese nationals namely Zhang Sheng @ Suraj and Zhang Lixia @ Usha and Qing Shi. Presently, these companies were



being run by Qing Shi as Zhang Sheng @ Suraj and Zhang Lixia @ Usha left for China and could not return due to Covid 19. Further, Qing Shi used to deliver the money to petitioner through Raj Bohara who worked at MZ Pharmacy/MZ Mall. It is further revealed that besides the money being received from the company MZ Mall Pvt. Ltd., the petitioner and his wife Pratima Vyas also went for foreign trips which were financed by his Chinese handlers namely Michael, Xou and George. It is stated that there were no corresponding entries in his bank or his wife's account which related to the offences attributable to their numerous foreign trips. The petitioner received money in cash as also using his friend Ramesh Virmani's account to get money from one Irtiza Nasim Ali, Editor-in-Chief of South Asia Monitor based in Malaysia. This money was taken by Rajeev Sharma from Ramesh Virmani in cash, offering a handsome commission. As per Ramesh Kumar Virmani, he did not know Irtiza Nasim Ali from whom he received money. He knew the petitioner whom he used to meet in the park while on morning walk and the said amount was transferred in cash to Rajeev Sharma who used to pay a commission of ₹15,000/- for an entry of ₹3,00,000/-.

10. According to the complaint, the petitioner received cash from Sher Singh @ Raj Bohara 7-8 times and every time, money was INR equivalent to 1000 USD. Further, Rajeev Sharma also received cash from MZ Mall Pvt. Ltd. through Pankaj Yadav, a freelance journalist who picked up ₹2.50 - 3 lakhs from MZ Mall office at Mahipalpur and delivered the same to Rajeev Sharma at his house in Pitampura. Further, one more person picked money from residence of Qing Shi and delivered ₹14 lakhs cash to the petitioner at his house and also ₹2 lakhs as cash deposited in his bank account by Sher Singh @ Raj Bohara. It is claimed that the petitioner was using one Ved Prakash as his assistant to whom, he transferred a sum of ₹3



lakhs from his bank account as also gave some money to Ved Prakash in cash to invest in shares. It is stated that Rajeev Sharma was working on the behest of Chinese Intelligence Agencies/Officers and was providing certain secrets/confidential information to them which were never shared in public domain and were for the use of his clients including Chinese Govt. Officials and he was getting a remuneration in the form of cash through human carriers in India as also in the form of foreign trips made by him and his wife.

11. Statement of Qing Shi was recorded under Section 50 of the PMLA who stated that she met Cheng Zhang @ Suraj while studying in the Delhi University and after completing study, joined the consultation company in the year 2016 and in the year 2018, she joined MZ Mall Pvt. Ltd. as an Interpreter. The company MZ Mall was run by two Chinese nationals, Cheng Zhang @ Suraj and Zhang Lixia @ Usha. Her salary of ₹1 lakh per month was being credited to her bank account maintained in a bank in China and all her expenses including her rent in India were paid in cash by MZ Mall Pvt. Ltd. She used to receive cash which was then given to Sher Singh @ Raj Bohara for further investment. It is stated that MZ Mall was doing the business of money exchange and used to give Indian currency to the Chinese tourists coming to India in lieu of money transferred by them from the Chinese bank accounts.

12. Conversations in the chat using telegrams app have been recovered between Rajeev Sharma and George as extracted from the mobile phone of the petitioner which were meant to cover up the transactions from his end in the guise of the business carried out by MZ Mall Pvt. Ltd. i.e. the medical tourism. The allegations against the petitioner are also that his foreign visits to Bhutan, China, Laos, Dubai, Singapore, Nepal, Malaysia and Indonesia



on various occasions were financed by his Chinese handlers/Intelligence agencies. However, the petitioner has given a breakup of his foreign visits with effect from 2016 and the mode of payments thereon, as under:

S.No.	Date	Destination	Mode of payment
1.	07.06.2016	Bhutan	Trip with Family Friends. Payment made in cash to organizer of the trip.
2.	22.06.2016	Kunming City	Indian Overseas Bank (Cheque No.298821)
3.	09.09.2016	Laos	Union Bank (Cheque No.00038)
4.	01.07.2017	Dubai	Visa Payment- Union Bank (Cheque No.22495) Tickets purchased by Credit Card
5.	23.11.2017	Singapore	Went with brother and family. Visa Payment- Indian Overseas Bank (Cheque No.207163) + Union Bank (Cheque No.00087) Tickets purchased by Credit Card. Lodging is Club Mahindra by Pratima Vyas' brother.
6.	21.01.2019	Nepal, Kunming City	Payment organized by SAM-work trip for holding an interview by SAM
7.	21.03.2019	Dubai	Tickets purchased by credit card.
8.	15.05.2019	Malaysia	Union Bank (Cheque No.000103)
9.	07.06.2019	Indonesia	Organized with a group of friends. Paid via Union Bank (Cheque No.53991)

