2023:PHHC:138051

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

107 **CRM M-52256 of 2023**
Date of Decision: 16.10.2023

Sher Jang Singh ...Petitioner

Vs.

Assistant Director (PMLA),
Directorate of Enforcement,
Jalandhar, Zonal Office,
Jalandhar ...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. P.S.Ahluwalia, Advocate and
Ms. Bhavi Kapur, Advocate, for the petitioner.

Mr. Satyapal Jain, ASG, with
Mr. Lokesh Narang, Senior Panel Counsel
for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. Apprehending the arrest, the petitioner has filed the present petition under Section 438 Cr.P.C. with a prayer to grant him the concession of anticipatory bail in a criminal complaint bearing COMA/02/2023 dated 31.03.2023 titled as **"Directorate of Enforcement Vs. Surjit Singh Grewal and others"** for the offences punishable under Section 4 of the Prevention of Money Laundering Act, 2002.

2. Learned counsel for the petitioner submitted that the petitioner, who is an indian citizen, has been falsely involved in the

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present case, as unfortunately he happens to be the co-villager of Surjit Singh Grewal, the principal accused, in the present complaint. Learned counsel further submitted that a FIR No. 20 dated 21.12.2017 under Sections 13(1)(e) and 13(2) of Prevention of Corruption Act, 1988 (Scheduled Offences) was registered by Vigilance Bureau, Patiala, on the allegations that the main accused had amassed disproportionate assets during the check period ranging from 01.04.1999 to 31.12.2014. During the course of investigation of the said case, the petitioner and other family members were also involved as accused in the said case. The respondent took cognizance of the offence under the Prevention of Money Laundering Act 2002 (hereinafter to be referred as **'the PMLA Act'**) by registering ECIR/JLZO/02/2019, which culminated into filing of criminal complaint No. COMA/02/2023 titled as **"Directorate of Enforcement Vs. Surjit Singh Grewal and others".** It was alleged against the petitioner that he had aided principal accused in laundering his proceeds of crime and certain immovable properties were purchased in the name of the present petitioner. Learned counsel further contended that in the present case, all the allegations have been levelled primarily against Surjit Singh Grewal, the principal accused and a crude attempt has been made by the respondent to falsely involve all the family members of the principal accused. Learned counsel further contended that from the summoning order

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itself, it is evident that the statement of the petitioner has already been recorded under Section 50 of the PMLA Act. As a consequence, once the petitioner had already joined the investigation and is further willing to join the investigation and to appear before the Court, no purpose would be served by his incarceration. He further contended that in the present case, during the course of investigation, the respondent opted not to exercise the power under Section 19 of the PMLA Act and accordingly did not arrest the petitioner during the course of investigation and the investigation had concluded; in such circumstances, the petitioner is sought to be arrested with a oblique motive after the conclusion of the investigation. Learned counsel further contended that the petitioner was neither named as an accused in the main case, i.e. FIR No. 20/2017 nor he has been nominated as an accused during the course of the investigation. Learned counsel for the petitioner has placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of **Dataram Singh Vs. State of Uttar Pradesh, 2018(2) R.C.R. (Criminal) 131,** wherein, the Hon'ble Supreme Court has held as follows:-

> *17. In our opinion, it is not necessary to go into the correctness or otherwise of the allegations made against the appellant. This is a matter that will, of course, be dealt with by the trial judge. However, what is important, as far as we are concerned, is that during the entire*

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period of investigations which appear to have been spread over seven months, the appellant was not arrested by the investigating officer. Even when the appellant apprehended that he might be arrested after the charge sheet was filed against him, he was not arrested for a considerable period of time. When he approached the Allahabad High Court for quashing the FIR lodged against him, he was granted two months time to appear before the trial judge. All these facts are an indication that there was no apprehension that the appellant would abscond or would hamper the trial in any manner. That being the case, the trial judge, as well as the High Court ought to have judiciously exercised discretion and granted bail to the appellant. It is nobody's case that the appellant is a shady character and there is nothing on record to indicate that the appellant had earlier been involved in any unacceptable activity, let alone any alleged illegal activity".

3. Still further, under similar circumstances, the Hon'ble Supreme Court held in the matter of **Aman Preet Singh Vs. C.B.I. Through Director 2021 AIR (Supreme Court) 4154** as under:-

"10. A reading of the aforesaid shows that it is the guiding principle for a Magistrate while exercising

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powers under Section 170, Cr.P.C. which had been set out. The Magistrate or the Court empowered to take cognizance or try the accused has to accept the charge sheet forthwith and proceed in accordance with the procedure laid down under Section 173, Cr.P.C. It has been rightly observed that in such a case the Magistrate or the Court is required to invariably issue a process of summons and not warrant of arrest. In case he seeks to exercise the discretion of issuing warrants of arrest, he is required to record the reasons as contemplated under Section 87, Cr.P.C. that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him. In fact the observations in Sub-para (iii) above by the High Court are in the nature of caution.

