**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-49570-2022
Reserved on: 05.01.2023
Date of Pronouncement: 06.01.2023

Suresh Seth ...Petitioner (s)

Versus

Assistant Director, Directorate Enforcement Jalandhar and another

…Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Sardavinder Goel, Advocate
for the petitioner(s).

Mr. Shobit Phutela, Advocate
for respondent No.1-ED.

Mr. R.S. Dhaliwal, Advocate for
Mr. Rajeev Anand, Advocate
for respondent No.2-CBI.

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ANOOP CHITKARA, J.

Complaint No.	**Dated**	**Pending in Court**	**Sections**
ECIR/03/JLZO /2017	------	Special Court, CBI at SAS Nagar Mohali in case No.COMA/03/2021 in CRA-PBSA01-007931-2021 dated 22.09.2021.	44 and 45 of the Prevention of Money Laundering Act, 2002 as defined u/s 3 R/w Section 70 and punishable u/s 4 of the PMLA Act 2002.

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 439 CrPC seeking regular bail.

2. In paragraph 45 of the bail petition, the accused declares that there are no criminal antecedents against the petitioner.

3. Since the main accused-Vikram Kumar Seth was granted regular bail by the Co-ordinate Bench of this Court vide order dated 22.03.2022 passed in CRM-M-35565-2021 and the said order was never assailed by the respondent before the Supreme Court, case of the petitioner is squarely covered on the grounds of parity, as such there would be no ground for rejecting the bail subject to complying with the conditions mentioned in this order.

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4. The Directorate of Enforcement's case, in nutshell is that the accused Vikram Seth operated a few bogus entities in his name and also in the name of the family members, as mentioned in the complaint, which reads as follows: -

> "(2). Brief summary of cause of action under Prevention of Money Laundering Act, 2002 (PMLA).
>
> The complainant submits that the condition precedent to investigate the offence of Money Laundering by the Complainant/ Directorate of Enforcement is either an FIR or a Police Report u/s 173 of Cr.P.C. or a complaint, in respect of scheduled offences under the PMLA, 2002. The PMLA, 2002, is an act to prevent Money Laundering and to provide for confiscation of any property derived or obtained directly or indirectly from, or involved in any process or activity connected to proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property. Since Sections 120-B, 420, 467 and 471 of IPC, 1860, and Section 13 of the Prevention of Corruption Act, 1988, invoked in the above mentioned FIRS are scheduled offences under the Prevention of Money Laundering Act (PMLA). 2002 (hereinafter referred to as PMLA), and whereas section 2 (1)(y) of PMLA provides "Schedule offence" means (1) the offences specified under Part A of the Schedule or (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more; or (iii) the offences specified under Part C of the Schedule, enquiries were initiated under PMLA against the accused persons after recording brief facts of scheduled offences in ECIR po. ECIR/03/JLZO/2017 dated 07.11.2017. A brief summary of the investigation culminating in the filing of this Prosecution Complaint is as follows:
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> (2.1). Sh.Vikram Seth had operated bogus entities viz. M/s B.L. Seth Steels Ltd., M/s B.L. Seth Coal Sales Pvt. Ltd., M/s V. S. Traders, M/s V. S. Enterprises, M/s P. K. Enterprises, M/s Goel Sales Corporation, M/s Subhash Singh & Co., M/s Unique Traders, M/s Quality Lime Product, M/s R. Sales Pvt. Ltd., M/s U.R. Enterprises and M/s M. K. Traders in the name of himself and his family members viz. Suresh Seth (his brother), 129 Sunita Seth (his wife), Anita Seth (his sister-in-law), Shivam Seth (his son), Veena Handa (his sister), Anand Prakash Handa (his brother-in law), Meenakshi Handa (his niece).
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> (2.2). Sh. Vikram Seth had availed 19 loans from Bank of Baroda, G.T. Road, Phagwara, fraudulently through criminal conspiracy, cheating, forgery and using forged documents as genuine in the names of business entities opened in his name and in the name of his family members including loans in individual capacity and defaulted on those loans resulting into wrongful loss of public money to the Bank of Baroda, Phagwara to the tune of Rs. 21.31 Crores. FIR No. RCCHG2015A0002 dated 15.01.2015 was registered by CBI, ACB, Chandigarh, under Sections 120-B, 420, 467, 468, 471 of IPC, 1860 and Sections 13(1)(d) r/w 13(2) of the Prevention of Corruption Act were invoked against Sh. Vikram Seth and others.
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> (2.3). Sh. Vikram Seth and his family members/associates in connivance with the accused bank officials cheated the Bank of Baroda, Phagwara to the tune of Rs. 21.31 crore as those 19 loans were obtained through criminal conspiracy and obtained through forgery, submission of forged documents as genuine and thereby cheated the bank and induced delivery of property as explained in para 3 of the prosecution complaint.
>
> (2.4) The loan amounts availed fraudulently through criminal conspiracy, cheating, forgery and using forged documents as genuine were not

