Form No.J(1)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

C.R.M.(SB) 187 of 2023

Kaustuv Ray
versus
Directorate of Enforcement

For the Petitioner : Mr. Y.J. Dastoor
Mr. Soubhik Mitter
Mr. Sayan De
Mr. Jaydeep Biswas
Mr. S. Nag
Mr. M. Chatterjee
Mr. Somopriyo Chowdhury.

For the E.D. : Mr. Dhiraj Trivedi, Ld. DSGI
Mr. Arijit Chakrabarti
Mr. Deepak Sharma.

Heard On : 22.12.2023, 21.12.2023, 20.12.2023, 18.12.2023, 12.12.2023, 11.12.2023, 06.12.2023, 05.12.2023 & 02.01.2024.

Judgement On : 02.01.2024.

Tirthankar Ghosh, J. :

The present application for bail has been preferred on behalf of the petitioner in connection with ECIR/KLZO-1/29/2021/1362. The said case is pending before the learned 1st Special Judge CBI (PMLA) at Bichar Bhavan, Kolkata and the petitioner lastly prayed for bail on 5th September, 2023 which is the subject matter of challenge before this Court in this application.

The prosecution case in brief as set out in the complaint is that M.L. Case No.13 of 2021 which arose out of the aforesaid ECIR is to the effect that Khejuri Police Station Case No.47 of 2017 dated 19.02.2017 was registered for investigation under Sections 420 and 406 of the Indian Penal Code and Section 3 of the West Bengal Protection of Interest of Depositors in Financial Establishment Act, 2013 against Pincon Group of Companies and its directors alleging that the said Group through their companies collected money from public fraudulently inducing high rate of interest on maturity through different schemes like MIS, FD and RD. The said case was taken over by Directorate of Economic Offences, Kolkata, West Bengal who filed charge-sheet being No.08 of 2018 under Sections 406/409/120B of the Indian Penal Code against 41 accused persons. Cognizance was taken by learned Additional District and Sessions Judge, 3rd Court, Tamluk, Purba Medinipur, West Bengal and as per charge-sheet therein, the total money which was collected is Rs.638.56/- crores. Based on the aforesaid information, investigation under the PMLA, 2002 was initiated by recording ECIR No. ECIR/KLZO-1/29/2021 dated 27.07.2021 to initiate investigation under the provisions of PMLA, 2002 against Pincon Group of Companies, its directors and others as prima facie case for an offence of money laundering under Section 3 of PMLA, 2002 read with Section 7C of PMLA, 2002 and punishable under Section 4 of PMLA, 2002 appeared to have been made out, since offences punishable under Section 120B and 420 of the Indian Penal Code, are covered by the definition of Scheduled Offences in terms of Section 2(1)(y) of PMLA, 2002. According to the complaint the charge-sheet filed by the West Bengal Police detected that the Pincon Group through its companies collected money from public luring with high rate of interest on maturity through different schemes like MIS, FD and RD and the total amount so collected was Rs.638.56/- crores and the said huge amount so raised from the common people was throughout the district of Purba Medinipur and other districts of West Bengal as also from other States since the year 2009 in the form of FD/RD/MIS, savings, debentures with false assurance of refunding the same with lucrative and exorbitant rate of interest. However, the directors of the accused companies deliberately and fraudulently misappropriated public deposits amounting to several crores and closed the branch offices of the concerned companies. In course of investigation, a report was obtained from the Project Manager, Web Infotech Solutions, 2C, Kalicharan Ghosh Road, Kolkata-700050 (who used to maintain the Database of Pincon Group of Companies and developed software of the said companies) and it was categorically indicated that the total liabilities of the Pincon Group of Companies stood at Rs.638,56,49,283/-. In course of investigation, it was revealed from the judgment dated 03.10.2020 passed by the learned Additional District & Sessions Judge, 3rd Court, Tamluk, Purba Medinipur, West Bengal in case No. SPI (PIDDE) Case 01/2017 that Shri Monoranjan Roy was convicted under Sections 406/409/420/120B of the Indian Penal Code and

Section 3 of the West Bengal Protection of Interest of Depositors in Financial Establishments Act, 2013 and was remanded to the Midnapore Central Correctional Home. During investigation by the Enforcement Directorate, it reveals that convict Shri Monoranjan Roy was transferred to Presidency Correctional Home, Kolkata and from there he was admitted at IRIS Hospital, Kolkata by the authority of the Correctional Home due to his illness.

