

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2016 OF 2024

Simpy Bharadwaj	...	Applicant
Vs.		
Union of India and another	...	Respondents

Mr. Akhilesh Dubey a/w. Mr. Sagar Wakale, Mr. Vagish Mishra, Mr. Amit Dubey, Mr. Uttam Dubey, Mr. Rajuram Kuleriya, Mr. Varad Dubey, Mr. Shubham Sharma, Mr. Alex D'souza, Mr. Emad Khan and Mr. Sahil Upadhyay i/b. Mr.Sagar Wakale for Applicant.

Mr. Shreeram Shirsat a/w. Mr. Shekhar Mane and Mr. Nikhil Daga for Respondent No.1 - ED.

Mr. Balraj B. Kulkarni, APP for Respondent No.2 - State.

CORAM : MANISH PITALE, J.

DATE : OCTOBER 11, 2024

P.C. :

1. The applicant is seeking bail in connection with PMLA Special Case No.5 of 2019 arising out of ECIR/MBZO-II/02/2018 dated 03.04.2018 registered by Directorate of Enforcement (ED) for offence under Section 4 of the Prevention of Money Laundering Act, 2002 (PMLA).

2. The applicant is the sister-in-law of one Amit Bharadwaj, who is stated to be the main accused person, being director of M/s. Variabletech Private Limited (VPL). The husband and the father-in-law of the applicant are also arraigned as accused in the present case. The applicant does not feature in the initial two First Information Reports (FIRs) registered against the said persons, which were the predicate offences for registration of Enforcement Case Information Report (ECIR) in the present case. The said ECIR was registered in the year 2018, while the applicant came to be arraigned as an accused in subsequent FIRs registered in the year 2019 and 2022. It would be appropriate to refer to

the sequence of events.

3. On 24.01.2018 and 15.03.2018, two FIRs were registered. FIR No.0020 of 2018 dated 24.01.2018 was registered at the Airport Police Station, Nanded, for offences under Sections 406, 420, 201, 120-B read with Section 34 of the Indian Penal Code, 1860 (IPC), while FIR No.0181 of 2018 dated 15.03.2018 was registered at Nigdi Police Station, Pune for the offences under Sections 406, 409, 420, 120-B read with Section 34 of the IPC; Section 66-D of the Information Technology Act, 2000; Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999; as also Sections 4 and 5 of the Prize Chits & Money Circulation Schemes (Banning) Act, 1978. These FIRs were registered against the said brother-in-law of the applicant i.e. Amit Bharadwaj, Director of VPL and Gainbitcoin.com and others. The applicant is neither a suspect nor an accused in the aforesaid FIRs.

4. In the said FIRs, three specific allegations were levelled against accused Amit Bharadwaj as promoter and founder of www.gainbitcoin.com. It was alleged that he hatched a conspiracy with others and devised a computer software for mining virtual / digital / cryptocurrency i.e. Bitcoin. It was further alleged that the said accused along with the other accused persons entered into Bitcoin Cloud Mining Contracts with a number of gullible investors, promising them high returns. It was further alleged that the amounts earned from such investments were diverted and promised returns were never given to the investors, thereby cheating them. The period of the alleged offences was between October 2016 and August 2017.

5. On 03.04.2018, the ED registered Enforcement Case Information Report (ECIR) bearing No. ECIR/MBZO-II/02/2018, treating the aforesaid two FIRs as predicate offences and initiated investigation

against the directors of VPL i.e. Amit Bharadwaj and others. The applicant was not named as an accused in the said ECIR. Subsequently, the ED added 33 FIRs registered on similar lines in various police stations in Delhi and all across India in the said ECIR against the said accused persons.

6. On 11.06.2019, the ED filed prosecution complaint bearing No. PMLA SPL. CASE/5/2019, arraigning eleven persons and one company as accused. In the complaint, the allegations against accused Amit Bharadwaj and Ajay Bharadwaj (applicant's husband) were that they floated the company VPL Singapore and as directors thereof, they launched a *ponzi* scheme to lure innocent investors, promising assured return of 10% on every bitcoin for a period of 18 months. It was also alleged that the main accused persons collected 80,000 bitcoins valued at Rs.6,606 crores as on November 2017 from several investors and that no returns were ever paid back to the investors, thereby claiming that the offence of money laundering was committed.

7. After the aforesaid complaint was filed by the ED, father-in-law of the applicant i.e. Mahendra Bharadwaj filed Writ Petition No.159 of 2019 before the Supreme Court. By order dated 02.07.2019, the Supreme Court granted protection to him on the condition that he would deposit amount of Rs.1 crore within six months. The husband of the applicant i.e. Ajay Bharadwaj also filed Writ Petition No.231 of 2019 before the Supreme Court and by order dated 30.08.2019, he was granted interim protection on the very same condition. The other accused persons also filed writ petitions and they were also asked to deposit amounts.

8. As noted hereinabove, two FIRs were registered in the year 2019, wherein the applicant, for the first time, was arraigned as an accused person. These were FIR Nos.330 of 2019 and 331 of 2019, both dated

06.12.2019 registered with Maidan Garhi Police Station, Delhi. Thereafter, another FIR was registered bearing FIR No.108 of 2022 on 09.02.2022 at Ramnagar Police Station, Delhi. These are the three FIRs in which the applicant is also shown as an accused along with other accused persons, including her family members. On 15.01.2022, the main accused person Amit Bharadwaj expired due to cardiac arrest. On 13.12.2023, the Supreme Court disposed of all the aforesaid pending writ petitions, directing that those accused persons apprehending arrest in connection with the subject FIRs would be at liberty to approach the CBI Court for appropriate reliefs. The interim orders passed in the writ petitions were vacated and the amounts deposited by the accused persons were directed to be transferred to the CBI Court at New Delhi.

9. Immediately thereafter, on 15.12.2023, the officers of the ED reached the house of the applicant for conducting search operation. It is alleged that when the officials of the ED reached her house, she was not present, but later on, she forcefully entered the house along with an unknown person, who claimed to be an advocate. It is alleged that the applicant created a ruckus, due to which her husband and father-in-law managed to escape and they could not be arrested. One of the officers of ED submitted a complaint before the Maidan Garhi police station, alleging that the applicant had created such a ruckus and that she had obstructed the search operation. It is a matter of record that on the basis of the said complaint, FIR No.47 of 2024 dated 11.01.2024 was registered against the applicant for offences under Sections 181, 186, 187, 189, 353 and 506 read with Section 34 of the IPC.

10. On 17.12.2023, the officers of the ED arrested the applicant, alleging that she was actively involved in the *modus operandi* of inducing innocent investors to invest into bitcoins and that she was in possession of the proceeds of crime, apart from the fact that she had vital

information about certain passwords. Reference was also made to her act of creating a ruckus on 15.12.2023, during the search operation conducted by the ED officials. On 18.12.2023, the ED moved remand application upon which the Special Court sent the applicant into custody of the ED till 26.12.2023. Thereafter, the applicant was sent to judicial custody. She filed an application for bail before the Special Court.

11. On 14.02.2024, the ED filed supplementary complaint, highlighting the alleged role of the applicant. On 25.04.2024, the Special Court dismissed the bail application of the applicant, pursuant to which, the applicant has approached this Court seeking bail.

12. The learned counsel for the applicant submits that in the present case the applicant was arrested only because she allegedly created a ruckus on 15.12.2023 at her residence during the period when the officials of the ED were conducting search operations. It is submitted that the applicant was never called in the context of any of the three FIRs registered against her. Even after the ECIR was registered, the applicant was never called and it was only after the incident of 15.12.2023, that her statement was hurriedly recorded. Thereafter, she was immediately arrested on 17.12.2023, on the basis that there was sufficient material to indicate her direct involvement in the activity of money laundering.

13. It is further submitted that considering the fact that the applicant was not even arraigned as an accused in the two predicate offences on the basis of which the ECIR was registered and she was never arrested in respect of the two FIRs of the year 2019 and one FIR of the year 2022 in which she was arraigned as an accused, the reasons for arresting the applicant, on 17.12.2023, cannot be fathomed. On this basis, it is alleged that the arrest can be said to be malicious and since there is no objective test applied while arriving at the grounds of arrest, Section 19 of the

PMLA has been violated. In this context, reliance is placed on judgements and orders of the Supreme Court in the case of *Arvind Kejriwal Vs. Directorate of Enforcement*, **2024 SCC OnLine SC 1703** and *V. Senthil Balaji Vs. Deputy Director, Directorate of Enforcement*, **2024 SCC OnLine SC 2626**.