11. Insofar as the present case is concerned and the general principles under Section 170 Cr.P.C., the most apposite observations are in sub-para (v) of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the

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circumstances of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this.

12. If we may say, the observation hereinabove would supplement our observations made in ***Siddharth v. State of Uttar Pradesh & Anr.(supra)*** *and must be read together with that judgment.*

13. The given factual scenario completely fits the aforesaid as the appellant was never taken into custody during investigation. Suffice to say that it would be a fit case for the trial Court to grant bail to the appellant on the next date on terms and conditions to its satisfaction. As a measure of precaution, laregly arising from the manner of submission of public prosecutor before the trial Court, it is made clear that the interim protection

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granted by this Court would continue till the appropriate order is passed by the trial Court".

4. On the other hand, learned senior counsel appearing on behalf of the respondent has vehemently opposed the prayer made by the learned counsel for the petitioner on the ground that the petitioner was in position to influence the witnesses of the prosecution and did not deserve the concession of bail. Learned senior counsel further submitted that the petitioner was not entitled to seek any discretionary relief of bail under Section 438 Cr.P.C. without fulfilling the twin conditions as laid down under Section 45 of the PMLA Act. Even the mandate of twin conditions under Section 45 of PMLA Act had been upheld by the Hon'ble Supreme Court in the matter of **Vijay Madan Lal Choudhary and others Vs. UOI and others 2022 SCC Online SC 929**. He further contended that this Court must be satisfied that there were reasonable grounds for believing that the accused was not guilty of such offence and that he was not likely to commit any offence while on bail. It was further contended that the Special Court at Mohali had already taken cognizance of the offence vide order dated 18.05.2023 and after due application of mind, the petitioner has been rightly summoned by the Court and the present application is liable to be dismissed.

5. Countering the submissions made by the learned senior counsel appearing on behalf of the respondent, the learned counsel for

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the petitioner contended that a review petition has been filed in the matter of **Vijay Madan Lal Choudhary and others case (supra),** which is pending before the Hon'ble Supreme Court. Still further, the respondent had conducted the investigation under the provisions of PMLA in furtherance of ECIR and the petitioner had duly cooperated with the investigation and his statement was recorded by the respondent under Section 50 of the PMLA Act. Since, the petitioner had fully cooperated in the investigation, therefore, he was not arrested by the respondent under Section 19 of the PMLA Act and his statement under Section 50 of the PMLA Act has already been recorded. The rigour of Section 45 of the PMLA Act would not be attracted in the present case. The petitioner also placed reliance on the judgments passed by the Hon'ble Delhi High Court in the matter of **Rana Kapoor Vs. Directorate of Enforcement 2022(295) DLT 468** and the judgment passed by this Court in the matter of **Mandeep Singh and others Vs. Assistant Director, Directorate of Enforcement, PMLA, Jalandhar, 2020(2) RCR (Criminal) 483 and Suraj Seth Vs. Assistant Director, Directorate Enforcement Jalandhar 2023(1) C.R.C. (Criminal) 635.**

6. Having given my thoughtful consideration to the above submissions, I am of considered opinion that no purpose would be served by putting the petitioner in judicial custody during the pendency of the trial in the statutory complaint filed by the

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respondent before the Special Court, Mohali. It is apparent that during the investigation of the money laundering case, the petitioner was never arrested by the respondent in exercise of its power under Section 19 of the PMLA Act. Apparently, the assets allegedly created by the petitioner with aid of alleged proceeds of crime have already been seized/attached. Still further, from the above, it is apparent that the recourse of Section 45 of the PMLA Act would be attracted only while considering the bail plea of an accused, who had been arrested by the respondent under Section 19 of the PMLA Act. Still further, the complaint is at initial stage and the disposal of the trial proceedings may take quite a long time. Consequently, no purpose would be served by putting the petitioner behind the bars. Consequently, the present petition is allowed. The petitioner is directed to surrender before the Special Court/trial Court SAS Nagar Mohali within a period of six weeks from today and on his surrender, he shall be admitted to bail by the concerned Court subject to the conditions:-

> *(i) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.*
>
> *(ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.*

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(iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.

(iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.

(v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.

(vi) In case, the petitioner involved in any other criminal activity, during the pendency of the trial, it shall be viewed seriously and the prosecution shall be at liberty to move an appropriate application for cancellation of bail granted to the present petitioner.

(*vii) The concerned Court may insist two heavy local surties and may also impose any other condition, in accordance with law, while accepting the bails bonds and surety bonds of the petitioner.*

16.10.2023 **(N.S.SHEKHAWAT)**

amit rana **JUDGE**

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

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