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utilized for the intended purpose and were layered by routing through accounts of various associated firms/companies and other fraudulent firms by the accused persons through a web of transactions as explained in para 7.3 of this complaint and ultimately the funds were diverted and siphoned off. Sh. Vikram Seth entered into sham business transaction with those entities which were controlled by his acquaintances and friends. In addition to the above, Sh. Vikram Seth used to canvass that he was influential enough to obtain loans for those acquaintances through his connections with Bank of Baroda and used to engage himself in manipulating records showing inflated revenues and profits and thereby entitle those entities for loans beyond their genuine entitlements. It has also been found out during investigation, that upon disbursal of loans to those entities, he would demand and obtain commission ranging from 12% to 14%. The amounts thus obtained were thereafter diverted to be credited to any of the entities controlled by him or his close relatives in the guise of a commercial transaction.

(2.5). Out of the proceeds of crime, as defined in the Prevention of Money Laundering Act, 2002, so generated, some funds are directly or indirectly parked in immovable and movable assets as elaborated in Para 7.6 of this complaint.

(2.6). A large amount of funds have been siphoned off by Sh. Vikram Seth and others in the form of cash withdrawals as explained in para 7.4 of this complaint. As elaborated in the money trail, some cash withdrawals were found to be utilized for purchasing immovable properties.

(2.7). Further, a large amount of loan funds/ cash withdrawn from fraudulent loan accounts of Bank of Baroda were diverted by Sh. Vikram Seth for making repayment of those old loans which were earlier availed by the BL Seth group from other banks/financial institutions as elaborated in detail in para 7.7 of this complaint.

(2.8). Apart from the above mentioned 19 loans, in separate cases bearing F.I.R. No. 61/2013 dated 13.05.2013 and F.I.R. No. 86/2013 dated 30.07.2013, Sh. Vikram Seth along with others opened accounts of fake firms, created forged and fabricated mortgage through criminal conspiracy, cheating, forgery of valuable security for the purpose of cheating and by using forged documents as genuine thereby causing a wrongful loss of Rs.89.5 Lacs and Rs. 2.7 Crores respectively to the Bank of Baroda, Phagwara and wrongful gain to the accused persons.

(2.9). In para 7.6, 7.7 and 8 of this complaint, it is clearly established that Sh. Vikram Seth who has acquired, is in possession and project/claim title of aforesaid proceeds of crime, as untainted property, is actually involved in one or more of processes or acitivities related to the proceeds of crime, had committed the offence of money laundering within the meaning of section 3 of Prevention of Money Laundering Act, 2002, which is punishable under section 4 of the Act ibid.

(2.10). Thus, Sh. Vikram Seth by having involved himself in the generation of the PoC to the extent of Rs. 21.26 Cr. (as explained in Paras 3.7, 3.8.4 and 3.9.3 of this prosecution complaint) and after acquiring the said PoC, by getting the PoC placed in the various accounts of entities related/controlled by him or his relatives; and by him having deployed the PoC thus layered to discharge existing loans or purchasing/acquiring property, has projected the amounts used for retiring such existing loans as untainted property has fulfilled all the ingredients of the offence of

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money laundering as defined in section 3 of the PMLA, 2002. Other accused persons have also fulfilled all the ingredients of the offence of money laundering as defined in section 3 of the PMLA, 2002 as elaborated against their names in para 13 of this complaint."

5. As per the complaint, the specific role attributed to the co-accused/Shivam Seth reads as under: -

I. Bogus entities viz. M/s Goel Sales Corporation and M/s Subhash Singh & Co. were operated wherein he was a partner / proprietor.

II. Bank loans from Bank of Baroda, Phagwara, were availed by him fraudulently through criminal conspiracy, cheating, forgery and using forged documents as genuine in the names of business entities opened in his name and in individual capacity and he defaulted on those loans resulting into wrongful loss of public money.

III. The loan amounts availed fraudulently through criminal conspiracy, cheating, forgery and using, forged documents as genuine were not utilized for the intended purpose and were layred by routing through accounts of various associated firms/companies and other fraudulent firms by the accused persons through a web of transactions as explained in para 7.3 of this complaint and ultimately the funds were diverted and siphoned off causing wrongful gains to him, his family members and others and resulting into a financial fraud.