13. Indubitably, offences punishable under the Official Secrets Act are not in the list of Scheduled Offences under the PMLA. Whether the charge sheet filed in the predicate offence is for offences punishable under Sections 3/4/5 of Official Secrets Act read with 120B IPC or for Section 120B IPC substantively or whether in the absence of any charge sheet under Section 411 IPC having been filed by the Special Cell, Delhi Police, the respondent/Enforcement Directorate could have recorded the above-noted ECIR for offences punishable under Sections 3 & 4 of the PMLA on the ostensible ground that since Section 120B IPC is a Schedule Offence and the



Enforcement Directorate had jurisdiction to investigate into offence of money laundering pursuant to the offences under Sections 3/4/5 of Official Secrets Act would be a matter to be dealt by the learned Trial Court at the stage of charge. It may be noted that the charge sheet filed by the Special Cell does not note the offence punishable under Section 411 IPC. Even in the complaint filed by the respondent before the learned Trial Court, Section 411 IPC being the predicate offence has not been mentioned. This plea has been taken by the learned Additional Solicitor General during the course of arguments. Further, even taking the allegations on their face value, the proceeds of crime are less than Rs.1 Crore.

14. Section 45 of the PMLA 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 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.”



15. In Nikesh Tarachand Shah (supra), the Hon'ble Supreme Court struck down the twin conditions mentioned in Section 45 of the PMLA. The amendment in Section 45 by the Finance Act 2018 is only with respect to substituting the term 'offence punishable for 3 years' with 'offence under this Act'. The said amendment does not revive the twin conditions already struck down by the aforesaid judgment as held by this Court in Bail Appln. 249/2019 titled as Upendra Rai Vs. Directorate of Enforcement. The twin conditions under Section 45 of the PMLA not being applicable, the triple test is required to be applied so as to consider grant of bail to the petitioner. Though learned Additional Solicitor General has strenuously argued that since the petitioner has connection with Chinese handlers and intelligence agencies, he is a serious flight risk, however, the petitioner is an Indian citizen, his wife is also an Indian citizen employed in JNU and thus, has roots in society. There is no allegation against the petitioner that after being released on default bail in FIR No. 230/2020 registered at Special Cell on 4th December 2020 till 1st July 2021, the petitioner either tampered with evidence or influenced any witness. The petitioner joined the investigation as and when directed prior to 1st July 2021 before arrest.

16. Learned Additional Solicitor General has laid great emphasis on the ground that the petitioner is involved in a very serious offence of passing on the information relating to Indian Army to the Chinese nationals thereby compromising with the national security. However, by this petition the petitioner does not seek bail for offences punishable under Sections 3/4/5 of the Official Secrets Act but for offences punishable under Section 3/4 PMLA. Considering that the predicate offence, if any, against the petitioner is under Section 120B IPC and Section 411 IPC only and the proceeds of



the crime which are alleged to be laundered are a sum of ₹48,20,788.50 paisa and that the petitioner has been in custody now for nearly six months, this Court deems it fit to grant bail to the petitioner.

17. It is therefore directed that the petitioner be released on bail on the following conditions:-

- (i) The petitioner will furnish a personal bond in the sum of ₹5 lakhs with two surety bonds of the like amount, subject to the satisfaction of the learned Trial Court, out of which, one surety would be a family member of the petitioner;
- (ii) The petitioner will surrender his passport to the learned Trial Court;
- (iii) The petitioner will not leave the country without the prior permission of the Court concerned;
- (iv) In case of change of residential address and/or mobile number, the same will be intimated to the Court concerned by way of an affidavit;
- (v) The petitioner will appear before the Investigating Officer on the first Monday of every calendar month at 5 pm for the next six months.

18. Petition is disposed of.

19. Order be uploaded on the website of this Court.

CRL.M.B.1095/2021 (interim bail)

In view of the order passed in Bail Appln. 3156/2021, the application is disposed of as infructuous.

(MUKTA GUPTA)
JUDGE

JANUARY 07, 2022
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