As per the statement of Sri Monoranjan Roy under Section 50(3) of the PMLA, 2002 the present petitioner namely, Kaustuv Ray, was his friend since 1998 and was the Chairman of M/s. R.P. Infosystems Pvt. Ltd. He stated that the petitioner had taken more than Rs.1.5 crores between 2013 and 2017 from him. The said money was sent through Pincon Group of Companies to the companies of the present petitioner namely R P Techvision Pvt. Ltd, M/s R P Vyapar Pvt. Ltd and M/s R P Infosystems Ltd.

The source of transferring such money, which were collected from the public, were five companies. The petitioner promised to refund the said money to Mr. Monoranjan Roy but he did not refund the same and threatened him as he had political connection with the ruling party in West Bengal. Subsequently, Sri Monoranjan Roy was scared and could not do anything.

It has been alleged that the petitioner did not return any money to Pincon Spirit Ltd or any other limited companies and after the arrest of Mr. Monoranjan Roy, his wife approached Mr. Kaustuv Ray, when she was threatened. When the statement of Axis Bank account of M/s. Pincon Spirit

Limited was shown and asked to explain to Mr. Roy, Mr. Roy in his statement dated 7.7.2023 deposed that payment of Rs. 40 lakhs on 07.08.2013, Rs. 10 lakh on 07.08.2023 to R. P Vyapaar Limited and Rs. 3 lakh and Rs. 2 lakh on 28.2.2014 to M/s R. P Techvision from Pincon Spirit Limited Axis Bank Account. Apart from the Rs. 55 lakh and Rs. 65.75 lakh, Sri Roy stated that he had paid another Rs. 30 lakh to Mr. Kaustuv Ray/the present petitioner.

On the other hand Mr. Kaustuv Ray/the present petitioner in his statement under section 50(3) of the PMLA, 2002 narrated that he knew Mr. Monoranjan Roy for 20 years and was aware regarding the business run by him, which deals with manufacturing of liquor, country liquor, edible oil, food *masala* etc. When Mr. Kaustuv Ray was shown the ledger account of PSL with regard to business of the companies namely, M/s R.P Techvision Pvt. Ltd and M/s. R. P Vyapar Pvt. Ltd for the period 1.4.2009 to 30.1.2017, wherein it was seen that total business volume of Pincon Group was Rs.4,65,50,712/- out of which a sum of Rs.2,73,44,668/- remained receivable by Pincon Group and the petitioner when confronted to offer his comments he evaded the same. When the petitioner was asked to provide the details of utilization of money received from M/s ASK Financial Services Ltd and Pincon Spirit Limited, the petitioner replied that he was not in a position to answer the transactions. The prosecuting authority as also the investigating agency through the complaint have detailed regarding the series of transactions which had taken place but more or less the complaint has been restricted to a sum of Rs.4,65,50,712/- received by the petitioner from Pincon Group.

The subject-matter of the case which gave rise to the cause of action was not only the receipt of money but also receipt of certain forged invoices alleged by the prosecuting agency as according to the complainant 40 invoices/bills were generated against advertisement services provided to M/s. Pincon Group. Out of the said 40 invoices, only 25 invoices wroth Rs. 1,40,23,651/- was accounted by M/s. Pincon Group. Remaining 15 bills totalling to Rs.2,68,69,955/- were not accounted by M/s. Pincon Group. The petitioner did not furnish any proof regarding the advertisement services provided to Pincon Group to run the advertisement in respect of the said 15 bills. As such, the prosecuting agency alleged that in the absence of proof, the said 15 bills totalling to Rs.2,68,69,955/- were not considered and advertisement services were worth only to the extent of Rs.1,40,23,651/-.