14. Apart from this, a specific contention is raised on behalf of the applicant that being a woman, she belongs to a specific category, that finds mention in Section 45 of the PMLA. In the case of *Kalvakuntla Kavitha Vs. Directorate of Enforcement*, **2024 SCC OnLine SC 2269**, the Supreme Court has emphasized that once a statute specifically provides a special treatment to a certain category of accused, if such special treatment is to be denied, the Court must give specific reasons as to why such benefit is being denied. It is stated that the applicant is a woman and hence belongs to a special category identified in the *proviso* to Section 45(1) of the PMLA and that, she has a six year old son, who is deprived of her company. The applicant has already suffered incarceration from 17.12.2023 and therefore, she deserves to be enlarged on bail in the interest of justice.

15. On the other hand, the learned counsel appearing for the ED submits that the interim orders passed by the Supreme Court in the aforementioned writ petitions, which were eventually repeated on 13.12.2023, resulted in a situation where no coercive action could be taken against the co-accused persons and hence the occasion to arrest the applicant also did not arise. In this backdrop, when further effective investigation could be undertaken on 15.12.2023 and the team of officials of ED reached the house of the applicant, she suddenly barged into the house and created such a ruckus that her husband and father-in-law escaped and they have remained absconding. In other words, the applicant assisted the said co-accused persons from escaping the

clutches of law and prevented the ED from arresting them. The ED was not aware about the fact that the applicant had been arraigned as an accused in the said two FIRs registered in the year 2019 and also the subsequent FIR registered in the year 2022. As soon as they became aware of the said facts and they undertook investigation, material came to light, showing the active involvement of the applicant. These facts constituted the basis for the grounds of arrest to take the applicant into custody. All such details were then eventually placed before the Special Court in the supplementary complaint filed by the ED, indicating the incidents of involving the applicant in inducing innocent investors and defrauding them.

16. On this basis, it is submitted that there is sufficient material on merits against the applicant and it cannot be claimed that she was arrested only because she created ruckus on 15.12.2023, when the team of officials of ED reached her house for carrying out the search operation. It is submitted that since such material is available against the applicant, she cannot take benefit of the *proviso* to Section 45(1) of the PMLA. Accordingly, it is submitted that the application may be dismissed.

17. This Court has considered the rival submissions in the light of the material available on record. It is to be noted that the applicant is not even an accused in the two predicate offences on the basis of which the subject ECIR was registered. The said ECIR was registered as far back as in the year 2018. Even after the Supreme Court passed interim orders in the aforementioned writ petitions in favour of the family members and other accused persons to the effect that coercive action would not be taken against them, nothing prevented the ED from ascertaining the role of the applicant in respect of the allegations of money laundering. Therefore, the contention raised on behalf of the ED that till 13.12.2023,

its hands were tied due to the interim orders passed by the Supreme Court, cannot be accepted.

18. It is the matter of record that the applicant was not summoned by the ED and there was no deliberation on the part of the ED as regards the alleged active involvement of the applicant in inducing and alluring innocent investors along with the co-accused persons. The contention raised on behalf of the ED that it was completely unaware about the two FIRs registered against the applicant in the year 2019 and the aforesaid FIR registered in the year 2022, *prima facie*, appears to be unbelievable, particularly when the ECIR was registered in the year 2018 itself on the basis that the husband, brother-in-law and father-in-law of the applicant were actively involved in inducing and alluring innocent investors. A perusal of the aforesaid FIRs also shows that the only allegation against the applicant was that she was present in meetings of VPL where the activity of inducing innocent investors was undertaken.

19. In this backdrop, when the grounds of arrest, on the basis of which the applicant was arrested on 17.12.2023, are perused, it can be said that they were drafted in a hurry, without any objective test being applied. It can be said that there was lack of credible material to raise a reasonable suspicion against the applicant when she was arrested. A bare perusal of the grounds of arrest shows that, while in paragraph 4, a chart is given enumerating the numerous FIRs, including the two FIRs of the year 2019 and one of the year 2022, wherein the applicant was arraigned as an accused, in paragraph 5, it is stated that the ECIR was recorded after such FIRs were registered. As noted hereinabove, the ECIR was recorded on 03.04.2018 itself, while the aforesaid three FIRs in which the applicant was arraigned as an accused were registered much thereafter. The aforesaid material supports the contention raised on behalf of the applicant about the arrest of the applicant violating Section

19 of the PMLA and the law laid down in that context by the Supreme Court in the case of **Arvind Kejriwal Vs. Directorate of Enforcement** (*supra*) and **V. Senthil Balaji Vs. Deputy Director, Directorate of Enforcement** (*supra*).

