07.10.2024
10
sdas
Allowed

(Assigned Ponzi)

C.R.M. (DB) 2929 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure/ under Section 483 of the Bharatiya Nagarik Suraksha Sanhita in connection with M.L. Case No. 13 of 2021 arising out of ECIR/KLZO-1/29/2021/1362 under Sections 3/4/70 of the Prevention of Money Laundering A ct, 2002.

And

In Re : Kaustav Ray .... petitioner

Mr. A. Mitra, Sr. Adv.
Mr. Jaydeep Biswas
Mr. S. Nag
Mr. M. Chatterjee
Mr. K. Ghosh
Mr. Victor Chatterjee
.....for the petitioner

Mr. Arijit Chakrabarti
Mr. Deepak Sharma
.....for the ED

1. Learned Counsel for the petitioner submits he is a journalist and editor of a reputed Bengali News Channel. In connection with his media business he had telecast programmes on behalf of the 'PINCON Group of Companies' and had received remunerations. He is in custody for more than 15 months and has not been charged for the predicate offences. He had unsuccessfully approached this Court in January, 2024. Subsequent thereto, the principal accused, Manoranjan Roy has been enlarged on bail after suffering detention for 10 months in the present case. Prosecution proposes to examine a large number of witnesses and rely on a number of documents.

There is no possibility of trial concluding in the near future. Accordingly, he prays for bail.

2. Learned Counsel for Enforcement Directorate opposes the bail prayer. He submits during enquiry petitioner took false plea that he had received monies from 'PINCON Group of Companies' against bona fide business activity i.e. telecasting programmes / advertisements on his news channel. However, analysis of the ledgers, invoice and telecast certificates show the programmes do not tally with the said certificates. Even the entries in the ledger of the petitioner's firm fails to account for Rupees 1.14 crores. Taking into consideration these aspects, this Court had rejected his prayer earlier. Bail prayer of Manoranjan Roy has been challenged before this Court.

3. We have considered the materials on record. 'PINCON Group of Companies' was running an illegal money circulation business. In course of such illegal activity, it had misappropriated over Rs.600 crores from innocent members of public. Manoranjan Roy and other directors of the company were charged with predicate offences under the Indian Penal Code and under WPPIDE Act. They have been convicted. It is relevant to note petitioner was not a part of the said conspiracy and had not been charged with predicate offences. Allegation against the petitioner was that he received a sum of Rs. 4.2 crores out of the proceeds of crime running to over Rs.600 crores. In course of enquiry it was the petitioner's case that the transactions between his company and that of the 'PINCON

Group of Companies' were in regard to programmes telecast on his news channel on behalf of 'PINCON Group of Companies'. On analysis of documentary evidence, though over Rs.3 crores was accounted for and a sum of Rs.1.14 crores remains unaccounted. In view of the aforesaid and as further investigation was in progress with regard to other unaccounted funds, bail prayer of the petitioner was turned down in January, 2024. Subsequently, another complaint has been filed. But there has not been any accretion of proceeds of crime in the hands of the petitioner. In the meantime the principal accused Manoranjan Roy (who suffered detention for 10 months in the present case) has been enlarged on bail.

4. Learned Counsel for the Enforcement Directorate contends there were prima facie material to show petitioner is guilty of offences under Section 3 of the Prevention of Money Laundering Act (for short 'PMLA') and in view of restrictions under Section 45 of PMLA Act bail may not be granted.

5. We are conscious of the strict restrictions to grant of bail on merits in PMLA cases. However, the said restrictions do not operate when bail prayer is made on the ground of delay in trial. Petitioner is in custody for 15 months and charge is yet to be framed. Prosecution proposes to examine a large number of witnesses and exhibit a number of documents. There is little possibility of trial concluding in the near future.

6. In a catena of decisions[1] the Hon'ble Apex Court has held that right to bail on the ground of infraction of fundamental right to speedy trial under Article 21 is not fettered by restrictions under Section 45 of PMLA Act. It could be argued that in ***Vijay Madanlal Chowdhury and ors vs Union of India and ors[2],*** the Apex Court held bail on the ground of delay in trial may be considered under section 436A CrPC in PMLA cases after the accused has suffered half of the maximum sentence. ***In Re: Inhuman Conditions in 1382 Prisons[3]***, the Apex Court clarified section 479 BNSS would apply to pending cases and an accused is entitled to be released on bail if he is a first time offender upon completing one third instead of half of the maximum detention as envisaged under the prior law. Be that as it may in ***Manish Sisodia*** *(supra)*, the Apex Court enlarged the accused on bail after a detention of 15 months on the ground of delay in trial. Similarly, in ***Prem Prakash***(supra) bail was granted to an accused in PMLA case when he was in detention for just over a year.

7. In the present case, petitioner is in custody for 15 months and a major part of the transaction by and between him and the 'PINCON Group of Companies' have not been accounted for. Whether failure to account for the remainder is due to inadvertent errors in maintaining accounts and/or would constitute offences of money laundering may be assessed

---

[1] *Prem Prakash vs. Union of India, 2024 SCC OnLine SC 2270; Manish Sisodia vs. Directorate of Enforcement, 2024 SCC OnLine SC 1920*
[2] 2022 SCC OnLine SC 929
[3] Writ Petition (Civil) No. 406/2013 dated, 23rd August, 2024

during trial. Keeping in mind the profile of the case and the period of detention suffered by the petitioner a reasonable guesstimation may be made that the trial would not conclude even if the petitioner is kept in detention for some months more to attain the benchmark under Section 479 of BNSS. It is also relevant to note that the principal accused Manoranjan Roy has been enlarged on bail and even if challenged the bail order has not been suspended by this Court. Given these situations we are of the considered view petitioner has made out a case for bail on the ground of protracted detention and dim possibility of conclusion of trial in the near future.

8. Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs. 50,000/- with five sureties of like amount each, two of whom must be local, to the satisfaction of the learned Judge-in-charge, City Sessions Court. Prior to his release petitioner shall deposit his passport, if in his possession, before the trial court and shall not leave country without permission of the court and shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

5. In the event petitioner fails to appear before the trial court without any justifiable cause, the trial court shall be at liberty to cancel his bail in accordance with law without further reference to this Court. He shall also make himself available

before the Enforcement Directorate for further interrogation as and when necessary.

6. The application for bail is, accordingly, allowed.

(Gaurang Kanth, J.) **(Joymalya Bagchi, J.)**