

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

CRM (SB) 227 of 2023

With

CRAN 1 of 2024

Sujay Krishna Bhadra

v/s.

Enforcement Directorate Kolkata Zonal Office-II

For the Petitioner:

Mr. Milon Mukherjee, Sr. Adv,
Mr. Jishnu Saha, Sr. Adv.
Mr. Anand Kesari, Adv,
Mr. Soumen Mohanty, Adv,
Mr. Ayan Poddar, Adv,
Mr. Piyush Kumar Ray, Adv,
Mr. Agnish Basu, Adv,
Mr. Riddhi Jain, Adv,
Mr. Vipul Vedant, Adv,

For the Enforcement Directorate:

Mr. Phiroze Edulji, Adv.,
Ms. Anamika Pandey, Adv.

Judgment delivered on:

06-12-2024

SUVRA GHOSH, J. :-

1. Initially the petitioner sought bail on the limited ground of his medical condition. In course of hearing of the application, he chose to file a supplementary affidavit seeking his release on bail on merits.
2. Argument canvassed by learned counsel for the petitioner is as hereunder:-
3. The Hon'ble High Court, vide order dated 8th June, 2022 in W.P.A. no. 9979 of 2022, directed Central Bureau of Investigation (in short the CBI) to register FIR and investigate the alleged illegalities in the

selection process for assistant teachers in primary schools. The petitioner was not named either in the FIR, or in the charge sheet and supplementary charge sheet submitted by the CBI in the said matter, despite investigation being continued for more than two years. Therefore the petitioner had no role in respect of the predicate offence. On the basis of the predicate offence, the Enforcement Directorate (hereinafter referred to as the E.D.) registered ECIR no. KLZO/19/2022 dated 24th June, 2022 under The Prevention of Money Laundering Act, 2002 (henceforth referred to as the PMLA). The petitioner was not named in the prosecution complaint filed by the E.D. on 19th September, 2022 or the three supplementary complaints filed on 7th December 2022, 21st March 2023 and 8th May 2023 respectively. He was arraigned as an accused in the fourth supplementary prosecution complaint filed on 28th July, 2023.

4. The petitioner is in custody for about one year and six months. The E.D. has relied upon 180 witnesses and 438 documents in the complaints and charge is yet to be framed. There is no possibility of commencement of trial in near future.
5. The petitioner is not a Government employee and has been implicated on the basis of statement of Tapas Kumar Mondal and Kuntal Ghosh recorded under section 50 of the PMLA, both of whom are co-accused. Their statements cannot be deemed to be substantive evidence for implicating the petitioner. The statement of Tapas Kumar Mondal reveals nexus between Manik Bhattacharyya, Kuntal Ghosh and himself. Tapas Kumar Mondal has stated that Manik Bhattacharyya

was close to the petitioner and the list of 325 ineligible candidates who sought appointment by shelling out huge money was sent to Manik Bhattacharyya through the petitioner. Manik Bhattacharyya being close to Tapas Kumar Mondal since 2011, it is absurd that the petitioner was a bridge between Manik Bhattacharyya and Tapas Kumar Mondal.

6. The E.D. has failed to establish the link between the generation of proceeds of crime and the bank accounts of the petitioner. The property at 3A, Fort Lee-II, Premises No. 24, Lee Road, Bhowanipore, Kolkata – 700 020 under provisional attachment was purchased by the daughter and son in law of the petitioner from M/s. Wealth Wizards Private Limited for consideration of Rs. 2.5 crores. The amount was paid by them by borrowing rupees one crore from certain companies and closing down a fixed deposit account of Late. G.P. Chatterjee, the son in law's uncle, since deceased, which was inherited by the son in law and withdrawing an amount of Rs. 1.5 crores therefrom. The loan taken from the companies was repaid. Therefore the said money cannot be termed as proceeds of crime. There is also no allegation against G.P. Chatterjee, since deceased, or the companies granting loan to the son in law that they have been involved in the offence of money laundering or in generation of proceeds of crime in any manner.
7. The contents of voice recordings of the petitioner relied upon by the E.D. do not indicate the petitioner's alleged involvement in the scam. The voice recording contains instructions from the petitioner to delete certain pictures and documents and has no nexus with the alleged offence.

