

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.302

CRM-M-58134-2023

Date of decision:12.12.2023

Surjit Singh Grewal

...Petitioner

Versus

Assistant Director (PMLA) Directorate of Enforcement Jalandhar

...Respondent(s)

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

Present: Mr.P.S. Ahluwalia, Advocate with
Mr. Keerat Dhillon, Advocate for the petitioner.

Mr. Satya Pal Jain, Addl. Solicitor General of India with
Mr. Lokesh Narang, Advocate for the respondent.

N.S. SHEKHAWAT, J.

1. The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in a criminal complaint bearing COMA/02/2023 dated 31.02.2023 titled as 'Directorate of Enforcement Vs. Surjit Singh Grewal and others' lodged under Section 4 of the Prevention of Money Laundering Act, 2022 (for short 'the PML Act').

2. Learned counsel for the petitioner submitted that the petitioner, who is a senior citizen, has been falsely involved in the above-said criminal complaint, instituted by the complainant/respondent under Section 44 read with Section 45 of the PML Act for the offence of money laundering as provided under Section 3 and punishable under Section 4 of PML Act. He further submitted that the prosecution in the present case was initiated

against him after a lapse of about 04 years from his retirement. The petitioner was released on bail in the scheduled offence in the year 2018. Thus, when the petitioner has already been released on bail in the main case and the investigation already stands concluded, no purpose would be achieved by sending the petitioner behind the bars in the predicate offence. The investigating officer in the present case did not opt to arrest the accused at the time of investigation and his arrest after conclusion of the investigation would be illegal at this stage. Furthermore, even the investigating agency throughout the course of investigation, opted not to exercise the powers under Section 19 of the PML Act. Apart from that, the petitioner is not in a position to influence the witnesses of the prosecution. Learned counsel further submitted that co-accused, namely, Pritpal Singh, Jasjit Singh and Sher Jang Singh had approached this Court vide CRM-M-50305-2023, CRM-M-52264-2023 and CRM-M-52256-2023, respectively, and this Court had admitted all the three accused to anticipatory bail. Learned counsel relied upon the detailed findings recorded in the orders passed in the said cases. Learned counsel has placed reliance on an order passed by the Hon'ble Supreme Court in **SLP (Crl) Nos.11644-11645 of 2023 titled as 'Benoy Babu Vs Directorate of Enforcement**. Furthermore, learned counsel has also relied upon a judgment of the Hon'ble Supreme Court rendered in **'Dataram Singh Vs State of Uttar Pradesh', 2018 (2) RCR (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 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 Directorate 2021 AIR (SC) 4154**, as follows:-

"10 A reading of the aforesaid shows that it is the guiding principle for a Magistrate while exercising 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 nonbailable 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 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, largely arising from the manner of submission of public prosecutor before the trial Court, it is made clear that the interim protection 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 submitted that the petitioner was not entitled to the relief under Section 438 Cr.P.C., without fulfilling the twin conditions as laid

down under Section 45 of the PMLA. He further contended that the mandate of twin conditions under Section 45 of PML 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**.

5. Learned counsel appearing on behalf of the petitioner also submitted that a review petition has already been filed in the matter of **Vijay Madan Lal Choudhary** (supra), which is pending consideration before the Hon'ble Supreme Court. Still further, the respondent had conducted the investigation under the provisions of PML Act 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 PML Act. Since, the petitioner had fully cooperated in the investigation, therefore, he was not arrested by the respondent under Section 19 of the PML Act and his statement under Section 50 of the PML Act has already been recorded. The rigour of Section 45 of the PML 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. I have heard the learned counsel for the parties and perused the record.

7. In the present case, during the investigation of the money laundering case, the petitioner was never arrested by respondent No.1 in

exercise of powers under Section 19 of the PML Act. Even the petitioner has already been admitted to bail in case FIR No.20 dated 21.12.2017 under Section 13(1)(e) read with Section 13(2) of Prevention of Corruption Act, 1988 and never misused the concession of bail. Even the provisions of Section 45 of the PML Act would be attracted only while considering the bail plea of an accused, who has been arrested by the respondent under Section 19 of the PML Act. Thus, the petitioner is directed to surrender before the Special Court/trial Court, SAS Nagar (Mohali) within a period of four weeks from today and on his surrender, he shall be admitted to bail by the court subject to following 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.
- (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 sureties and may also impose any other condition, in accordance with law, while accepting the bails bonds and surety bonds of the petitioner.

12.12.2023
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO