

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.3375 OF 2022

Vinod Kumar Chaturvedi

...Applicant

Versus

Directorate of Enforcement and Anr.

...Respondents

...

Mr. Vijay Agarwal with Mr. Yash Agarwal, Mr. Yash Wardhan Tiwari, Mr. Rohit Kaul, Mr. Abhiraj Ray, Mr. Shreyas Chaturvedi, Ms Shruti Chaturvedi and Mr. Dilip Shukla for the Applicant.

Mr. Shriram Shirsat with Mr. Anna Oommen, Ms Neha Patil for Respondent -ED.

Mr. S.H. Yadav, APP for the Respondent -State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

ORDER PRONOUNCED ON : 21st JULY, 2023.

ORAL ORDER :-

1. The Applicant, who is facing trial in PMLA Special Case No.1390 of 2021 for offences under Sections 120-B, 420, 468 and 471 of the IPC, seeks statutory bail under Section 167 (2) of the Criminal Procedure Code, 1973.

2. The Applicant filed an application for statutory bail under Section 167(2) of the Cr.PC. on the ground that the complaint under the PMLA has been filed though the investigation is still pending. It was stated that the charge-sheet/complaint was filed without

completing the investigation to scuttle the statutory right of bail.

3. Learned Special Judge observed that the complaint was filed within the prescribed period of limitation. The applicant had filed the application for default bail after taking cognizance of the offence and rejection of the application for bail on merits. Learned Judge further observed that Explanation (ii) to section 44 of PMLA empowers and authorizes the Investigating Agency to continue further investigation and to bring any further oral or documentary evidence. Hence, the mere fact that the Respondents have made reference to further investigation in prayer clause (d) would not per se indicate that the investigation/complaint as against the Applicant is incomplete. Learned Judge therefore held that no indefeasible right has accrued in favour of the Applicant and hence, dismissed the application. Being aggrieved, the Applicant has filed the application under consideration.

4. Mr. Agarwal, learned counsel for the Applicant submits that in *Ritu Chhabaria Vs. Union of India and Ors, Writ Petition (Cri.) 60 of 2023* the Apex Court has granted default bail observing that practice of filing charge-sheet without completing the investigation, was only to scuttle the right of default bail and permitting such practice would in fact negate the purpose of introducing Section 167(2) of the Cr.P.C. He

submits that though by order dated 01/05/2023 the Apex Court in ***Directorate of Enforcement vs. Manprit Singh Talwar, (SLP Cri No.5724 of 2023)***) had directed the courts to defer the applications filed on the basis of the judgment in ***Ritu Chhabaria*** (supra), subsequently by order dated 12/05/2023 the three Judge Bench has clarified that the said order shall not preclude the courts from considering the application for default bail independent of and without relying upon the said judgment.

5. Learned counsel for the Applicant submits that the respondent vide application dated 22/11/2021 sought an extension of judicial remand on the ground that the investigation is pending against the Applicant and that in fact, the investigation had just begun. He further submits that prayer clause (d) also indicates that the investigation is not complete. He submits that the Applicant and the co-accused are alleged to have laundered proceeds of crime amount of Rs.915.65 crores. However, the provisional attachment of immovable and movable property is worth Rs.68,77,88,917/-. He contends that the complaint indicates that the efforts to recover remaining crime proceed are still going on and that the investigation as regards the role of the co-accused Ravi Agarwal regarding receipt of commission and

providing accommodation entries is pending. He contends that the respondent has filed the complaint without completing the investigation, only to defeat the right of statutory bail under section 167(2) of Cr.P.C. He submits that the Courts have deprecated unhealthy practice of filing incomplete charge sheet keeping some part of the investigation pending, as subterfuge to prevent the accused from claiming default bail. He has relied upon the decision of ***Rakesh Kumar Paul v/s. State of Assam (2017) 15 SCC 67*** and the decision of Telangana High Court in ***C. Parthasarathi vs. Director of Enforcement, 2022 SCC Online TS 1075***, decisions of Delhi High Court in ***Chitra Ramkrishna Vs. Central Bureau of Investigation (CBI), 2022 SCC Online 3124, Central Bureau of Investigation vs. Kapil Wadhawan and Anr., CRL. M.C. 6544/2022, CRL. M.A. 25503/2022*** and the decision of Madhya Pradesh High Court in ***Manish Gandhi vs. State of Madhya Pradesh M.Cr.C. No.15397 /2017***.

