IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1841 OF 2024

Sanjay Rajkumar Chhabria ... Applicant
Versus
Directorate of Enforcement & Anr. ... Respondents

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Mr. Vikram Nankani, Senior Counsel, a/w Mr. Vibhav Krishna, Tahir Prande and Mr. Anmol Bartaria i/by Juris Consillis Advocates for the Applicant.
Mr. Hiten S. Venegaokar a/w Mr. Aayush Kedia for Respondent No.1-E.D.
Ms. Rutuja Ambekar, APP for Respondent No.2-State.
Mr. Shailendra Gupta, Assistant Director ED, present.
Mr. Kuldeep Singh, Enforcement Officer ED, present.

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CORAM: MANISH PITALE, J.
DATE : 10th JULY 2024

P.C. :

. The applicant (accused No.25) has filed the present bail application seeking regular bail in connection with PMLA Special Case No. 452 of 2020 in ECIR/MBZO-I/03/2020. The applicant was arrested on 28th April 2022 and he has continued to remain behind bars since then.

2. The chronology of events in brief, leading to filing of the present bail application, is that on 7th March 2020 the Central Bureau of Investigation (CBI) registered an FIR against one Rana Kapoor of Yes Bank Ltd., Kapil Wadhawan and Dheeraj

Wadhawan, Promoters of Dewan Housing Finance Limited (DHFL) and other persons for offences under Sections 420 and 120-B of the Indian Penal Code, 1860 (IPC) and Sections 7, 12 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. It was alleged that the accused persons entered into a conspiracy, whereby the said Rana Kapoor made Yes Bank Ltd. to invest huge amount of ₹ 3,700 crores in DHFL, in lieu of kick back of ₹ 600 crores paid to Rana Kapoor, his companies, as also his family members.

3. Since it was found that proceeds of crime and money laundering activity had taken place concerning scheduled offences under the provisions of Prevention of Money Laundering Act, 2002 (PMLA), the respondent – Enforcement Directorate (ED) recorded Enforcement Case Information Report (ECIR) bearing No. ECIR/MBZO-1/03/2020, for offence of money laundering against twelve persons, including the said Rana Kapoor and promotors of DHFL and others. A prosecution complaint was filed on 6th May 2020 by the ED in that context. On 11th July 2020, subsequent prosecution complaint was filed. On 14th March 2022, the ED filed second subsequent prosecution complaint and on 4th August 2022, the ED filed the third subsequent prosecution complaint, wherein the applicant was shown as accused No.25 and one Avinash Bhosale was shown as accused No.27. The applicant was arrested in that connection.

4. In the said subsequent complaint, the role of the applicant was stated as having conspired with accused No.27-Avinash Bhosale to enter into sham agreement of loan, whereby the applicant agreed to repay amounts at exorbitant interest, with the result that under the agreement he was required to repay funds to the extent of three times the loan received and this was an unusual transaction. According to the ED, the loan amount taken by the applicant from DHFL to the tune of more than ₹ 2,000 crores was ostensibly taken for a project 'Avenue 54' of his Company. But, actually the said amount was diverted for other purposes, including payment to the companies of accused No.27 under such suspicious loan agreements. The ED stated in the prosecution complaint that the huge loan amount received in the companies of the applicant was never used for the purpose for which the loan was disbursed by DHFL and the money trail demonstrates how such amount was diverted, thereby making out a case of money laundering against the applicant under the provisions of the PMLA. The ED has treated the loan amounts disbursed by DHFL to the companies of the applicant as proceeds of crime, which were further diverted by the applicant.

5. The applicant filed his application for bail before the Special Court designated under the PMLA. By an order dated 13th February 2024, the Special Court rejected the bail application of the applicant. It was held that the applicant was involved in placing, layering and integrating the proceeds of crime, thereby

showing that he could be said to be guilty of offence of money laundering under Section 3 of the PMLA. It was held that the applicant failed to satisfy the rigors of the twin test under Section 45 of the PMLA.

6. The applicant filed the present application before this Court, wherein the ED filed its affidavit in reply and opposed the prayer. The application is taken up for hearing.