8. Though it appears from the statement of Kuntal Ghosh that he had given Rs. 70 lakhs to the petitioner in February 2017, Kuntal Ghosh has admitted that the said money was returned to him by the petitioner in May, 2017. No candidate who was allegedly cheated/duped corroborated the statement given by the co-accused.
9. The petitioner's firm M/s. S.D. Consultancy obtained consultancy services from M/s. Leaps and bounds since his firm did not have adequate man power for installation of aluminium products for Bengal Merlin Projects in terms of a commercial contract entered into between the petitioner's company and M/s. Bengal Merlin Housing Limited. Payment of Rs. 2, 32, 47, 552/- was made to the petitioner's company by Bengal Merlin out of which the petitioners' company paid Rs. 53,10,000/- to Leaps and Bounds in terms of work order dated 3rd January, 2020. The said money cannot qualify as proceeds of crime or tainted money.
10. The petitioner is in custody for considerable period of time and his further detention is not required, moreso, since incriminating material has not transpired against him and the allegations are based solely upon the statement of the co-accused recorded under section 50 of the Act. The case is based on documentary evidence which is in custody of the E.D. There is no scope for the petitioner to tamper with the same. The petitioner has deep roots in the society and there is no chance of his abscondence. The petitioner undertakes to appear before the trial Court on every date of hearing, not to tamper with evidence or influence witnesses in connection with the case and not to misuse the liberty, if

granted to him. He has been lastly interrogated by the E.D. before about eleven months. The layering of funds as alleged by the E.D. is required to be substantiated during trial.

11. This Court being a constitutional Court, Article 21 of the Constitution can be read into the twin conditions laid down under section 45 of the PMLA. Though the E.D. points out that the petitioner was admitted in the hospital for a substantial period of his custody, such hospitalisation on account of his serious ailments is also deemed to be judicial custody.

12. Learned counsel has placed reliance on the following authorities in support of his contention.

- 1) Sanjay Jain v/s. Enforcement Directorate reported in 2024 Supreme Court Cases OnLine Del 1656
- 2) C.P. Khandelwal v/s. Directorate of Enforcement reported in 2023 Supreme Court Cases OnLine Del 1094
- 3) Manish Sisodia v/s. Directorate of Enforcement reported in 2023 Supreme Court Cases OnLine Del 3770
- 4) Dipakbhai Patel v/s. State of Gujarat & Another reported in (2019) 16 Supreme Court Cases 547
- 5) Preeti Chandra v/s. Directorate of Enforcement reported in 2023 Supreme Court Cases OnLine Del 3622
- 6) Vijay Aggarwal v/s. Directorate of Enforcement reported in 2023 Supreme Court Cases OnLine Del 3176
- 7) A. Tajudeen v/s. Union of India reported in (2015) 4 Supreme Court Cases 435

- 8) Prem Prakash v/s. Union of India reported in 2024 Supreme Court Cases OnLine SC 2270
 - 9) Manish Sisodia v/s. Directorate of Enforcement reported in 2024 Supreme Court Cases OnLine SC 1920
 - 10) Ramkripal Meena v/s. Directorate of Enforcement reported in 2024 Supreme Court Cases OnLine SC 2276
 - 11) Jalauddin Khan v/s. Union of India reported in 2024 Supreme Court Cases OnLine 1945
13. Learned counsel for the E.D. has vehemently opposed the prayer and has submitted as follows:-
14. Out of the entire period of detention of the petitioner, he was in judicial custody only for a period of 266 days and remained in the hospital for the rest of the period. Involvement of the petitioner in the offence surfaced from the disclosure made by Tapas Kumar Mondal and Kuntal Ghosh in their statement recorded under section 50 of the PMLA. Immovable property valued at Rs. 8.1 crores has been seized from the petitioner. The petitioner was closely associated with Partha Chatterjee, Kuntal Ghosh, Manik Bhattacharyya and Santanu Banerjee. The seized mobile phone of Manik Bhattacharyya indicates several communications made between Manik Bhattacharyya and the petitioner with regard to appointment of ineligible candidates in TET-2014 and receipt of huge amount of money in lieu thereof. The petitioner raised funds to the tune of more than rupees ten crores by issuing shares from his company M/s. Wealth Wizards Private Limited at a huge premium and siphoned them by purchasing shares of other