There were other allegations in respect of 40 lakhs given in cash from March, 2017 to April, 2023 to Mr. Kaustuv Ray. It was asserted by Monoranjan Roy that financial outstanding from the petitioner to Pincon Group of Companies was Rs.2,49,01,793/-.

The prosecuting agency referring to the series of allegations as narrated above, in a tabular form, along with others, represented the complicity of the petitioner for alleged offence under Section 3 of the PMLA, 2002 in the following manner :

8.	M/s. RP Techvision India Pvt Ltd (A-8)	Shri. Monoranjan Roy, out of the money collected from public which was further diverted to M/s. Pincon Spirit Limited, had sent money on various occasions to M/s. RP

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<td>represented by Shri Kaustuv Ray</td>
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Group of Companies owned by Shri Kaustuv Ray.
Shri Monoranjan Roy has stated in his statement dated 01.09.2023 that as per his ledger, Shri Monoranjan Roy had paid the following amounts to Shri Kaustuv Ray as hand loans when he was in bad financial condition during the period from 2012 to 2017 as Shri Kaustuv Ray was his friend.
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<tr><th>S. No.</th><th>Name of the Company/head as per PSL Ledger.</th><th>Net receipts from PSL</th></tr>
<tr><td>1</td><td>M/s. RP Techvision India Pvt Ltd</td><td>3,68,25,444</td></tr>
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Against the said amount, Kolkata TV has run advertisements of M/s. Pincon Spirit Limited for an amount of Rs. 1,40,23,851/-, Shri Monoranjan Roy further stated that the final outstanding from Shri Kaustuv Ray to Pincon Group is Rs. 2,49,01,793/-.
Shri Kaustuv Ray has not submitted 40 invoices purportedly raised against Pincon Group for advertising services provided in Kolkata TV. However, it is revealed during the statement that only 25 bills totalling to Rs. 1,40,23,651/- are genuine and the remaining bills are doctored and fabricated. Shri Kaustuv Ray has not furnished any documentary evidence against the money received from Pincon Group except the said 40 invoices / bills.
From the investigation conducted so far it is revealed that Shri Kaustuv Ray has received proceeds of crime of Rs. 4,29,25,444/- from Pincon Group out of the public fund collected as accommodation loan, and provided advertisement services worth Rs. 1,40,23,651/- to M/s. Pincon Spirit Limited. The remaining amount of Rs. 2,49,01,793/- is in the possession of Shri Kaustuv Ray.
In the instant case, accused company has knowingly and actually acquired, possessed, and laundered the proceeds of crime, therefore, guilty of offence of money-laundering as per the provisions of Section 3 of PMLA and therefore liable to be punished under Section 4 of PMLA. In view of
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Records reflect that the petitioner attended the office of the Enforcement Directorate on 17.07.2023 and after a detailed interrogation, the petitioner was arrested on 18.07.2023. The grounds of arrest as has been reflected by the investigating officer is as follows :

> "*Since Shri Kaustuv Ray, S/o- Ajit Kumar Ray, R/o- 6, Haripada Dutt Lane, PS- Girish Park, Kolkata-700006 and currently residing at 190, 6th Floor, Sarat Bose Road, Kolkata is involved in the commission of offence of money laundering, by indulging in receiving proceeds of crime derived from commission of schedule offence under PMLA, 2002 from Shri Manoranjan Roy without underlying any genuine business transaction and using the said proceeds of crime for his personal gain, projecting the same as untainted. He has knowingly indulged, involved and is a party in the process and activity connected to the proceeds of crime including its possession, use, concealment and projecting and claiming the said proceeds of crime as untainted property*

> *deriving illegal monetary gains and hence, has committed offence of Money Laundering u/s 3 of Prevention of Money Laundering Act, 2002 punishable under section 4 of the said act. The aforesaid criminal act is cognizable and non-bailable. I, therefore, arrest Shri Kaustav Ray under section 19 of PMLA, 2002.*"

It would not be out of place to state that the investigating agency while submitting the complaint prayed for further investigation and according to the learned advocate appearing for the Enforcement Directorate, the said investigation is still continuing.