7. Mr. Vikram Nankani, learned Senior Counsel appearing for the applicant raised three grounds in support of the application. Firstly, that the applicant has remained behind bars since 28th April 2022 i.e. for a period of two years and two months and there is no sign of the trial even commencing. The ED intends to examine more than 70 witnesses and hence, the trial will certainly be delayed. Even if the applicant is to be convicted, he can be sentenced for a period of three years to seven years. Hence, on the ground of delay in the trial proceedings, bail ought to be granted.

8. In support of the said ground pertaining to delay in completion of trial, the learned Senior Counsel appearing for the applicant relied upon the observations made by the Special Court itself in the order dated 21st December 2023, passed in bail application filed by the said Rana Kapoor. The Special Court referred to the huge pendency of such cases initiated by the ED under the PMLA and found, as a matter of fact, that even

commencement of the trial would take some time and that completion of trial would certainly be delayed. It was submitted that the said accused No.1-Rana Kapoor was granted bail only on the ground of remote possibility of the trial being completed within reasonable time. Reliance was placed on judgment of this Court in the case of ***Hari Sankaran v/s/ Serious Fraud Invesgitation Office & Anr., 2024 SCC OnLine Bom 753***.

9. Secondly, it was submitted that the applicant and accused No.27 are the only two accused persons in custody, while all the other accused persons are either not arrested or they have been released on bail. It is claimed that when the main accused person against whom far more serious allegations have been made, has been released on bail, on the principle of parity, the applicant deserves to be released on bail.

10. In support of the aforesaid proposition regarding parity, the learned Senior Counsel sought to rely upon order dated 17th May 2024 passed by this Court (Coram: N. J. Jamadar, J.) in Bail Application No. 2383 of 2023 ***(Avinash Nivritti Bhosale v/s. Central Bureau of Investigation & Anr.)***. This order pertains to the FIR/offences registered at the behest of the CBI. In the said order, while dealing with allegation of loan given by accused No.27-Avinash Bhosale to the applicant herein on exorbitant rate of interest, it was observed that charging 18% interest per annum *prima facie* cannot be said to be exorbitant or unusual in the

money market and that the allegation that return on the investment made by the said accused No.27 in the Radius Group of the applicant was disproportionately exponential, could be said to be in the nature of a value judgment. It was indicated that all such aspects would eventually be adjudicated at trial. The applicant relies upon the said observations to claim party and hence, an order for being enlarged on bail.

11. Thirdly, it was submitted that the amount disbursed by DHFL to the company of the applicant i.e. Radius Estate Projects Private Limited and other group of companies, was a pure and simple loan transaction. The applicant and his companies have no connection with Yes Bank Ltd. and accused No.1-Rana Kapoor and it is not even alleged against the applicant that he or his companies gave some kick back to Rana Kapoor or DHFL for disbursing the loan amounts. It cannot be alleged that the amount of money disbursed by DHFL was tainted money, as there is no link even *prima facie* established by the ED as against the applicant. A pure and simple loan transaction, having nothing to do with the predicate offence has been wrongly given the colour of money laundering and at this stage itself, this Court can reach a conclusion that there is a reasonable possibility about the applicant not being guilty of the offence. There is nothing to show that the applicant has any criminal record and since, he is a well respected businessman, the twin test contemplated under Section 45 of the PMLA is clearly satisfied.

12. On the basis of the aforesaid contentions, the learned Senior Counsel appearing for the applicant submitted that this Court may allow the present application.

13. On the other hand, Mr.Hiten S. Venegaokar, learned counsel appearing for respondent No.1-ED, submitted that the investigation has revealed involvement of the applicant in the second leg of the transaction which emanated from the huge amounts disbursed by Rana Kapoor through Yes Bank Ltd. to DHFL, a large part of which found its way to the companies of the applicant. It was submitted that the loan disbursed by DHFL to the companies of the applicant was ostensibly for the project 'Avenue 54', but the said amount was illegally diverted as per the money trail revealed during the course of investigation.