6. Per contra, Mr. Shreeram Shirsat, learned counsel for the Respondent submits that the application under Section 167(2) of the Cr.P.C. was filed after rejection of bail on merits. The said application is not maintainable since the complaint under the provisions of the PMLA was filed within the stipulated period and the Special Court has

already taken cognizance of the offence. Learned counsel for the Respondent submits that the PMLA itself provides for further investigation even after filing of the complaint. Hence, the mere fact that further investigation is pending as regards the other accused would not per se lead to an inference that the complaint filed against the Applicant is incomplete. He has relied upon the decision of the Apex Court in *Serious Fraud Investigation Office vs. Rahul Modi and Ors. (2022) SCC Online 153* to contend that right to statutory bail becomes unenforceable once a charge-sheet is filed and cognizance is taken.

7. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

8. The chronology of some of the relevant dates and events necessary to decide this application is as follows :-

(i) On 28/09/2019 Respondent registered ECIR (ECIR/MBZO-I/05/2019) against the Applicant and 9 others under Sections 3 and 4 of the PMLA Act.

(ii) On 17/09/2021, the Applicant was arrested and

remanded to PC till 27/09/2021 and later to judicial custody.

(iii) On 12/11/2021, the Respondent filed a complaint against the Applicant and others for offences under the PMLA Act.

(iv) On 30/11/2021, the learned Special Court took cognizance of the offence under Section 3 of the PMLA Act.

(v) On 17/05/2022, the Applicant filed an application for regular bail.

(vi) On 19/05/2022, the Special Court dismissed the application for regular bail.

(vii) On 27/06/2022, the Applicant filed an application for default bail on the ground of incomplete complaint.

(viii) On 14/10/2022, the Special Court dismissed the application for default bail.

9. The Applicant seeks statutory bail under Section 167(2) of the Cr.P.C. It is pertinent to note that while considering the scope of section 167(2) of Cr.P.C., the Apex Court in the case of ***Serious Fraud***

Investigation (supra), considered the previous pronouncements in ***Suresh Kumar Bhikamchand Jain v/s. State of Maharashtra and Anr. (2013) 3 SCC 77, Sanjay Dutt v/s. State (1994) 5 SCC 410*** and ***M. Ravindran v/s. Intelligence Officer, Directorate of Revenue Intelligence 4 (2021) 2 SCC 485***; and reiterated that in the event of investigation not being completed by the Investigating Authorities within the prescribed period, the accused acquires an indefeasible right to be granted bail, if he offers to furnish surety. He is entitled to be released on bail notwithstanding subsequent filing of the final report/charge-sheet. However, once the charge sheet is filed within the stipulated period, the right of the accused to statutory bail comes to an end and the accused is entitled to pray for regular bail on merits. The Apex Court has reiterated that filing of the charges sheet is sufficient compliance with the provisions of proviso (a) to section 167(2) and that the accused cannot demand release on default bail under section 167(2) on the ground that cognizance has not been taken before the expiry of 60 days. The Apex Court also referred to the decision of the Apex Court in ***Mohamed Iqbal Madar Sheikh and Ors. v/s. State of Maharashtra (1996) 1 SCC 722***, wherein it is held that the right conferred on the accused under section 167(2) of the Cr.P.C. cannot be exercised after the charge sheet has been submitted and cognizance has

been taken.

10. In the instant case, it is not in dispute that the complaint under the provisions of the PMLA was filed within the stipulated time and investigation against the co-accused and on other issues is pending. Explanation (ii) to Section 44 of the PMLA clarifies that “*the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not*”. The Hon’ble Supreme Court in ***Vijay Madanlal Choudhary and Ors. v/s. Union of India and Ors. 2022 SCC Online SC 929***, has observed that by virtue of Clause (ii) of Explanation in Section 44(1) of the 2002 Act, it is open to the authorities to bring any further evidence, oral or documentary against any accused person involved in respect of offence of money laundering, for which, a complaint has already been filed by him or against a person not named in the complaint and by legal fiction, such further complaint is deemed to be part of the complaint originally filed.

11. It would be advantageous to refer to the decision of ***Dinesh Dalmia v/s. CBI (2007) 8 SCC 770***. In the said case, charge sheet was filed against the Appellant though he was absconding. Some of the documents relied upon by the CBI were not filed and further investigation on some vital points was pending. The Appellant was arrested after the trial court had taken cognizance of the offence. The Appellant sought statutory bail under section 167(2) of Cr.P.C. on the premise that no further charge sheet in respect of the investigation under sub-section 8 of section 173 of the Code had been filed. The Apex Court observed that :-

“19. A charge sheet is a final report within the meaning of Sub-section (2) of Section 173 of the Code. It is filed so as to enable the court concerned to apply its mind as to whether cognizance of the offence thereupon should be taken or not. The report is ordinarily filed in the form prescribed therefor. One of the requirements for submission of a police report is whether any offence appears to have been committed and, if so, by whom. In some cases, the accused having not been arrested, the investigation against him may not be complete. There may not be sufficient material for arriving at a decision that the absconding accused is also a person by whom the offence appears to have been committed. If the

investigating officer finds sufficient evidence even against such an accused who had been absconding, in our opinion, law does not require that filing of the charge sheet must await the arrest of the accused.