Mr. Dastoor, learned senior advocate appearing for the petitioner submitted that the petitioner is the Editor of Regional Bengali News Channel "Kolkata TV" which is run and operated by M/s. RP Techvision India Pvt. Ltd. Learned senior advocate has detailed on the factum of how M/s. RP Techvision India Pvt. Ltd. took over Kolkata TV and has been successfully running the said channel from the day it was taken over. It was emphasised that Monoranjan Roy was associated with Pincon group of companies and number of criminal cases were registered against him which related to ponzi schemes. The said Monoranjan Roy was convicted vide judgement and order dated 03.10.2020 and thereafter on appeal, he was granted bail. The said Monoranjan Roy remained in IRIS hospital till September 2023 and he was interrogated by the Enforcement Directorate on a number of occasions which would be available from the documents relied upon by the investigating agency/prosecution in respect of the complaint which has been filed.

According to the petitioner, the documents tendered on 17.07.2023 were prepared by him from the records (which were more than eight years old), as were available and the details of which were handed over to the officers of the Enforcement Directorate and the same would be also reflected from the documents relied upon by the prosecuting agency. Utmost cooperation was demonstrated by the petitioner and in spite of the same without any threshold relating to "guilt" as described under Section 19 of the PMLA, the petitioner was arrested on 18.07.2023.

The learned senior advocate for the petitioner disputed the contentions made in the complaint as also that by the learned advocate appearing for the Enforcement Directorate in respect of 40 invoices concerned both with regard to the factum of advertisement being telecast as also regarding its genuinity. Learned senior advocate drew the attention of the Court regarding the ledger which was relied upon by the Enforcement Directorate which belonged to Pincon group of companies and submitted that if the chronology of the numbers are checked, it would reflect that the number of the invoices and the dates on which they were issued cannot be harmonised as no chronology was maintained in respect of the invoices which have been referred to in the ledger. There is no compatibility or relation in respect of the ledger and the dates which were relied upon. It was categorically pointed out in respect of a demand draft, that on a holiday such demand draft was issued and was reflected in the ledger which the Enforcement Directorate accepted as sacrosanct.

So far as the telecasting regarding advertisements are concerned in the petitioner's television channel, the telecast certificates were obtained from TAM/BARC which would reflect that the time period for which the charges were raised do match with the forty invoices and unnecessarily a difference of amount has been created by the Enforcement Directorate without investigating the same for the purpose of suiting their needs to detain the petitioner in custody.

The Enforcement Directorate did not cross-check the telecast certificates provided by TAM/BARC who are independent regulatory authorities and are acting impartially and objectively as the bridge between the advertisers and broadcasters.

Learned senior advocate in a tabular form demonstrated in the written notes of arguments justifying the price quote, the amount of time spent on advertisement of PINCON group of companies along with the taxes charged, to arrive at the total quantum of money.

It has also been contended that the petitioner is in custody for more than five and half months and the Investigating Agency not having interrogated the petitioner since 9th August, 2023, further detention of the petitioner for the purposes of the instant case is unwarranted.

Additionally, it has also been submitted that the total volume of the case investigated by the Enforcement Directorate is more than Rs. 638 crores (approximately), on the contrary the subject matter for which the petitioner has been detained is restricted to only Rs.4.5 crores (approximately).

Learned senior advocate prays for bail on any condition as till date there has been no progress since the complaint has been filed and the petitioner not being interrogated for the last four and half months, his detention becomes unwarranted in the facts and circumstances of the case.

According to the learned senior advocate the volume of the documents do not reflect that within a very short span of time there is any scope of trial commencing or the trial substantially progressing.