companies. The said company as well as M/s. Arhieve Consultancy Private Limited and M/s. Nimbus Club Private Limited are under control of the petitioner. The Directors of the company acted on instructions of the petitioner. Huge amount of money was infused in the accounts of M/s. Wealth Wizards through issuance of preference shares at huge premium. The petitioner was involved in financial transactions with Santanu Banerjee and Kuntal Ghosh in the garb of business transactions. Several incriminating documents and electronic devices have been recovered pursuant to searches at several locations including the premises of the petitioner which reveal his role in the offence of money laundering. Statements of several witnesses demonstrate the various means adopted by the petitioner for layering of funds. The petitioner had direct access to the office of Manik Bhattacharyya and shared details of the candidates of TET-2014 with him for the purpose of their selection and appointment. Huge amount of money was found to have been deposited from various companies in the account of M/s. Wealth Wizards and an amount of Rs. 5 lakhs was deposited in cash in the said account and another Rs. 5 Lakhs received from Kuntal Ghosh through RTGS. An amount of Rs. 14,25,000/- was also transferred to the account of the petitioner from the account of Wealth Wizards, thereby suggesting the control of the petitioner over the said company.

15. Learned counsel has relied upon the following authorities and has sought rejection of the prayer for bail:-

- 1) Maru Ram Etc. vs. Union of India & Anr reported in 1981 SCR (1)1196.
- 2) Karan Singh vs. State of Haryana & Anr reported in 2013 (12) SCC 529.
- 3) Satyendar Kumar Jain vs. Enforcement Directorate reported in 2024 SCC OnLine SC 317.
- 4) Partha Chatterjee vs. Enforcement Directorate [CRM (SB) 180 of 2023].
- 5) Kuntal Ghosh vs. C.B.I. [C.R.M (DB) 681 of 2024].
- 6) Manish Sisodia vs. C.B.I reported in 2023 SCC OnLine SC 1393.
- 7) Tarun Kumar vs. Enforcement Directorate reported in 2023 SCC OnLine SC 1486.
- 8) Vijay Madanlal Choudhary vs. Union of India reported in 2022 SCC OnLine SC 929.
- 9) State of Gujarat vs. Mohanlal Jitamalji Porwal reported in (1987) 2 SCC 364.
- 10) Y.S Jagan Mohan Reddy vs. C.B.I reported in (2013) 7 SCC 439.
- 11) Nimmagadda Prasad vs. C.B.I reported in (2013) 7 SCC 466.
- 12) Gautam Kundu vs. Directorate of Enforcement (Prevention of Money-Laundering Act) reported in (2015) 16 SCC 1.
- 13) State of Bihar vs. Amit Kumar reported in (2017) 13 SCC 751.
- 14) Anil Kumar Yadav vs. State (NCT of Delhi) reported in (2018) 12 SCC 129.
- 15) Tofan Singh vs. State of T.N. reported in (2021) 4 SCC 1.

- 16) Subires Bhattacharyya vs. C.B.I. reported in 2022 SCC OnLine Cal 4307.
- 17) Anubrata Mondal vs. C.B.I, reported in 2023 SCC OnLine Cal 23.
- 18) Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra reported in (2005) 5 SCC 294.
- 19) Union of India vs. Varinder Singh reported in (2018) 15 SCC 248.
- 20) Directorate of Enforcement vs. Aditya Tripathi reported in 2023 SCC OnLine SC 619.
- 21) Saumya Chaurasia vs. Enforcement Directorate reported in 2023 SCC OnLine SC 1674.
- 22) Pavana Dibbur vs. Enforcement Directorate reported in 2023 SCC OnLine SC 1586.

16. In reply, it is submitted on behalf of the petitioner that there has been no custodial interrogation of the petitioner for the last eleven months. He is not named in the predicate offence and was only named by Tapas Kumar Mondal on the seventh occasion of his interrogation. The petitioner is not a director of Wealth Wizards and the alleged layering of money has to be substantiated by the E.D. during trial. Referring to section 70 of the PMLA, learned counsel has submitted that the company Wealth Wizards is not an accused in the present proceeding. The petitioner is entitled to be released on bail in view of Article 21 of the Constitution as well as Section 479 of The Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as the BNSS).
17. I have considered the rival contention of the parties, material on record and the relevant laws.

