IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLEANOUS JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Tirthankar Ghosh

CRM (SB) 164 OF 2023

Shri Souvik Bhattacharya
versus
Enforcement Directorate

For the Petitioner : Mr. Jishnu Saha, Sr. Adv.
Mr. Kumarpal R. Chopra, Adv.,
Mr. Pawan Kumar Gupta, Adv.,
Ms. Sofia Nesar, Adv.,
Mr. Santanu Seth, Adv.,

For the Enforcement Directorate :
Mr. Phiroze Edulji, Adv.,
Ms. Anamika Pandey, Adv.,

Heard On : 16.08.2023, 30.8.2023, 06.09.2023, 12.09.2023, 15.09.2023, 18.09.2023, 21.09.2023, 09.10.2023, 11.10.2023, 12,10,2023, 17.10.2023

Judgement On : 18.10.2023

Tirthankar Ghosh, J. :

The present application for bail has been preferred by the petitioner in connection with M.L. case no. 13 of 2022 arising out of ECIR No. KLZO-II/19/2022 dated June 24, 2022 for alleged commission of offence under Sections 3 read with Section 70 of the Prevention of Money Laundering Act, 2002 and punishable under Section 4 of the Prevention of Money Laundering Act, 2002.

Without going into the details of the case, records reflect that the initial complaint was filed on September 19, 2022 by the Directorate of

Enforcement (E.D.) and subsequently number of supplementary complaints were filed.

The present petitioner has been implicated pursuant to the prosecution complaint being filed on 7th of December, 2022.

The accusations made against the present petitioner along with M/s Acuere Consultancy Services and M/s. Educlasses Online are as follows:

> ***"2.*** *Shri Souvik Bhattacharya (A-10), D.O.B- 23.02.1989, S/o- Shri Manik Bhattacharya, R/o-26S, Jadavpur East Road, 1st Floor, Kolkata-700032:*
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> *Shri Souvik Bhattacharya was actively involved in assisting his father Shri Manik Bhattacharya in acquisition, possession, concealment and laundering the proceeds of crime acquired by Shri Manik Bhattacharya out of his corrupt and criminal activities relating to schedule offences under PMLA.*
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> *Shri Manik Bhattacharya being the president of West Bengal Board of Primary Education has abused and misused his high official position and in pursuance thereof he compelled 530 self-financed D.El.Ed Colleges to give him an amount of Rs. 50,000/- per institute. In order to launder the said extorted money, Shri Souvik Bhattacharya in connivance with Shri Manik Bhattacharya, formed a proprietary concern namely M/s Acuere Consultancy Services In his name and arranged an agreement vide dated 02.10.2018 between the said firm and Bengal Teachers Training Colleges Association being the association of self-financed D.El.Ed colleges of West Bengal, showing purpose of consultancy services to be provided to the said 530 self-financed D.El.Ed colleges by M/s Acuere Consultancy Services. Investigation conducted under PMLA, 2002 revealed that an amount of Rs.2,64,53,988/- was extorted*

from 530 self-financed D.El.Ed Colleges at the rate of Ps. 50,000/- per college which was received in the bank accounts of M/s Acuere Consultancy Services in guise of services rendered to them. Investigation conducted under PMLA, 2002 revealed that no such services have been provided to these colleges/institutions by M/s Acuere Consultancy Services against the amounts so received from them. Further the amount so received from the said institutions has not been returned so far.

Investigation also revealed that Shri Manik Bhattacharya being the president of West Bengal Board of Primary Education has abused and misused his high official position and in pursuance thereof he compelled D.EI.Ed Colleges to give him an amount of Rs. 500/- per D.El.Ed student during the covid-19 pandemic. Investigation revealed that an amount of total Rs. 2.47 Crores at the rate of Rs. 500/- per student from the colleges have been extorted by Shri Manik Bhattacharya. In order to launder the said extorted money, Shri Souvik Bhattacharya in connivance with Shri Manik Bhattacharya formed a proprietary concern namely M/s Educlasses Online and brought the said extorted money of Rs. 2.47 Crores in the bank accounts of this firm in order to show them as business transaction towards providing online classes. However, investigation conducted under PMLA revealed that no such classes, except some classes arranged as an eyewash, have been arranged for the students of D.El.Ed colleges by the said firm.