20. *Indisputably, the power of the investigating officer to make a prayer for making further investigation in terms of Sub-section (8) of Section 173 is not taken away only because a charge sheet under Sub-section (2) thereof has been filed. A further investigation is permissible even if order of cognizance of offence has been taken by the Magistrate.*

21. *We may notice that a Constitution Bench of this Court in K. Veeraswami v. Union of India and Others [(1991) 3 SCC 655] stated the law in the following terms :*

"76 As observed by this Court in Satya Narain Musadi v. State of Bihar that the statutory requirement of the report under Section 173(2) would be complied with if the various details prescribed therein are included in the report. This report is an intimation to the magistrate that upon investigation into a cognizable offence the investigating officer has been able to procure sufficient evidence for the Court to

inquire into the offence and the necessary information is being sent to the Court. In fact, the report under Section 173(2) purports to be an opinion of the investigating officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the Court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). Nothing more need be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence.

22. *It is true that ordinarily all documents accompany the charge-sheet. ...Even if all the documents had not been filed, by reason thereof submission of charge-sheet itself does not become vitiated in law. The charge-sheet has been acted upon as an order of cognizance had been passed as basis thereof. The Appellant had not questioned the said order taking cognizance of the offence. Validity of the*

said charge-sheet is also not in question.

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25. Such a right of bail although is a valuable right but the same is a conditional one; the condition precedent being pendency of the investigation. Whether an investigation in fact has remained pending and the investigating officer has submitted the charge-sheet only with a view to curtail the right of the accused would essentially be a question of fact...

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39. The statutory scheme does not lead to a conclusion in regard to an investigation leading to filing of final form under Sub Section (2) of Section 173 and further investigation contemplated under Sub Section (8) thereof. Whereas only when a charge-sheet is not filed and investigation is kept pending, benefit of proviso appended to Sub Section (2) of Section 167 of the Code would be available to an offender; once, however, a charge-sheet is filed, the said right ceases. Such a right does not revive only because a further investigation remains pending within the meaning of Sub Section (8) of Section 173 of the Code.”

12. In this backdrop, the crucial question for consideration is

not the pendency of further investigation but whether the complaint/report filed by the Respondent was sufficient to take cognizance of the offence or whether an incomplete charge-sheet/ complaint was filed only to defeat the statutory right of the accused.

13. In the instant case, the Applicant being the promoter and Managing Director of M/s. Usher Agro Ltd. (UAL) is stated to be a prime conspirator, who played a vital role in borrowing loans from consortium of banks and other financial institutions. It is alleged that he was the decision maker and controlling authority during the material period. It is stated that he was the master mind in incorporation of 15 shell companies, which were created with an intention to inflate the books of account and to hoodwink the bank and take false loan. It is alleged that the same was done by booking fake / bogus accommodation entries by showing circular trading between UAL and 15 shell companies, the directors of which were either his acquaintances or known to him. It is alleged that the Applicant in connivance with Manoj Pathak and others orchestrated the whole fraud, which is not restricted to 15 shell companies but fake /bogus transactions involve 40 shell companies. It is stated that the Applicant and others did not utilise the loan for the purpose for which it was

sanctioned, but illegally diverted and amount of Rs.915.65 crores to their personal entities and used for their personal gain.

14. The learned Judge having gone through the complaint and the voluminous records produced alongwith the complaint, by order dated 30/11/2021 took cognizance of the offence and issued process. It is thus evident that the Special Court having applied its mind, was satisfied that the material collected by the Investigating Officer is sufficient to proceed against the applicant for offence under Section 3, punishable under Section 4 of the PMLA. It is stated that the said order has not been challenged. In such fact situation the mere fact that further investigation is pending would not per se render the complaint incomplete. Consequently, it is not open to the Applicant to seek statutory bail under Section 167(2) of the Cr.P.C. on the premise that the investigation is incomplete. In view of the above, it is not necessary to refer to the decisions relied upon by the learned counsel for the Applicant as in the facts and circumstances the said decisions are distinguishable and are of no avail to the Applicant.

15. Under the circumstances and in view of discussion supra, the application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)