Mr. Dhiraj Trivedi, learned DSGI and Mr. Arijit Chakraborti, learned advocate appearing for the Enforcement Directorate submitted that the petitioner was thickly connected with the said Monoranjan Roy and the limited amount of money itself will not reflect the manner in which the complicity of both the persons are intricately related.

Learned Advocates for the Enforcement Directorate submitted that the two mobile phones of the present petitioner were impounded and there were forensic imaging of the same. Data were retrieved from which it reflected that the petitioner's complicity is not restricted to the sum of Rs.4.5 crores but stretches beyond the same. The petitioner happens to be an influential person and has exerted his influence which would be transparent from the materials which have been collected by the investigating agency and substantiated by the statements so recorded.

The Enforcement Directorate has emphasized that there was no agreement executed between the Pincon Group of Companies and the R P Techvision Pvt. Ltd. or the companies belonging to the present petitioner and in spite of the same they carried on transactions. Money was transacted between them and the same consisted both banking transactions and cash transactions.

So far as the cash transactions are concerned, according to the Enforcement Directorate, in course of further investigation, additional materials have surfaced which have changed the nature and character of the quantum involved particularly the association of the petitioner with such quantum of concealed money. In order to substantiate such contention, the learned DSGI appearing on behalf of the Enforcement Directorate has referred to number of points on which the Investigating Officer is keen to interrogate the petitioner in custody and that the same could not be done as the petitioner is admitted at SSKM Hospital. There are no medical documents, according to the ED, which are of such nature that the petitioner would stay for more than four months in SSKM Hospital. However, it was reiterated by them that the petitioner being an influential person has exerted his influence for staying at SSKM Hospital. According to the Investigating Officer of the case, a number of employees of the RP Group (belonging to the petitioner) in their statement under Section 50 of PMLA, 2002 divulged such suspicious mode of transactions between RP Group and Pincon Group. The statements of the employees according to the Assistant Directorate reflect that differential treatment in relation to advertisement services were rendered to Pincon Group by Kolkata TV of RP Group. It was further stated that the extracted data from the impounded mobile phones of the accused petitioner reflected materials which speaks that he is having a high level connection and is able to manage different litigations and individuals for and on behalf of different people. The conversation with high rank individuals reveal that he is in the habit of influencing different people to settle and to get rid from the clutches of law in different cases. The extracted data also reflect huge monetary transaction by the accused, sources of which are cash transactions and are further required to be investigated. According to the Investigating Officer, identification in respect of Rs.60 crores is under verification. Further properties worth Rs.25 to Rs.30 crores have been identified. The process of investigation in relation to immovable properties require verification as the same are suspected to be derived from proceeds of crime. The scrutiny and analysis in respect of the data so extracted, the materials so collected, the cash transactions which have been traced including the properties which are concealed require substantial time, not only for the reason that the petitioner is in hospital but also because of the resistance faced by the Investigating Agency at different levels for tracing out the sources.

In order to substantiate their contentions, the Enforcement Directorate has relied upon the judgment of Chaman Lal Vs. State of U.P. reported in (2004) 7 SCC 525 wherein the Hon'ble Apex Court observed that the courts while granting bail should keep in mind the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant and prima facie satisfaction of the court in support of the charge. The same principle was reiterated in Suman Pandey Vs. State of U.P. reported in (2007) 12 SCC 364. Relying upon Sangitaben Shaileshbhai Datanta Vs. State of Gujarat reported in (2019) 14 SCC 522, attention of the court was drawn to the locus of the present petitioner particularly with reference to paragraph 6 of the said judgment wherein the Hon'ble Apex Court has observed that the court should take into consideration the gravity of the crime, the character of evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice, repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice.

Reliance was placed on *Vijay Madanlal Choudhary & Ors.-vs.-Union of India & Ors.* reported in *2022 SCC OnLine SC 929*.

Learned advocate for the Enforcement Directorate stressed on the ambit of Section 3 of the PMLA, 2002 and tried to impress the court on the issue that the offence of money laundering is an independent offence regarding the process or activity connected with the proceeds of crime which were derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form – be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, any of the acts connected with the proceeds of crime would constitute the offence of money-laundering.

