2024:PHHC:124479

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.16895 of 2024 (O&M)

Date of Decision: 20.09.2024

Sadhu Singh Dharamsot

... Petitioner

Versus

Directorate of Enforcement, Govt. of India
through Assistant Director, Jalandhar

...Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. A.P.S. Deol, Senior Advocate assisted by
Mr. Vishal R. Lamba, Mr. Himmat Singh Deol,
Mr. Dharam Pal, Mr. Arun Kaundal, Mr. Randeep S. Bains,
Mr. Sumer Singh Boperai, Mr. Arun Goyat& Mr. Karan Kalia,
Advocates for the petitioner.

Mr. Jagjot Singh Lalli, Dy. Solicitor General of India with
Mr. Lokesh Narang, Senior Panel Counsel &
Mr. Manish Verma, Advocate for the respondent.

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<u>MAHABIR SINGH SINDHU, J.</u>

Present petition has been filed under Section 439 of the Code of Crimianl Procedure, 1973 (*for short 'Cr.P.C.*) for grant of bail pending trial to the petitioner in ECIR/JLZO/12/2023 dated 29.03.2023 (P-10) (COMA-03/2024 dated 14.03.2024) [*for short 'ECIR No.12'*], under Sections 3 & 4 of the Prevention of Money Laundering Act, 2002 *(for short 'PMLA')*, registered by Directorate of Enforcement, Jalandhar Zonal Office, Jalandhar *(for short 'E.D.')*.

(2) **<u>BRIEF FACTS:-</u>**

(2.1) Initially, an **FIR No.6 dated 02.06.2022**, under Sections 7, 7A of the Prevention of Corruption Act 1988, as amended vide Amendment Act, 2018 (*for short 'P.C. Act'*) and Section 120-B of the Indian Penal Code, 1860 *(for short 'IPC')*, Police Station Vigilance Bureau, Flying Squad-1, Punjab, District SAS Nagar at Mohali was registered at the instance of *de facto* complainant-Davinder Singh Sandhu against Gurmanpreet Singh, District Forest Officer & Harmohinder Singh @ Hummy, Contractor of the Forest Department.

(2.2) During investigation, the statement of aforesaid Harmohinder Singh @ Hummy was recorded by the police and a diary was also recovered from him in terms of Section 27 of the Indian Evidence Act, 1872.

The alleged diary has the details of cutting of Khair Trees, transfer of Officers, amount of bribe allegedly paid to petitioner (former Forest Minister); issuance of NOCs; purchase of Tree Guards; embezzlement in plantation drive; forgery in bogus expenses of fencing; levelling of hill area in District Mohali and illegal mining etc.

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(2.3) On the basis of above statement of Harmohinder Singh @ Hummy, coupled with the diary recovered from him, another **FIR No.7 dated 06.06.2022**, under Sections 7, 7-A, 13 (1) (a) read with Section 13 (2) of the P.C. Act & Section 120-B of IPC, Police Station Vigilance Bureau, Flying Squad-1, Punjab, District S.A.S. Nagar at Mohali [*for short 'FIR No.7 of 2022'*] was registered against total 09 accused, including present petitioner, who happens to be former Forest Minister, Punjab.

(2.4) Vide order dated 05.09.2022 (P-1), petitioner was granted bail pending trial by the Coordinate Bench in CRM-M-34718-2022 (FIR No.7 of 2022).

(2.5) The contents of aforesaid FIR Nos.6 & 7 of 2022 were scrutinized by the E.D.; thereafter, ECIR/JLZO/11/2022 dated 15.07.2022(P-4)*(for short 'ECIR No.11')* was recorded by the E.D. against petitioner and other co-accused, for further investigation into the matter under the provisions of PMLA.

(2.6) Subsequently, another **FIR No.6 dated 06.02.2023**, under Section 13(1)(b) read with Section 13 (2) of the P.C. Act (Sections 420, 465, 467, 468, 471 & 120-B of IPC added later on), Police Station Vigilance Bureau, Flying Squad-I, Punjab at District SAS Nagar (Mohali) [*for short 'FIR No.6 of 2023'*] was registered against the petitioner levelling allegations that while conducting inquiry No.1 dated 05.08.2022 against him regarding disproportionate assets beyond his income for the check period from

01.03.2016 to 31.03.2022, total amount of ₹ 2,37,12,596.48/- was found to be the income of petitioner along with his family members from the known sources; whereas their total expenditure comes to ₹ 8,76,30,888.87/-.

(2.7) During this check period, excess amount of ₹ 6,39,18,292.39/- was allegedly found, which comes to 269% of their total income. The petitioner being a public servant is alleged to have committed the offence under Section 13(1)(b) read with Section 13 (2) of the P.C. Act.

