

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Tirthankar Ghosh

CRM (SB) 182 OF 2023

***Sri Manik Bhattacharya
versus
Enforcement Directorate***

For the Petitioner : Mr. Sandipan Ganguly, Sr. Adv.
Mr. Kumar Pal 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 : 12.09.2023, 09.10.2023, 17.10.2023 & 16.11.2023.

Judgement On : **16.11.2023**

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. Earlier the petitioner's prayer for bail was rejected in CRM (SB) 82 of 2023.

It was initially brought to the notice of this Court that in connection with the present application for bail, the petitioner preferred Special Leave to Appeal (Crl) No. 13646/2023, wherein the Hon'ble Supreme Court by its order dated 20.10.2023 was pleased to direct this Court to dispose of the application for bail today, i.e. 16.11.2023.

Mr. Ganguly, Id. Senior Advocate, appearing for the petitioner argues that in spite of the Directorate of Enforcement (E.D.) having submitted earlier before this Court that they are ready for framing the charges, yet, no charge was framed on 3rd of August, 2023 by the Id. Special Court as the investigation till date could not be concluded.

Ld. Advocate submitted that the petitioner is in custody for more than 400 days and materials so relied upon by the E.D., till date, after submission of the complaint and the supplementary complaint do not reflect any complicity of the present petitioner and the evidence so collected according to the Id. Senior advocate is vague. There is no material to show that there is any evidence which has been collected against the petitioner by any underserving candidate who has paid money; neither any agent or any person on whom the prosecution has relied upon from whom it can be directly connected in the chain of circumstances that the petitioner has accepted any gratification for the purpose of recruiting any underserving candidate as Primary Teacher in connection with the investigation, which is carried on by the CBI as well as the E.D. To that extent, Id. Senior Advocate appearing for the petitioner has referred to the statements of Tapas Mondal, Tapas Ghosh, Kuntal Ghosh and Sujay Krishna Bhadra.

It has been pointed out that although further investigation is being carried out by the CBI, but, the charge-sheets, till date, which has been submitted, do not reflect any iota of materials so far as the present petitioner is concerned.

The ld. Senior Advocate has also relied upon the notification of the Government of West Bengal relating to the School Education Department dated 2nd of March, 2016 and by drawing the attention of the Court to the different Rules, emphasized that the petitioner was the President of the West Bengal Board of Primary Education (hereinafter referred to as the Board). The Board of Primary Education had no role to play in respect of the appointments, as there was a Selection Committee and it was the District Primary School Council, which is responsible for appointment of the teachers. If there has been any anomaly in the appointments it was at the district level of the Primary School Council over which the petitioner had no control and/or knowledge. So far as the Board is concerned, it used to publish list of successful candidates and was not responsible for the appointment which were done by the District Primary School Council.

Thus, the very foundation of the case of E.D. is not based on chain of circumstances reflecting involvement of the present petitioner and the petitioner has been arraigned very cryptically by showing that there is some money found in the accounts and there has been illegal appointments and/or recruitments so far as the primary teachers are concerned. No materials surfaced in course of the investigation till date to reflect that there was direct or indirect nexus so far as the petitioner is concerned and unnecessarily the petitioner is suffering such long detention by way of languishing in jail.

Emphasis is laid so far as the Report submitted by the West Bengal Board of Primary Education is concerned and it has been

emphasized by the ld. Senior advocate for the petitioner that, if at all, out of 44,000 candidates there could have been any anomaly the same was in respect of 98 candidates, over which the petitioner being the President of the Board, could never have any control. No material has surfaced so far as the examination process is concerned neither any candidate has come forward to address on the issue that money/gratification was involved over the subject-matter in the process of recruitment. Ld. Senior Advocate appearing for the petitioner has relied upon the order of bail passed in SLP (Crl.) No(s). 12763/2023 which was granted taking into account the period of incarceration. It was emphasized that the same principle do apply to the present petitioner.

Mr. Edulji, learned advocate appearing for the Enforcement Directorate submitted that there has been no change of circumstances since the last application for bail was rejected and the investigation of the case is still continuing.