14. It is submitted that the money trail in the present case clearly demonstrated as to the manner in which the loan amount totaling more than ₹ 2,000 crores disbursed by DHFL to the companies associated with the applicant, was in turn transferred to various entities, including into the personal account of the applicant and hence, all the three components of money laundering under Section 3 of the PMLA are satisfied. It is emphasized that the offence is extremely serious and such acts of the accused persons have the effect of eating into the economy of the nation and this has a negative effect on the image of India in international fora, particularly when foreign investment is sought for development of

infrastructure in the country. Public money has been squandered by the applicant and other accused persons.

15. The learned counsel appearing for respondent No.1 relied upon judgment of the Supreme Court in the case of ***Gurwinder Singh v/s. State of Punjab & Anr.*** *(judgment and order dated 7th February 2024 passed in Criminal Appeal No. 704 of 2024)*, to contend that if the Court has reasonable grounds to believe that the accusations against the accused are *prima facie* true then bail may be rejected as a rule. Reliance was also placed on the judgment of the Supreme Court in the case of ***Pavana Dibbur v/s. The Directorate of Enforcement*** *(judgment and order dated 29th November 2023 passed in Criminal Bail Application No. 2779 of 2023)*, to contend that when the proceeds of crime are found subsequently in the hands of a person, who has assisted in concealment of the proceeds of crime, offence under Section 3 of the PMLA is made out.

16. As regards reliance placed by the learned Senior Counsel for the applicant on the order of this Court passed in Bail Application No. 2383 of 2023 ***(Avinash Nivritti Bhosale v/s. Central Bureau of Investigation & Anr.)***, it was submitted that the said order was passed in the case of FIR while the present bail application is being considered under the PMLA where the twin test under Section 45 thereof is to be satisfied. It is submitted that the observations made in the said order cannot be of assistance to the applicant in this

application, for the reason that the investigation in the present case has revealed how the applicant in conspiracy with Kapil Wadhawan and Dheeraj Wadhawan, promoters of DHFL, overruled the inputs of the Finance Committee of DHFL, which had recommended not to disburse such huge loan of over ₹ 2,000 crores to the companies of the applicant. In this regard, reliance was placed on statements of the then General Manager of DHFL and another person associated with a company in joint venture with the company of the applicant.

17. The learned counsel appearing for respondent No.1 also specifically placed reliance on contents of paragraphs 4.4 to 4.7 of the affidavit in reply, where the details of diversion of amounts by the applicant and its companies has been stated.

18. As regards parity, it was submitted that the accused No.1-Rana Kapoor was granted bail purely on the basis of the duration of incarceration, which in his case was about three years and nine months and upon giving the benefit of Section 436-A of the Code of Criminal Procedure, 1973 (Cr.P.C.). It was submitted that therefore, this application deserves to be dismissed.

19. This Court has considered the rival submissions on the basis of the material placed on record. The first ground raised on behalf of the applicant is the question of delay in completion of the trial, in the light of the fact that the trial is yet to commence. The ED proposes to examine more than 70 witnesses. The observations

made by the Special Court itself in its order dated 21st December 2023, while granting bail to accused No.1-Rana Kapoor, indeed shows the high level of pressure on the Special Court to decide such matters under PMLA. The said order records the data and statistics, which indicate the factual position regarding such trial taking a considerable period of time. But, it is to be noted that the aforesaid aspect, along with the data and statistics, was discussed by the Special Court in the backdrop of a specific contention raised on behalf of the applicant therein i.e. accused No.1 for benefit under Section 436-A of the Cr.P.C. Under the said provision, when a person, during the pendency of investigation, enquiry or trial, undergoes detention for a period upto one half of the maximum period of imprisonment specified for the alleged offence, he is to be released by the Court on personal bond, with or without sureties. The proviso states that such an order can be passed only after hearing the public prosecutor and for reasons to be recorded in writing. While considering the application of the accused No.1 in the said order dated 21st December 2023, the Special Court recorded the fact that the accused No.1 had already suffered incarceration for three years and nine months and since the maximum sentence for offence is between three years to seven years, the Special Court granted bail to the accused No.1 and in that context, referred to the long time period expected to be consumed in completing the trial.