IV. Out of the proceeds of crime, as defined in the Prevention of Money Laundering Act, 2002, so generated, some funds are directly or indirectly parked in immovable and movable assets in his name/ in the name of his business concerns and in the name of his family members as elaborated in Para 7.6 of this complaint

V. A large amount of funds have been siphoned off through the accounts in his name/ in the name of his business concerns in the form of cash withdrawals as explained in para 7.4 of this complaint. As elaborated in the money trail, some cash withdrawals were found to be utilized for purchasing immovable properties.

VI. Further, a large amount of loan funds/ cash withdrawn from fraudulent loan accounts of Bank of Baroda were diverted for making repayment of those old loans which were earlier availed by the BL Seth group from other banks/financial institutions as elaborated in detail in para 7.7 of this complaint and he has actively participated in diversion of funds.

VII. It is clear that Sh. Shivam Seth who has acquired, is in possession and project/claim title of proceeds of crime in his name and in the name of business concerns in his name, as untainted property, is actually involved in one or more of processes or activities related to the proceeds of crime, had committed the offence of money laundering within the meaning of section 3 of Prevention of Money Laundering Act, 2002, which is punishable under section 4 of the Act ibid.

VIII. Thus, Sh. Shivam Seth having been the Prop. of M/s Subash Singh & Company, Partner in M/s Goel Sales Corporation and also having availed a housing loan during 2011-12 to the extent of Rs. 2.25 Crores, by resorting to forgery and submission of forged documents as genuine, had come into possession of said Rs. 2.25 Crores by actually involving himself in the acquisition of the POCS and by integrating the same into the businesses of the said Company, Firm and housing loan, had projected the POCS as untainted. Based on the above, Sh. Shivam Seth had committed the offence of Money Laundering to the extent of

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Rs. 2.25 Crores in terms of Section 3 of the PMLA and punishable under Section 4 of the PMLA.

6. The allegations are of money laundering and in para 8 of the petition it has been mentioned that the entire complaint revolves around the allegations that co-accused/Vikram Seth had obtained loans fraudulently from Bank of Baroda and it has been declared that the petitioner is not involved in obtaining the loans.

7. Till the time of filing of the complaint, the Enforcement Directorate chose not to arrest the accused. Only when the concerned trial Court summoned the accused, as they failed to put in an appearance, the court issued bailable and non-bailable warrants, which led to the arrest of the accused Vikram Seth and in the interregnum also of the petitioner-Suresh Seth. Thus, it is clear that ED filed the complaint without arresting any of the accused.

8. The most important aspect is the decision of the Directorate of Enforcement not to arrest all the accused; coupled with the nature of allegations attributed to each accused, the case of every accused in the FIR stood on a different footing and decided independently of the other.

9. In Gurbaksh Singh Sibbia v State of Punjab, 1980 (2) SCC 565, (Para 30), a Constitutional Bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav, 2005 (2) SCC 42, (Para 18) a three-member Bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such person on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application. The courts can release on bail, provided the circumstances then prevailing requires, and a change in the fact situation. In State of Rajasthan v Balchand, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule might perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In Gudikanti Narasimhulu v Public Prosecutor, (1978) 1 SCC

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240, (Para 16), Supreme Court held that the delicate light of the law favors release unless countered by the negative criteria necessitating that course. In Prahlad Singh Bhati v NCT, Delhi, (2001) 4 SCC 280, Supreme Court highlighted one of the factors for bail to be the public or the State's immense interest and similar other considerations. In Dataram Singh v State of Uttar Pradesh, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously, compassionately, and in a humane manner. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

10. 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.

11. 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.

12. 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.

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

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

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(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned court, and in case of non-availability, any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned court must satisfy that if the accused fails to appear in court, then such surety can produce the accused before the court.

OR

(b) Petitioner to hand over to the concerned court 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 favor of the 'Chief Judicial Magistrate' of the concerned district. Said 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). 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.

(d). It shall be the total discretion of the petitioner to choose between surety bond and fixed deposit. 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.

(e). On the reverse page of personal bond, the petitioner shall mention her/his permanent address along with the phone number, preferably that number 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.

(f). 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.

14. 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.

15. During the trial's pendency, if the petitioner repeats or commits any offence where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, it shall always be permissible to the respondent to apply for cancellation of this bail. It shall further be open for any investigating agency to bring it to the notice of the Court seized of the subsequent application that the accused was earlier cautioned not to indulge in criminal activities. Otherwise, the bail bonds shall

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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 accused does not repeat the offence and to provide an opportunity to the victim to consider legal remedies for recovery of the amount. 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 bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction. Further, 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 Police or the investigating agency from further investigation as per law.

20. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns 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.

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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

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Whether speaking/reasoned: Yes
Whether reportable: No.

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