Attention of the court was drawn to paragraph 295 of the aforesaid judgment, wherein a reference was made to Section 5(1) of the PMLA, 2002 and it was submitted that the act or action of the investigating officer can be initiated only on the basis of material in possession of the authorised officer indicative of any person being in possession of proceeds of crime.

Lastly, attention was drawn to paragraphs 387 and 395 wherein emphasis was laid down on the twin conditions of Section 45 of the PMLA, 2002 regarding the facts to be taken into consideration for the purpose of granting bail to a person, who has been arrested under the provisions of the PMLA, 2002.

On behalf of the E.D. reliance was also placed on *Y.S. Jagan Mohan Reddy –vs- Central Bureau of Investigation* reported in *(2013) 7 SCC 439*, to address this court regarding the approach of the Hon'ble Apex Court in respect of economic offences and bail to be granted in such matters.

To that effect, relevant paragraphs from *Rohit Tandon –vs.- Directorate of Enforcement* reported in *(2018) 11 SCC 46 and Gautam Kundu –vs- Directorate of Enforcement* reported in *(2015) 16 SCC 1* were also referred to.

Relying upon *Directorate of Enforcement –vs- Aditya Tripathi* reported in *2023 SCC OnLine SC 619,* it was submitted that the nature of the allegations and its seriousness which were investigated into for the purpose of ascertaining whether the money has been laundered or not are to be gone into thoroughly and the investigating agency must also be afforded time to work on the same.

Reliance was also made on *Pavana Dibbur –vs-Directorate of Enforcement* reported in *2023 SCC OnLine SC 1586* to draw the attention of the court that it is not necessary that a person against whom the offence under section 3 of the PMLA, 2002 is alleged must have been shown as the accused in the schedule offence.

Reliance was also placed on *Pankaj Bansal –vs- Union of India & Ors.* reported in *2023 SCC OnLine SC 1244* to substantiate that Section 19(1) of the PMLA, 2002 was applied correctly in the facts and circumstances of the instant case.

I have considered the submissions of the learned Senior Advocate appearing on behalf of the petitioner as well as Mr. Trivedi and Mr. Arijit Chakrabarti learned advocates for the E.D. When the present case was initiated the financial transaction was restricted to Rs.4.5 crores (approx.) and out of which, according to the petitioner, whole of the amount was for the purposes of advertisement and to that extent there were documentary evidences which were available and in fact, according to the petitioner, he owed money from the principal accused viz. Monoranjan Roy, while on the other hand, the claim of the Enforcement Directorate is that the present petitioner has, in fact, usurped funds which were collected from the public at large on different pretext and the ledger of Pincon group which has been placed before this Court or relied upon in the initial complaint is only a very small part of the investigation which is being carried out for tracing the amount of Rs.638 crores which has been laundered. The initial complaint was filed when the case relating to petitioner was restricted to the amount as aforestated, but the investigating agency presently is at a crucial stage of further investigation wherein it has been claimed by the investigating officer of the case that they have been able to identify transactions over Rs. 60 crores and additional properties valued at Rs.25 crores to Rs.30 crores leaving aside further immovable properties which are in the process of identification. There are statements under Section 50 of the PMLA, 2002 which were subsequent to the complaint having been filed. It would be unwise to hold at this stage that the investigation is complete and has been concluded. Having regard to the materials which were placed by the Enforcement Directorate in course of hearing of this bail application, particularly relating to the transactions, the names which have surfaced in respect of the materials collected and the association/complicity of the present petitioner, I am of the opinion that further investigation is at such a stage that the same does not inspire the confidence of this Court to release the petitioner presently on bail.

Accordingly, prayer for bail of the petitioner is **rejected**.

The instructions which were originally signed by the investigating officer of the case and related to further investigation are kept in a sealed envelope by this Court.

The application for bail, being CRM (SB) 187 of 2023, is, thus, dismissed.

Pending connected application, if any, is consequently disposed of.

All concerned parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of the judgement, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)