20. As a matter of fact, the applicant in the present case has

suffered incarceration for two years, two months and a few days, which does not qualify as one half of the maximum sentence that can be imposed, which is seven years and on this ground itself, the applicant cannot claim parity with accused No.1-Rana Kapoor.

21. There can be no quarrel with the proposition that in cases where the trial is likely to take a very long period of time, this Court can consider the said aspect and grant bail to the applicant. But, in the said process, when the facts do not make out a case for invoking Section 436-A of the Cr.P.C., the Court cannot ignore the merits of the matter, particularly when in such case the applicant is required to satisfy the stringent twin test under Section 45 of the PMLA. Thus, the ground of delay in completion of trial cannot result in a positive order in favour of the applicant, at this stage. Appropriate directions can be given for expediting the trial and liberty can be reserved with the applicant to move the Court, in the event he becomes eligible to claim the benefit of Section 436-A of the Cr.P.C. As noted hereinabove, the Court cannot be oblivious of the seriousness of the offence and the material available on record while examining as to whether the applicant has indeed satisfied the stringent twin test under Section 45 of the PMLA.

22. A submission was made on behalf of the applicant that since other accused persons were either not arrested or they were granted bail, on the principle of parity the applicant should also be granted bail. It was highlighted that only the applicant i.e. accused No.25 and accused No.27 have continued in custody while all

others have either not been arrested or they have been granted bail. This Court is of the opinion that while parity can be a ground for seeking bail, the role of the applicant in the alleged offence cannot be completely ignored. If the material on record does *prima facie* indicate the role of the applicant/accused, particularly in the backdrop that in the cases involving PMLA, the applicant is required to satisfy the twin test under Section 45 thereof, the applicant must make out a case on merits to justify the prayer for being enlarged on bail. Hence, in the present case also it is necessary to consider as to whether the material, upon which the respondent No.1-ED relies, does make out a *prima facie* case against the applicant and whether the applicant has been able to make out reasonable grounds to believe that he is not guilty of the offences registered against him. The examination of the said aspect of the matter would cover the third ground raised on behalf of the applicant.

23. The thrust of the submissions made on behalf of the applicant is that the ED has unnecessarily given the colour of money laundering to a pure and simple loan transaction, whereby DHFL had disbursed loan amount of ₹ 2317 crores to the company associated with the applicant. It was emphasized that the said amount could never be said to be connected with amount disbursed by Yes Bank Ltd. to DHFL as the amount given towards loan to the company associated with the applicant was not the only amount with DHFL when the loan was disbursed. The

"tainted" money allegedly coming from Yes Bank Ltd. cannot be said to be carrying the colour of the taint when the loan was disbursed to the company associated with the applicant. It was also emphasized that in the absence of any allegation of kick back, the ED cannot claim that a pure and simple disbursal of loan can be said to be money laundering under Section 3 of the PMLA.

24. The documents on record, particularly, the statement of Rajendra Mirashie, who was the then General Manager, Wholesale Lending, with DHFL and later President (Project Finance) with DHFL, demonstrate that when the applicant had approached the DHFL for loan of ₹ 2,000 crores for its project 'Avenue 54' at Mumbai, the project finance team of DHFL had found the project economically non-viable and the committee had conveyed its concern by a specific email on 15th June 2018 to the CMD of DHFL. But, the applicant directly approached Kapil Wadhawan and Dheeraj Wadhawan, promoters of DHFL, after which Kapil Wadhawan directed that a positive proposal be put up to the finance committee of DHFL for approval of the loan. Kapil Wadhawan assured that he will convince the finance committee of DHFL to grant approval, whereupon the loan of more than ₹2,000 crores was approved.

25. A perusal of the statement of Ramesh Shah, who is engaged in the business of construction and development through Sumer Group of companies, shows that he had agreed with the applicant representing the Radius Group of companies to develop the said

project i.e. 'Avenue 54' at Mumbai in a 50:50 joint venture and that a joint venture company was formed for the said project. He further stated that the applicant had not revealed the fact that loan of ₹ 800 crores was taken by him upon creating security of 50% share on the land concerning project 'Avenue 54' and that this fact came to light only when the said person contacted Yes Bank Ltd. in connection with repayment of his own earlier loan. It was further stated that the applicant never informed the Sumer Group i.e. the joint venture partner, about disbursements made by DHFL against the sanctioned loans of ₹ 1,100 crores and ₹ 900 crores and that when Yes Bank Ltd. issued notice under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) on 18th October 2019 for taking possession of project 'Avenue 54', that the disbursal of the said amounts came to light and it also came to light that the applicant utilized those funds for repayment of other loans.