Investigation conducted under PMLA also revealed that Shri Souvik Bhattacharya and Shri Manik Bhattacharya in conspiracy with themselves and others induced their other family members and distant relatives and pursuant to that conspiracy opened a number of joint bank accounts with those induced persons without informing them the purpose of opening such Joint accounts with them. Further, he kept such joint bank accounts in his control, occupation and operation. Further he also infused huge sums of *cash in that bank accounts and from there the same were used for making FD jointly in the name of himself and his one of the relative Shri Debabrata Mukherjee. . Further, Shri Souvik Bhattacharya operated those accounts by showing himself as secondary holder but the said bank accounts was completely under his control and use.*

As such Shri Souvik Bhattacharya was involved in the acquisition, use, possession, and concealment of proceeds of crime with the assistance of other accused persons and entities. Thus, the accused person has committed the offence of Money Laundering as defined under section 3 of PMLA and is, therefore, liable to be punished under section 4 of PMLA, 2002.

Aforesaid acts committed by him are covered by the definition of offence of money-laundering. In addition to that, Explanation to Section 3 of PMLA also provides that "the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever". As revealed from the facts of the case, he continued to be involved in processes and activities connected with said proceeds of crime and continued to be in possession and use of the said proceeds of crime. In view of the facts and aforesaid legal explanation, it is noticed that he continued to commit offence of money laundering as per Section 3 of PMLA and therefore liable to be punished under Section 4 of PMLA for such continuing activity.

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4. *M/s Acuere Consultancy Services (A-12) (Represented through its proprietor Shri Souvik Bhattacharya), at:- 26 S, Jadavpur East Road, 1st Floor, Kolkata-700032:*

M/s Acuere Consultancy Service is the proprietary concern of Shri Souvik Bhattacharya (A-10) which was formed solely for the purpose to launder the proceeds of crime generated/derived out of the criminal activity relating to the scheduled offences under FMLA.

Shri Manik Bhattacharya (A-9) being the president of West Bengal Board of Primary Education has abused and mused his high official position and in pursuance thereof he compelled the self-financed D.El.Ed Colleges to give him an amount of Rs. 50,000/- per institute during the period from Oct 2018 to April 2019 in the name of services rendered to them investigation conducted under PMLA, 2002 revealed that an amount of Rs. 2,64,53,988/- was extorted from 530 self-financed D.El.Ed Colleges in the name of services rendered to them.

In order to launder the said extorted money, Shri Manik Bhattacharya (A-9) in connivance with his son Shri Souvlk Bhattacharya (A-10) formed this proprietary concern: (A-12) and arranged to be made an agreement dated 02.10.2018 between M/s Acuere Consultancy Services and Bengal Teachers Training Colleges Association being the association of self-financed D.El.Ed colleges of West Bengal, in the name of consultancy to be provided to the said 530 self-financed D.El.Ed colleges. Investigation conducted under PMLA, 2002 revealed that no such services have been provided to these colleges, institutions by M/s Acuere Consultancy Services against the amounts so received from them. Further, the amount so received from the said institution has not been returned so far. This is nothing but solely an act of influencing and abusing the power of the post of president of West Bengal Board of Primary Education by Shri Manik Bhattacharya. Therefore, it is clear that this amount was nothing but the proceeds of crime generated through the criminal activities relating to the scheduled offence under PMLA, 2002

This business entity was solely used in the acquisition, use, possession, and concealment of proceeds of crime with the assistance of other accused persons and entities. Thus, it has committed the offence of Money Laundering as defined under section 3 read with section 70 of PMLA, 2002 and is, therefore, liable to be punished under section 4 of PMLA, 2002.

5. *M/s Educlasses Online (A-13) (Represented through its proprietor Shri Souvik Bhattacharya), At:- 26 S Jadavpur East Road, 1st Floor, Kolkata-700032:*

M/s Educlasses Online is the proprietary concern of Shri Souvik Bhattacharya (14-10) which was formed solely for the purpose to launder the proceeds of crime generated/derived out of the criminal activity relating to the scheduled offences under PMLA.