18. The Hon'ble Supreme Court, in the authority in *Prasanta Kumar Sarkar v/s. Ashis Chatterjee* and another reported in (2010) 14 Supreme Court Cases 496, has laid down the factors which are required to be considered while dealing with an application for bail:-

- i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- ii) nature and gravity of the accusation;*
- iii) severity of the punishment in the event of conviction;*
- iv) danger of the accused absconding or fleeing, if released on bail;*
- v) character, behaviour, means, position and standing of the accused;*
- vi) likelihood of the offence being repeated;*
- vii) reasonable apprehension of the witnesses being influenced; and*
- viii) danger, of course, of justice being thwarted by grant of bail-*

19. In dealing with section 24 of the PMLA the Hon'ble Supreme Court in the authority in *Vijay Madanlal Choudhary* (supra) has observed that only after the prosecution establishes at least three basic or foundational facts, the onus to rebut the presumption laid down under section 24 shifts on the accused. The foundational facts are laid down as hereunder:-

- i) that a criminal activity relating to a scheduled offence has been committed;
- ii) that the property in question has been derived or obtained directly or indirectly, by any person as a result of such criminal activity; and
- iii) that the person concerned is directly or indirectly involved in any process or activity connected with the said property which constitutes proceeds of crime.

20. In the judgment in Prem Prakash v/s. Union of India through Directorate of Enforcement reported in 2024 INSC 637; the Hon'ble Supreme Court has held that once these foundational facts are established by the prosecution the onus shifts on the person facing charge of offence of money laundering to rebut the legal presumption that the proceeds of crime are not involved in money laundering, by production of evidence which is within his personal knowledge.
21. Admittedly, the petitioner was not named in the FIR, charge sheet or supplementary charge sheet submitted by the CBI in the predicate offence.
22. In the words of the Hon'ble Supreme Court in Vijay Madanlal Choudhary (supra) *"the authority of the Authorised Officer under the 2002 Act to prosecute any person for offence of money-laundering gets triggered only if there exists proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act and further it is involved in any process or activity. Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of "proceeds of crime" under*

Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence..... Even though, the 2002 Act is a complete Code in itself, it is only in respect of matters connected with offence of money-laundering, and for that, existence of proceeds of crime within the meaning of Section 2(1)(u) of the Act is quintessential. Absent existence of proceeds of crime, as aforesaid, the authorities under the 2002 Act cannot step in or initiate any prosecution.”

23. The case essentially hinges on the statement of the petitioner and the co-accused and recovery made pursuant to the same. The prosecution has in fact commenced with the statement of Tapas Kumar Mondal and Kuntal Ghosh under section 50 of the PMLA.
24. It is trite law that prosecution cannot commence with the statement of a co-accused under section 50 of the PMLA. The Hon’ble Supreme Court has held in a catena of judgments with the statement of the co-accused cannot be considered against the petitioner and is not substantive piece of evidence. Its evidentiary value has to be tested at the time of trial and not at the stage of granting bail. The statement cannot be taken as gospel truth and only broad probabilities have to be seen. In the authority in A. Tajudeen v/s. Union of India (supra) the Hon’ble Court has held that statement of the accused can under no circumstances constitute the sole basis for recording the finding of guilt against him.
25. In Kashmira Singh v/s. State of Maharashtra reported in (1952) SCR 526, the Hon’ble Supreme Court has observed that “... *The proper way*

to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept.”

26. The truth and veracity of the statements recorded under section 50 of the PMLA need to be weighed during trial.
27. Learned counsel for the E.D. has pointed out that various incriminating documents and electronic devices have been seized from the premises of the petitioner which are proceeds of crime and the petitioner has not been able to offer any plausible explanation for the same.
28. Whether seizure of such allegedly incriminating articles/documents discloses an unbroken money trail, i.e., generation of proceeds of crime which eventually leads to the petitioner is a factual aspect which shall be decided in trial.
29. The E.D. has drawn the attention of the Court to the alleged nexus of the petitioner with Manik Bhattacharyya, Kuntal Ghosh and Santanu Banerjee, all of whom are on bail in the PMLA cases. The petitioner is similarly circumstanced.