(2.8) In FIR No.6 of 2023, petitioner has been named along with other unknown persons and there are specific allegations against him. The contents of same read as under:-

> ***"F.I.R. No.06 dated 06.02.2023***
> *That while conducting enquiry no. 01 dated 05-08-2022 Mohali against Sadhu Singh Dharamsot, former Forest Minister, Punjab regarding disproportionate assets beyond his income, the chart of income/expenditure for the check period from 01-03-2016 to 31-03-2022 has been prepared. As per enquiry, total income of Rs. 2,37,12,596-48 and total expenditure of Rs. 8,76,30,888-87 of Sh.Sadhu Singh Dharamsot former Forest Minister, Punjab and his family members during this period has been found. Thus during this check period the expenditure of excess amount of Rs.6,39,18,292-39 has been found which comes to 269% of his income. Sh. Sadhu Singh Dharamsot former Forest Minister, Punjab being a public servant has committed offence u/s 13 (1) (B) r/w 13 (2) P.C. Act 1988 as amended by P.C. (Amendment) Act 2018. Case has been registered under these offences."*

(2.9) In pursuance of aforesaid FIR No.6 of 2023, petitioner was arrested on 06.02.2023 and later on, released on regular bail vide order dated 17.05.2023 (P-3), passed by the Coordinate Bench in CRM-M-15025-2023.

After scrutinizing the contents of above FIR by the E.D., it was found that offences under Section 13 (1)(b) read with Section 13 (2) of the P.C. Act are falling within the definition of "*scheduled offence*" as envisaged under Section 2(y) of the PMLA and covered under Part A of the Schedule thereof. As a result of the above, ECIR No.12was recorded by the E.D. against petitioner for further investigation into the matter under the provisions of PMLA. Hence, the present petition.

(3) **<u>CONTENTIONS ON BEHALF OF PETITIONER:-</u>**

(3.1) Learned Senior Counsel contends that earlier FIR No.7 of 2022 was registered against the petitioner and in the same, he was granted regular bail by the Coordinate Bench vide order dated 05.09.2022, passed in CRM-M-34718-2022. He has been implicated under the similar Sections of the P.C. Act and the allegations of FIR No.6 of 2023 could have been investigated in the previous case bearing FIR No.7 of 2022.

(3.2) Further contends that FIR No.6 of 2023 has been registered during check period from 01.03.2016 to 31.03.2022, alleging income of the petitioner along with family members was ₹ 2,37,12,596.48/- and their expenditure was ₹ 8,76,30,888.87/-; therefore, petitioner during the aforesaid check period had spent excess amount of ₹ 6,39,18,292.39/-.

(3.3) Also contends that this excess expenditure on the basis of which, Vigilance Bureau has registered FIR No.6 of 2023 is nothing; but merely based upon three plots; out of which, two are in the names of petitioner's both sons, namely, Harpreet Singh & Gurpreet Singh; whereas third plot is in the name of his wife-Sheela Devi, which had already been sold in the year 2022.

(3.4) Again contends that a complaint under Section 45 read with Section 44 of PMLA for commission of offence for money laundering under Section 3, punishable under Section 4 of the PMLA, was instituted by the E.D. on the basis of FIR No.6 of 2023 registered by Vigilance Bureau. Petitioner was arrested on the same very day i.e. 06.02.2023 and he was granted bail pending trial by the Coordinate Bench vide order dated 17.05.2023 (P-3) in CRM-M-15025-2023.

(3.5) Yet again contends that now-a-days, E.D. has adopted pick-and-choose policy by singling out the petitioner out of 16 accused challaned in earlier FIRs, including another former Forest Minister-Sangat Singh Gilzian and other senior Forest Officers.

(3.6) Further contends that even in the present FIR No.6 of 2023, E.D. has registered ECIR No.12 against the petitioner solely. It is nothing; but an outcome of political vendetta as out of 16 co-accused, who were challaned in FIR No.7 of 2022 (predicate offence), now only the petitioner is an accused in FIR No.6 of 2023 as well as in ECIR No.12.

(3.7) Still further contends that although ECIR No.11 was registered on 15.07.2022, but no summons under Section 50 of PMLA was sent to the petitioner for a period of nearly one-and-a-half year till 08.01.2024, which clearly depicts the *mala fide* practice, adopted by the E.D.

(3.8) Vehemently contends that petitioner was summoned on two occasions in ECIR No.12; he had appeared and cooperated with E.D. each time. He has even supplied copies of all documents, including details of movable & immovable properties, assets in India as well as abroad, FDRs, mutual funds, shares, LIC policies, loans etc., maintained by him andhis family members along with ITRs from 2015-2016 onwards.