By referring to the order dated 5th October, 2023 passed by the Division Bench in MAT 1960 of 2023 and MAT 1961 of 2023 it has been pointed out that cut-off date has already been fixed by the Hon'ble Division Bench to be 31st December, 2023 wherein the entire investigation has been directed to be concluded.

Learned advocate for the Enforcement Directorate has also referred to paragraphs 295 and 463 of the judgment of Vijay Madanlal Choudhary vs. Union of India reported in 2022 SCC OnLine SC 929 which are set out as follows:

“295. As aforesaid, in this backdrop the amendment Act 2 of 2013 came into being. Considering the purport of the amended provisions and the experience of implementing/enforcement agencies, further changes became necessary to strengthen the mechanism regarding prevention of money-laundering. It is not right in assuming that the attachment of property (provisional) under the second proviso, as amended, has no link with the scheduled offence. Inasmuch as Section 5(1) envisages that such an action can be initiated only on the basis of material in possession of the authorised officer indicative of any person being in possession of proceeds of crime. The precondition for being proceeds of crime is that the property has been derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence. The sweep of Section 5(1) is not limited to the accused named in the criminal activity relating to a scheduled offence. It would apply to any person (not necessarily being accused in the scheduled offence), if he is involved in any process or activity connected with the proceeds of crime. Such a person besides facing the consequence of provisional attachment order, may end up in being named as accused in the complaint to be filed by the authorised officer concerning offence under Section 3 of the 2002 Act.

463. It is urged that there is no gradation of punishment depending on the nature of offence which may be committed by the principal offender and other offenders. Section 4 of the 2002 Act makes no distinction between person directly involved in the process or activity connected with the proceeds of crime and the other not so directly involved. Further, the scheduled offence may have been committed by someone else and the offence of money-laundering by third person owing to being involved in the process or activity connected with the proceeds of crime. The petitioners have relied on Section 201 and 212 of IPC. It is their case that this distinction is absent in Section 4 of the 2002 Act which

provides that the term of rigorous imprisonment shall not be less than three years and extend upto seven years or ten years, as the case may be, with fine. This argument to say the least is flimsy and tenuous. For, the punishment under Section 4 is not in relation to the predicate offence, but offence of money-laundering under Section 3 of the 2002 Act. The person may be involved in any one or more than one process or activity connected with the proceeds of crime. All of them are treated as one class of offender involved in money-laundering. The proceeds of crime may be derived or obtained as a result of criminal activity with which the offender involved in money-laundering offence may not be directly concerned at all. Even so, he becomes liable to be proceeded under Section 3 and punished under Section 4 of the 2002 Act. The principle of an accessory after the fact will have no application to the offence of money-laundering. Suffice it to observe that the argument under consideration is devoid of merit.”

The aforesaid paragraphs were emphasized by the learned advocate for the Enforcement Directorate in order to rebut the contention of the petitioner that the petitioner has not been named in the charge-sheet submitted by the Central Bureau of Investigation yet the petitioner has till date been detained by the Enforcement Directorate.

Referring to Rules 7, 8 and 9 of the School Education Department, Government of West Bengal, Law Branch it has been pointed out that it is the Board who constitutes the Selection Committee, the procedure of selection as also approval of the panel. Therefore, according to the learned advocate for the ED the contention of the petitioner that the Board is ignorant regarding the fact of appointment being made by the District

Primary School Council is not acceptable, in view of the rules framed by the Government.

Learned advocate for the ED has also emphasized that admit card for several candidates, certificates of individual candidates, mark-sheets of candidates along with other documents which were present inside an envelope and stapled, were recovered from the premises of the petitioner. Attention of the Court was drawn to the schedule to the inventory of the items recovered and seized which included number of compact discs., loose sheet, money receipt book in respect of Accure Consultancy Services.

It was further brought to the notice of this Court that the allegations in the complaint which has been filed before the learned special court and the seizures reflect that Shri Manik Bhattacharya was confronted with the copy of letter which was seized from his residential premises under Annexure-A (page nos.6 to 8) of panchnama dated 22.07.2022 and asked to explain the said letters. In reply to which Shri Manik Bhattacharya disclosed that this is the letter from Office of General Secretary, West Bengal Pradesh Trinamool Youth Congress committee addressed to Hon'ble Chief Minister of West Bengal and copy sent to Chairman, West Bengal Board of Primary Education and others for looking into the matter of primary teacher recruitment examination and for consideration of 44 candidates for primary teacher in 2013 examination. On being asked, he evaded the reply by merely stating that he doesn't know about their selection status as the list of 44 candidates does not contain their

candidature and the same can be explained by the general secretary of the West Bengal Pradesh Trinamool Youth Congress.