Shri Manik Bhatracharya (A-9) being the president of West Bengal Board of Primary Education has abused and misused his high official position and in pursuance thereof he compelled the students of the D.El.Ed Colleges and/or the D.El.Ed colleges to give him an amount of Rs. 500/- per student of all the D.El.Ed Colleges in guise of arranging online classes to the students of D.El.Ed. colleges during the Covid-19 pandemic. Investigation conducted under PMLA, 2002 revealed that an amount of Rs. 2,47,44,500/-was extorted from the students of all the D.El.Ed Colleges and/or the D.El.Ed Colleges in guise of arranging online classes to the students of D.El.Ed. colleges. Investigation revealed that no such online classes were provided to the D.El.Ed students.

In order to launder the said extorted money, Shri Manik Bhattacharya (A-9) in connivance with his son Shri Souvik Bhattacharya (A-10) formed this proprietary concern (A-13) and arranged to bring the said extorted money in the bank accounts of this firm by routing into the bank accounts of All Bengal Teacher's Training Achievers Association, which is the association of Teacher

Training Collages of West Bengal, in view of the namesake agreement made between this accused firm and All Bengal Teachers Training Achievers Association.

This business entity was solely used in the acquisition, use, possession, and concealment of proceeds of crime with the assistance of other accused persons and entries. Thus, it has committed the offence of Money Laundering as defined under section 3 read with section 70 of PMLA, 2002 and is, therefore, liable to be punished under section 4 of PMLA, 2002."

On 7.1.2023 the petitioner appeared in respect of the summons issued by the ld. Special Court and prayed for bail. The E.D. prayed time to file their objection. The same was filed in due course when the learned Court was pleased to keep the objection on record and fixed next date on 7th of February, 2023. On 7th of February, 2023, an adjournment was sought for on behalf of the petitioner. The learned Court was pleased to fix the next date on 22nd February, 2023 for hearing of the bail application.

After hearing both the sides by an order dated 22.2.2023, the learned Special Court was pleased to reject the prayer for bail of the present petitioner.

Challenging the order refusing bail, a revisional application was filed under Section 401 read with Section 482 of the Cr.P.C. and Section 397 of the Cr.P.C. being CRR 816 of 2023 before the Hon'ble High Court, Calcutta. However, the said revisional application subsequently was not pressed by the petitioner.

In the meantime, an application under Section 88 of the Cr.P.C. was preferred before the learned Special Court. The learned Special Court by its order dated 22.3.2023 rejected the prayer of the petitioner assigning its grounds.

Mr. Saha, learned Senior Advocate, appearing for the petitioner emphasized the issues relating to the period of detention, the innocence of the accused, bank accounts of the petitioner being already mapped by the investigating agency and the funds already being seized by the investigating agency in course of investigation.

It has also been submitted that the petitioner is cooperating with the investigating agency and made himself available as and when called for in course of the investigation.

It has further been stressed that the petitioner was never arrested nor the power under Section 19 of the PMLA Act was exercised by the investigating agency in course of the investigation.

Learned Senior Advocate in order to substantiate the arguments relied upon the observations made in Satarupa Bhattacharya –vs- Enforcement Directorate reported in 2023 SCC OnLine Cal 2273 as also the judgement of the Hon'ble Supreme Court in Pankaj Banshal –vs- Union of India & Ors. reported in 2023 SCC OnLine SC 1244.

Mr. Edulji, learned Advocate for the E.D., opposed the contention of the petitioner and stressed on the complicity and the money trial, particularly with the proprietorship firms held by the petitioner namely M/s

Acuere Consultancy Services and M/s. Edu Classes Online, the seizure effected and the manner in which Manik Bhattacharya, the then President of the Board of Primary Education, used his influence to transmit funds of different colleges in the accounts of the two proprietorship concern of Souvik Bhattacharya, named above.

Learned Advocate for the E.D. has relied upon the statements of Pannalal Bhattacharya, Hiralal Bhattacharya, Asfak Alam, Sudip Ganguly, Rajib Kundu and Ruhul Amin to emphasise on the issues relating to the complicity of the present petitioner, relating to transfer of funds, the manner in which, according to the prosecution, the amounts were transmitted, the movement of the funds through the accounts of relations reached the petitioner as the final beneficiary, differentiates him from the other accused who was granted bail.