30. The E.D. has placed reliance on a voice recording of the petitioner. Whether the said recording is relevant to the present proceeding shall be decided at the appropriate stage of trial.
31. True, the conditions laid down in section 45 of the PMLA are the guiding factors for grant of bail to an accused under the Act and the accused has to satisfy the said condition for earning an order of bail in his favour.
32. In the judgment in Manish Sisodia (supra), the Hon'ble Supreme Court has held that the right to bail in cases of delay coupled with incarceration for a long period should be read into section 439 of The Code of Criminal Procedure and section 45 of the 2002 Act. The Hon'ble Court has referred to the authority in Javed Gulam Nabi Shaikh v/s. State of Maharashtra and another reported in 2024 Supreme Court Cases OnLine SC 1693 wherein the Hon'ble Court has dealt with the law laid down in the judgments in Gudikanti Narasimhulu and others v/s. Public Prosecutor, High Court of Andhra Pradesh reported in (1978) 1 Supreme Court Cases 240, Shri Gurbaksh Singh Sibbia and Others v/s. State of Punjab reported in (1980) 2 Supreme Court Cases 565, Hussainara Khatoon and Others (I) v/s. Home Secretary, State of Bihar reported in (1980) 1 Supreme Court Cases 81, Union of India v/s. K.A. Najeer reported in (2021) 3 Supreme Court Cases 713 and Satender Kumar Antil v/s. Central Bureau of Investigation and Another reported in (2022) 10 Supreme Court Cases 51 and observed as follows:-

“If the State or any prosecuting agency including the Court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.” The Hon’ble Court has also observed that the principle bail is a rule and refusal is an exception is, at times, followed in breach and it is high time that the trial Courts and the High Courts should recognize the principle that bail is rule and jail is exception.

33. The petitioner is in custody for considerable period of time. It is not in dispute that he was lastly interrogated by the E.D. before about eleven months. Therefore it is evident that his further custodial interrogation is not required. The E.D. intends to rely upon voluminous evidence including 180 witnesses, and 438 documents. Charges are yet to be framed. Chance of conclusion of trial in near future is bleak. The delay in trial is not wholly attributable to the petitioner.
34. The Hon’ble Supreme Court has time and again held that prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial and in such a case Article 21 applies irrespective of the seriousness of the crime. The right to life and personal liberty enshrined under Article 21 of the Constitution is overarching and sacrosanct. A constitutional Court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the

right of the accused/under-trial under Article 21 of the Constitution has been infringed. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional Court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part.

35. Since the case primarily depends on documentary evidence which is in custody of the E.D, there is no scope for the petitioner to tamper with the same. With regard to the apprehension that the petitioner shall influence witnesses or may abscond if released on bail, stringent conditions may be imposed upon him to address the concern.
36. Though the E.D. has stated that out of the entire period of detention of the petitioner, he was in judicial custody only for 266 days and remained in the hospital for the rest of the period, the hospitalisation of the petitioner during his incarceration is also deemed to be judicial custody.
37. Upon consideration of the facts and circumstances of the case, submission made on behalf of the parties as well as material on record, this Court is inclined to release the petitioner on bail subject to stringent conditions keeping in mind his right to speedy trial under section 21 of the Constitution as well as his prolonged incarceration without trial.
38. Accordingly, the application for bail being C.R.M. (S.B) 227 of 2023 is allowed.
39. C.R.A.N. 1 of 2024 is also disposed of.

40. The petitioner be released on bail upon furnishing bond of Rs. 10,00,000/- (Rupees Ten lakhs) with adequate sureties, half of whom should be local, subject to the following conditions:-

- i. The petitioner shall surrender his passport with the learned trial Court at once.
- ii. He shall not leave the territorial jurisdiction of the learned trial Court without leave of the trial Court.
- iii. He shall appear before the learned trial Court on every date of hearing fixed before the learned Court.
- iv. He shall not tamper with evidence or intimidate witnesses in any manner whatsoever.
- v. He shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
- vi. He shall provide his mobile number before the learned trial Court and shall not change the said number without prior intimation to the Court.

41. In the event the petitioner violates any of the bail conditions as stated above, the learned trial Court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.

42. It is made clear that the observation made in this judgment is for the limited purpose of deciding the bail application and shall not be construed as an expression of opinion on the merits of the case. The learned trial Court shall deal with the matter independently in accordance with law without being influenced by any observation which may have been made in this judgment.

43. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.
44. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)