Shri Manik Bhattacharya was confronted with the copy of seized documents which was seized from his residential premises under Annexure-A (page nos.4&5) of panchnama dated 22.07.2022 and asked to explain the said documents. In reply to which Shri Manik Bhattacharya disclosed that these pages contain official communication from the office of district primary school council to the President/Secretary and a list of Eleven candidates to whom the appointment letters were issued on 08.12.2017. He further stated evasively that the same can be explained only by the then Chairperson of DPSC, Bankura.

It was also emphasized on behalf of the Enforcement Directorate that cumulatively if the case is taken as a whole, the statement under Section 50 of PMLA of the witnesses as well as some of the accused persons would reflect that it is the present petitioner who was at the helm of affairs and it was he who had the authority to have a final say so far as the appointments are concerned.

To that effect, E.D. has relied upon the statements of Tapas Kumar Mondal, Jitendra Nath Roy, Dibendu Bagh and Md. Mohidul Haque Ansari. By referring to these statements learned advocate for the ED submits that at least there is reflection that undeserving candidates got appointment but subsequently removed by the Hon'ble High Court. Additionally, it has been submitted that fresh materials surfaced in respect of school and club wherein huge donations were made and in respect of the same materials were being collected by the Investigating Agency. There has been

obstruction in collection of materials. To that effect the bank statement have been referred and the non-cooperation regarding the local branch of the bank as well as the regional bank authorities have been referred to by the ED. Learned advocate for the Enforcement Directorate in order to emphasize his argument relied upon the following judgments that economic offences are a class apart and the Hon'ble Supreme Court has reiterated regarding the parameters for the accused persons to be released on bail.

1. Y. S. Jagan Mohan Reddy –Vs. - CBI, (2013)7 SCC 439;
2. Rohit Tandon –Vs. – Directorate of Enforcement, (2018)11 SCC 46;
3. Anil Kumar Yadav –Vs. – State (NCT of Delhi), (2018) 12 SCC 129;
4. Gautam Kundu –Vs. – Directorate of Enforcement (prevention of Money-Laundering Act), (2015) 16 SCC 1;
5. Ranjitsing Brahmajeetsing Sharma –Vs. – State of Maharashtra, (2005) 5 SCC 294;
6. Subires Bhattacharyya, In re, 2022 SCC OnLine Cal 4307;
7. Anubrata Mondal –Vs. – CBI, 2023 SCC OnLine Cal 23;
8. Vijay Madanlal Choudhary –Vs. – Union of India, 2022 SCC OnLine SC 929;
9. V. Sendhil Balaji –Vs. – State, 2023 SCC OnLine SC 934;
10. State of T.N. –Vs. – S.A. Raja, (2005)8 SCC 380;
11. State of M.P. –Vs. – Kajad, (2001) 7 SCC 673.

I have considered the submissions of the ld. Advocate appearing for the petitioner as well as that of the E.D. It would not be out of place to state that the very genesis of the case was the FIR registered by the CBI pursuant to the direction passed by the Hon'ble High Court, Calcutta. The crux of the

allegations as spelt out in the CBI's FIR i.e., RC0102022A0006 dated 9.6.22 is as follows:

“It has been alleged that the Teachers Eligibility Test (TET), 2014 was held on 11.10.2015. the accused persons illegally, arbitrarily gave appointment to the ineligible candidates by corrupt means. The primary teacher's jobs have been purchased in lieu of huge amount of money and extraneous consideration extended by the ineligible candidates to get appointment as an Assistant Teacher in primary schools.

