IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49391-2022
Reserved on: 24.01.2023
Pronounced on: 30.01.2023

Raman Singhal ...Petitioner

Versus

Directorate of Enforcement …Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Dharamveer Sharma, Sr. Advocate with
Mr. Mayank Bajaj, Advocate
Ms. Sunder Kumari, Advocate and
Mr. Tushar Sharma, Advocate
for the petitioner.

Mr. Satya Pal Jain, Additional Solicitor General of India with
Mr. Lokesh Narang, Sr. Panel Counsel
for the respondent.

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ANOOP CHITKARA, J.

Complaint case No.COMA-27-2022 dated 20.07.2022 in ECIR/CDZO-II/01/2019 dated 05.09.2019 against the petitioner u/s 3 read with Section 70 & 4 of Prevention of Money Laundering Act (PMLA), 2002 and complaint filed u/s 45 read with Section 44 of Prevention of Money Laundering Act, 2002 for the alleged commission of offence u/s 3 read with Section 70 of the Prevention of Money Laundering Act, 2002 punishable u/s 4 of the PMLA.

1. The petitioner apprehending arrest in the complaint captioned above, on the allegations of laundering a massive sum of money in connivance with main accused, has come up before this Court under Section 438 CrPC seeking anticipatory bail.

2. In paragraph 14 of the bail petition, the accused declares that he has no criminal antecedents.

3. Petitioner's counsel argued that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. ED's counsel strenuously opposes the bail.

REASONING:

5. On Dec 20, 2022, this Court had passed the following order,

> "Respondent has filed reply in compliance of the order dated 05.12.2022, the same is not up to the mark and is being returned with the direction to file affidavit from the concerned incumbent that why the petitioner was not arrested at the time of completion of investigation or preparation of the challan.
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> List on 24.01.2023.
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> Interim order to continue till the next date of hearing."

6. In response, Mr. Himanshu Agarwal, Assistant Director, Directorate of Enforcement, has placed on record the ED's response, which reads as follows:

> "1. That, in compliance to order dated 05.12.2022 and order dated 20.12.2022, it is submitted that in present matter Ashok Kumar Mittal, Director of M/s Mahesh Timbers Pvt Ltd being the master mind behind the said embezzlement and laundering of massive sum of money, was arrested on 23.05.2022 invoking provisions of Section 19 of PMLA, 2022 and Prosecution Complaint/ Challan No. COMA/27/2022 dated 20.07.2022 was by this Directorate before the Hon'ble Special Court (PMLA),Panchkula within 60 days of arrest with Raman Singhal as one of the accused. The bail application of Ashok Kumar Mittal has been dismissed by this Hon'ble Court vide order dated 30.09.2022.
>
> 2. That, at this stage the petitioner Raman Singhal can not bearrested without warrants of Court since the Prosecution has been filed by the Directorate and the matter is subjudice before the Trial Court.
>
> 3. That, if bail application of Petitioner is declined by this Hon'ble Court, if deemed fit, Petitioner may be arrested and/or custodial interrogation may be sought from the Trial Court for further investigation. This Directorate is opposing the said bail application of the Petitioner as per Section 45 of PMLA, 2002 relying upon "Twin Conditions" which has also been upheld by the Hon'ble Apex Court in **Vijay Madanlal Choudhary & Ors v. Union of India & Ors.**

7. As per the response, the ED "may" arrest the petitioner in the event of the dismissal of his bail. Given such a stand buy the prosecuting agency, there is no reason or justification for this court to reject the bail. Reference be also made to paras 10 & 11 of Aman Preet Singh v. CBI, 2021 (4) RCR (Criminal) 108. However this court earnestly believes that the bail has to be as per stringent conditions to enable the ED and the aggrieved parties to initiate steps for recovery of the duped money.

8. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative and stringent conditions. In Sushila Aggarwal, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions. In Sumit Mehta v. State of N.C.T. of Delhi, (2013)15 SCC 570, Para 11, Supreme Court holds that while exercising power Under Section 438 of the Code, the Court is duty-bound to strike a balance between the

individual's right to personal freedom and the right of investigation of the police. While exercising utmost restraint, the Court can impose conditions countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation.

9. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail, subject to the following terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

10. In Mahidul Sheikh v. State of Haryana, CRM-33030-2021 in CRA-S-363-2020, decided on 14-01-2022, Para 53, [Law Finder Doc Id # 1933969], this Court observed,

> [53]. The pragmatic approach is that while granting bail with sureties, the "Court" and the "Arresting Officer" should give a choice to the accused to either furnish surety bonds or to handover a fixed deposit, or direct electronic money transfer where such facility is available, or creating a lien over his bank account. The accused should also have a further option to switch between the modes. The option lies with the accused to choose between the sureties and deposits and not with the Court or the arresting officer.

11. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above, in the following terms**:**

(a). Petitioner to furnish personal bond of Rs. Ten thousand (INR 10,000/-); AND

(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned investigator/SHO. Before accepting the surety, the concerned officer must satisfy that if the accused fail to appear in court, then such surety can produce such accused before the court.

OR

(b) Petitioner to hand over to the concerned investigator/SHO a fixed deposit for Rs. Ten Thousand only (INR 10,000/-), with the clause of automatic renewal of the principal and the interest reverting to the linked account, made in favour of the 'Chief Judicial Magistrate' of the concerned district. The fixed deposit may be made from any of the banks where the stake of the State is more than 50% or any of the well-established and stable private sector banks. The fixed deposit need not necessarily be made from the petitioner's account.

(c). In case of the launching of the prosecution, the said fixed deposit be forwarded to the concerned court along with the police report/challan under 173 CrPC.

(d). Such court shall have a lien over the deposit until the case's closure, or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A CrPC, 1973, and at that stage, subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes if any, shall be endorsed/returned to the depositor.

(e). It shall be the discretion of the petitioner to choose between surety bonds and fixed deposits. It shall also be open for the petitioner to apply to the Investigator or the concerned court to substitute the fixed deposit with surety bonds and vice-versa.

(f). On the reverse page of personal bond, the petitioner shall mention her/his permanent address along with the phone number, preferably that numbers which is linked with the AADHAR, and e-mail (if any). In case of any change in the above particulars, the petitioner shall immediately and not later than 30 days from such modification intimate about the change to the concerned police station and the concerned court.

(g). The petitioner is to also execute a bond for attendance in the concerned court(s) as and when asked to do so. The presentation of the personal bond shall be deemed acceptance of the declarations made in the bail petition and all other stipulations, terms, and conditions of section 438(2) of the Code of Criminal Procedure, 1973, and also of this bail order.

12. <u>The petitioner is directed to join the investigation as and when called by the Investigator</u>. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer; and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail. Whenever the investigation occurs within the police premises, the petitioner shall not be called before 8 AM, let off before 6 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

13. The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police officials, or any other person acquainted with the facts and the circumstances of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

14. <u>Within fifteen days from today, the petitioner shall forward to the Investigator and also to the petitioner's employer through the immediate superior officer a notarized affidavit containing the complete details of bank account numbers with addresses, fixed deposits, DEMAT account numbers, the current market value of jewelry, sovereign metals, all precious articles, held either individually or jointly, and cash-in-hand. The affidavit declaring assets and liabilities shall not be used in violation of Article 20(3) of the Constitution of India</u>. ***If the petitioner fails to comply with this condition, the bail might be canceled on this ground alone and the Investigator/concerned officer of ED <u>shall</u> file the said application in this court***.

15. The bail bonds shall remain in force throughout the trial and after that in Section 437-A of the Cr.P.C., if not canceled due to non-appearance or breach of conditions.

16. The conditions mentioned above imposed by this Court are to endeavour that the money is recovered. In Mohammed Zubair v. State of NCT of Delhi, Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of

Hon’ble Supreme Court holds that “The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed.” In Mohammed Zubair v. State of NCT of Delhi, Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon’ble Supreme Court holds that “The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed.”

17. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

18. If the petitioner finds bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even to the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

19. This order does not, in any manner, limit or restrict the rights of the the investigating agency from further investigation as per law.

20. In case the Investigatorarraigns another section of any penal offence in this FIR, and if the new section prescribes maximum sentence which is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above, then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days providing an opportunity to avail the remedies available in law.

21. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

22. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

23. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

30.01.2023
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Whether speaking/reasoned: Yes
Whether reportable: No.