20. It is significant to note that with regard to the alleged ruckus created by the applicant on 15.12.2023, an official of the ED had lodged a complaint with the Maidan Garhi Police Station. It is pertinent to note that this was stated to be one of the grounds for arresting the applicant on 17.12.2023, while FIR in respect of the alleged incident of ruckus was registered later, on 11.01.2024 for offences under Sections 181, 186, 187, 189, 353 and 506 read with Section 34 of the IPC. The offence under Section 353 of the IPC is a non-bailable offence. The aforesaid sequence of events further supports the contention raised on behalf of the applicant that only because the applicant reached her house on 15.12.2023 and the incident which is claimed to be 'ruckus created by the applicant' occurred on the said date, that the officials of the ED were upset and they hurriedly prepared material and took action of arresting the applicant on 17.12.2023.

21. Apart from this, there is substance in the contention raised on behalf of the applicant that she is entitled to the benefit of the exception in the form of *proviso* to Section 45(1) of the PMLA. The said *proviso* specifically identifies categories, which includes the category of 'woman'. The Supreme Court in the case of **Kalvakuntla Kavitha Vs. Directorate of Enforcement** (*supra*) deliberated upon the scope of the aforesaid *proviso* and held that when a statute specifically provides a special treatment for certain category of accused, if the benefit of such special treatment is to be denied, the Court is required to give specific reasons for such denial. In the said case, the accused was a Member of the Legislative Council of the State and the High Court had held that

since she could not be said to be a “vulnerable” woman, she could not claim the benefit of the aforesaid *proviso*. In this context, the Supreme Court in the aforesaid judgement held as follows:-

“20. However, the learned Single Judge in the present case, while denying the benefit of the *proviso* to Section 45(1) of the PMLA, comes to a ‘heartening conclusion’ that the appellant is highly qualified and a well-accomplished person. The learned Single Judge further observed that the appellant has made significant contributions to politics and social work. The learned Single Judge further observed that while deciding her bail application, the Court may appreciate her accomplishment, however, it cannot lose sight of the serious allegations levelled by the prosecution and the evidence collected during the course of the investigation and presented before the Court.

21. The learned Single Judge thereafter proceeds to observe that the present appellant cannot be equated to a ‘vulnerable woman’.

22. We find that the learned Single Judge erroneously observed that the *proviso* to Section 45(1) of the PMLA is applicable only to a ‘vulnerable woman’.”

22. Applying the said position of law, this Court is of the opinion that the applicant, in the present case, being a woman is entitled to the benefit of the *proviso* to Section 45(1) of the PMLA. This Court finds no reason as to why the applicant is to be denied the benefit of the exception carved out in the *proviso* for special treatment. In any case, it is not denied that the applicant is a mother to a six year old child, who obviously needs her care and company. She has suffered incarceration for about ten months and continuing her judicial custody would serve no purpose when the commencement of the trial in the present case, itself, will not be undertaken in the foreseeable future, thereby indicating that the completion of the trial will not take place within a reasonable period of time.

23. For the aforesaid reasons, the application is allowed in the following terms:-

- (A) The applicant shall be released on bail in connection with PMLA Special Case No.5 of 2019 arising out of ECIR/MBZO-II/02/2018 dated 03.04.2018 on furnishing P.R. Bond of Rs.50,000/- with one or two sureties in the like amount;
- (B) The applicant shall continue to co-operate with the respondent No.1 for further investigation / enquiry that the respondent No.1 may undertake;
- (C) The applicant shall cooperate with the proceedings before the trial Court and she shall attend each and every date in the said proceedings, unless specifically exempted by the trial Court;
- (D) The applicant shall not tamper with the evidence of the prosecution. She shall not influence the informant, witnesses or any other person concerned with the case;
- (E) The applicant shall surrender her passport to the office of the respondent No.1 - Directorate of Enforcement, Mumbai, within one week of release on bail;
- (F) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of her active mobile numbers, landline numbers, email address and residential address to the respondent No.1 - Directorate of Enforcement, Mumbai.

24. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the

observations made in this order.

25. Upon the application being allowed, the learned counsel for the applicant prays for cash security till the surety is furnished.

26. The applicant is permitted to furnish cash security of Rs.50,000/- for a period of four weeks.

27. The application is disposed of.

(MANISH PITALE, J.)

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