West Bengal Board of Primary Education on 23.12.2020 published a Notification for recruitment of Primary Teachers. In the notification the board invited online applications from TET, 2014 qualified trained candidates of West Bengal seeking appointment for the posts of Assistant Teachers against 16,500 state-wide vacancies in the Govt. Aided/Sponsored Primary/Junior Basic Schools. The selection and appointment of the candidates was to be made in terms of West Bengal Primary School Teachers Recruitment Rules, 2018 as amended up to date and notified under no.605-SE/EE/P) 10M-6/09(Pt.VII) dtd. 22.12.2020.

It has been alleged that in the primary selection process of TET, 2014 the question paper and its evaluation process were done dubiously as wrong questions and/or answer keys were designed in disguised manner for depriving the eligible candidates.

It is further alleged some of the TET fail and/or ineligible candidates of TET 2014 got appointment as Assistant Teacher in primary schools. A number of ineligible candidates got appointment who did not answer the question by answering the

MCQ and submitted blank exam paper only mentioning their personal details got appointment as Assistant Teachers.

It is also alleged that an additional panel was created in dubious manner and several persons who did not even pass TET-2014 were included in such additional panel. The complete selection process was clearly shows favoritism and nepotism in the selection process.”

It would not be also out of place to state that the twin conditions which have been referred to in Section 45 of the PMLA Act is in addition to what has been stated in sub-section (2) of Section 45. The limitation on granting of bail specified in 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.

So the parameters of Section 439 of the Cr.P.C. are definitely applicable while considering the application for bail under the provisions of the PMLA Act.

The judgment of *Prasanta Kumar Sarkar –Vs- Ashis Chatterjee & Anr. reported in (2010) 14 SCC 496*, is relevant wherein the Hon’ble Supreme Court had the occasion to deal with the factors to be taken into account while considering an application for bail. Paragraph 9 of the said judgment, for the purposes of this case, is set out as follows:

“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent

upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

[See State of U.P. v. Amarmani Tripathi [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] (SCC p. 31, para 18), Prahlad Singh Bhati v. NCT of Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] , and Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] .]

In *Deepak Yadav –vs- State of U.P. & Anr.* reported in (2022) 8 SCC 559, paragraphs 25 and 26 are relevant for consideration for deciding the present case, which are set out as follows:

“25. *For grant or denial of bail, the “nature of crime” has a huge relevancy. The key considerations which govern the grant of bail were elucidated in the judgment of this Court in Ram Govind Upadhyay v. Sudarshan Singh [Ram Govind*

Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598 : 2002 SCC (Cri) 688] , wherein it has been observed as under : (SCC p. 602, para 4)

“4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a *prima facie* satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

26. Similarly, the parameters to be taken into consideration for grant of bail by the courts have been described in *Kalyan Chandra Sarkar v. Rajesh Ranjan* [*Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528 : 2004 SCC (Cri) 1977] as under : (SCC pp. 535-36, para 11)

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge.””

The nature and gravity of accusation in a case while deciding an application for bail assumes importance as the Court has to consider the manner of commission of the offence, the harm or likely harm which may be extended to the victim and the harm or likely harm which may be caused to the society and its values.

In the instant case, there was not even an FIR by the State Police or the State agencies and it was on the direction of the Hon’ble High Court that the CBI initiated the investigation wherein the main thrust of allegations related to the primary teachers’ job which have been purchased in lieu of huge amount of money and extraneous consideration extended to

the ineligible candidates to get appointment as Assistant Teachers in primary schools.

To that extent the process of selection, the question papers, its evaluation process, which has been alleged to be done in a dubious manner as wrong questions and answer keys were designed in a mode for depriving the eligible candidates.

Thus, having regard to the issue relating to which the investigation of the case is being continued, the number of victims being involved, and the accused person being an influential person, whose means, position are beyond question at the State administrative level as also the education department, his release, will have an impact at this stage of the investigation when an outer limit of 31st December, 2023 has been fixed by the Hon'ble Division Bench to conclude the investigation, which is being carried on by the E.D.

Having regard to the aforesaid, particularly, with regard to the means, position, the standing of the present petitioner, the gravity of the offence as also the stage of the investigation which is at the final stage, I am of the view that this is not a fit case for the petitioner to be released on bail at this stage.

Accordingly, the prayer for bail of the present petitioner is **rejected**.

With the aforesaid observations, CRM (SB) 182 of 2023 is dismissed.

Pending application, if any, is also disposed of.

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.)