26. The statement of Ms.Tarannum Merchant shows that according to her, although she was working in the Radius Group of companies of the applicant as Client Relationship Manger and she was shown as a Director of M/s. Flag Industries India Private Limited on the directions of the applicant, she had never attended any meeting of the Board of Directors. The statement of Anil Chhabria also shows that according to him, he was merely an employee of the Radius Group of the applicant; he was shown as a

Director in the company of the said group on the directions of the applicant and he had also never attended any meeting of the Board of Directors.

27. The aforesaid material does indicate that the applicant was the person undertaking actions and decisions on behalf of the Radius Group of companies. He along with the Kapil Wadhawan and Dheeraj Wadhawan of DHFL ensured that the concerns of the finance committee of DHFL were overruled and huge loan amounts of more than ₹ 2,000 crores were disbursed to the group of companies of the applicant. The amount of loan was ostensibly advanced for project 'Avenue 54', without the same being utilized for the said purpose and even the joint venture partner was not aware that the funds were being diverted by the applicant. The money trail has been elaborately stated in the third supplementary complaint filed by the ED, showing the manner in which the amounts of loan, totaling more than ₹ 2,000 crores, were diverted at the behest of the applicant, without being utilized for the purpose for which the loan was taken. This Court is of the opinion that the aforesaid material does *prima facie* indicate the involvement of the applicant in the offence of money laundering under Section 3 of the PMLA. The contentions raised on behalf of the applicant that the three components of the offence of money laundering under Section 3 of the PMLA i.e. placement, layering and integration are not made out, cannot be accepted. The manner in which the money trail is traced showing the diversion of

amounts, justifies the contention raised on behalf of the ED that the involvement of the applicant in the second leg of the process of money laundering is *prima facie* made out.

28. The contentions raised on behalf of the applicant that since there is no allegation of kick back against the applicant, his case is distinguishable and the allegation of money laundering cannot be raised as against him, is also not sustainable for the reason that the statements recorded during the course of investigation, which form part of the third supplementary complaint of ED and the money trail do raise a *prima facie* case against the applicant of being involved in concealment and possession of the proceeds of crime. The material on record does not justify the applicant's claim that this is a pure and simple loan transaction, the repayment of which was delayed. Instead, the material on record *prima facie* shows the money trail and flow of funds indicating that the proceeds of crime indeed found their way to the applicant, who not only came in possession of the same, but he acted in a manner so as to conceal such proceeds of crime. The processes or activities connected with proceeds of crime stated in clause (a) to (f) in Explanation (i) of Section 3 of the PMLA can be said to be *prima facie* found in the present case as against the applicant.

29. Once such a finding is reached, it is clear that the applicant has failed to clear the first limb of the stringent test under Section 45 of the PMLA. This Court is unable to record its satisfaction

that there are reasonable grounds for believing that the applicant is not guilty of the offence alleged against him. Hence, the application deserves to be dismissed.

30. Nonetheless, this Court cannot ignore the right of the applicant for a speedy trial. In this regard, appropriate direction can be issued to the Special Court, particularly in the light of the statement made by the learned counsel appearing for ED that respondent No.1-ED is ready for day to day proceedings in the trial.

31. In view of the above, the application is dismissed.

32. The Special Court is directed to expedite the trial. The respondent No.1 is to abide by its statement that it shall assist and cooperate with the Special Court for conducting day to day proceedings in the trial. The applicant is also directed to cooperate with the Special Court in expediting the trial proceedings.

33. At the same time, liberty is reserved for the applicant to renew his prayer for bail, in the event the trial remains languishing and the delay is not attributable to him, *inter alia,* by invoking Section 436-A of the Cr.P.C.

MANISH PITALE, J.