Learned Advocate has also relied upon the statement of the present petitioner under 50 of the PMLA Act to substantiate his argument. Ld. Advocate has also relied upon the following judgments:

Y S Jagan Mohan Reddy vs. CBI, (2013) 7 SCC 439; Rohit Tandon vs. Directorate of Enforcement, (2018) 11 SCC 46; Anil Kumar Yadav vs. State (NCT of Delhi), (2018) 12 SC 129; Gautam Kundu vs. Directorate of Enforcement (Prevention of Money- Laundering Act), (2015)16 SCC 1; Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra, (2005) 5 SCC 294; Subires Bhattacharyya, in re, 2022 SCC online Cal 4307; Anubrata Mondal vs. CBI, 2023 SCC OnLine Cal 23 and Vijay Madanlal Choudhry vs. Union of India, 2022 SCC OnLine SC 929; Pankaj Jain vs. Union of India, AIR 2018 SC 1155; Satender Kumar Antil vs. CBI, (2022) 10 SCC 51 and Directorate of Enforcement vs. Debabrata Halder, 2022 SCC OnLine Cal 4095.

The main thrust of argument relied upon by the E.D. were that in economic offences the same principles as under Section 439 of the Cr.P.C. do not apply and as and when material so surfaces, the investigating agency has to act upon the same.

Learned Advocate for the E.D. has also drawn the attention of the Court to the accounts to show that majority of the funds which accumulated, which is the subject-matter of the prosecution's case, is in the name of the present petitioner. Further the petitioner himself being the son was involvement for concealing and acquiring the funds which were obtained by the said Manik Bhattacharya while he was discharging his duties as the President of the West Bengal Board of Primary Education and the proceeds collected, which is being investigated in the alleged Teachers Recruitment Scam.

The thrust is on the factum of the complicity of the present petitioner so far as the proceeds of crime is concerned.

At the initial stage when the argument commenced and the Enforcement Directorate prayed for filing their affidavit, this Court directed to clarify whether any policy has been adopted by the Investigating Agency so far as the exercise of the powers under Section 19 of the PMLA is concerned. In paragraph 54 of the affidavit-in-opposition the Enforcement Directorate categorically stated that they have not adopted any parameters for invoking the powers under Section 19 of the PMLA and the same would depend on the facts and circumstances of the case. There were no cogent reasons assigned by the Investigating Agency which in the background of the present case satisfies the conscience of the Court regarding the exercise of such powers. Towards the end of the hearing, it was pointed out by the Enforcement Directorate that the Teachers' Recruitment Scam involves wide magnitude and there are materials which have recently surfaced leading to money trail where the involvement of the petitioner is glaring.

Records which have been produced before this Court reflect that such documents were collected by the Investigating Agency on 16th October, 2023. The statement of some of the witnesses with regard to the money trail has been recorded and the Enforcement Directorate intends to examine some more witnesses which could not be done by them due to paucity of time. Another factor which has been brought to the notice of the Court is that the Division Bench in MAT 196 of 2023 in its order dated 5th October, 2023 at paragraph 24 was pleased to observe as follows:

> ***"****We would except the entire investigation to be concluded by 31st December, 2023. The appellant shall cooperate with the E.D. in all respect. However, the E.D. shall not call the applicant between 19th October, 2023 and 26th October, 2023. ....* ***"***

Having considered the tentative time limit set by the Hon'ble Division Bench to the Investigating Agency to conclude the investigation and further materials having surfaced for which the Investigating Agency at this stage sought for time to examine two more witnesses apart from the witnesses who have already been examined particularly with regard to the amount which has transpired relating to the donations in the account of the school, I am of the view that having regard to the ramifications involved in the Teachers' Recruitment Scam, the Investigating Agency at this stage must be granted an opportunity to exhaust their powers relating to investigation.

Accordingly, at this stage, I am not inclined to release the petitioner on bail.

Thus, the prayer for bail of the petitioner being CRM (SB) 164 of 2023 is dismissed.

The documents, which were handed over by the Enforcement Directorate in course of hearing particularly, in respect of which investigation is in progress, are returned to the learned advocate appearing for the Enforcement Directorate.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)