(3.9) Forcefully contends that the E.D. has completely failed to identify any money or single property having been obtained through proceeds of crime in ECIR No.12, except property already identified by Vigilance Bureau in ECIR No.11. Meaning thereby, E.D. just to satisfy itself is running two parallel ECIRs, having the full knowledge that petitioner has already been granted bail in two separate FIRs (alleged to be predicate offences) by the Co-ordinate Benches.

(3.10) Further contends that E.D. has not arrested the petitioner in the present ECIR No.12 till date. Even though, they have filed separate complaint bearing COMA-3-2024 (P-11) in ECIR No.12 on 14.03.2024 (P-12).

(3.11) Lastly contends that learned Special Judge vide order dated 15.03.2024 (P-13) took cognizance of the complaint against the petitioner as well as his two sons, namely, Gurpreet Singh & Harpreet Singh for commission of offence underSection 3, punishable under Section 4 of the PMLA. However, since the petitioner was already in custody in ECIR No.11, learned Special Judge had no other option; but to issue non-bailable warrants dated 15.03.2024 against the petitioner and co-accused (his two sons).

(4) <u>CONTENTIONS ON BEHALF OF THE RESPONDENT:-</u>

(4.1) Learned Deputy Solicitor General of India submits that there are specific allegations against the petitioner in FIR No.6 of 2023 as well as in ECIR No.12 regarding disproportionate assets beyond his known sources of income when he was holding the Office of Forest Minister in the Government of Punjab. That while conducting inquiry No.1 dated 05.08.2022 against petitioner regarding disproportionate income and expenditure, it came out that his income along with his family members for the check period from 01.03.2016 to 31.03.2022, was ₹ 2,37,12,596.48/-; whereas their total expenditure was ₹ 8,76,30,888.87/-. Petitioner being a public servant has committed the offence under Section 13(1)(b) read with Section 13 (2) of the P.C. Act, leading to proceeds of crime, resulting into laundering of money.

(4.2) Further submits that the contents of complaint filed by the E.D. clearly depict that various immovable properties and moveable assets were purchased by petitioner as well as his family members, whereas both of his sons were having no independent source of income, leading to disproportionate assets to the tune of ₹ 6,39,18,292.39/-.

(4.3) Also submits that after recording statements of various persons and collecting sufficient material against the petitioner, aforesaid ECIR No.12 was registered. During investigation, many persons were summoned under Section 50 of the PMLA. Thereafter, a complaint bearing No.COMA-3-2024 dated 14.03.2024 has been filed before learned Special Judge, whereby there are sufficient reasons to believe that petitioner is guilty of money laundering; hence, the contention regarding pick-and-choose policy is unsubstantiated.

(4.4) Again submits that as recorded in ECIR No.11, petitioner is the main kingpin in the 'Forest Scam', who is also involved in collecting bribe money from various Contractors as well as unknown sources, leading to laundering of money. The contention of petitioner that the present case is only an outcome of political vendetta is baseless as the investigation is being conducted thoroughly; multiple searches were/are conducted under Section 17 of PMLA against all the suspected individuals.

Though in FIR No.6 of 2023, petitioner is solely named as an accused along with other unknown persons; whereas the complaint bearing COMA-3-2024, filed before learned Special Judge by the E.D., includes both his sons, namely, Gurpreet Singh & Harpreet Singh. The allegation of petitioner that he is being unfairly targetted is without any merit as efforts made by the Investigating Agency are comprehensive and extended to all individuals, who are involved in money laundering in the present case.

(4.5) Yet again submits that onthe basis of both FIRs, two separate ECIRs; one related to 'Forest Scam' and another related to 'Disproportionate Assets' have been recorded. In ECIR No.11, the petitioner was found to have received bribe money; whereas in ECIR No.12, he was found to have accumulated assets disproportionate to his known sources of income.

It is very much evident that in parallel investigations, conducted in both the ECIRs, it is found that the accumulation of bribe money by the petitioner and the purchase of assets in his name along with family members were almost during the same check period.

Also revealed that in ECIR No.12, petitioner had purchased assets in the name of his family members, who apparently have no independent source of income.

(4.6) Lastly submits that highly dubious credit transactions were found in the bank accounts of his family members and the same were arranged by the petitioner either by way of misusing his official capacity or by adjustments of cash.

The assets, so acquired by the petitioner, were eventually attached by way of provisional Attachment Order in ECIR No.12 and prayer has been made for confiscation of the same in the complaint filed by the E.D.

(5) Heard learned Counsel for the parties and perused the paper-book.

(6) Before proceeding further, it would be appropriate to reproduce Section 19 of PMLA**,** which reads as under:-

> *"**19. Power to arrest.**__(1)__If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (that reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.*
>
> *__(2)__The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.*
>
> *__(3)__Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:*
>
> *Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Special Court or Magistrates Court."*

(6.1) Concededly, in the present case, there is no order of arrest and/or grounds of arrest served upon the petitioner in terms of Section 19 of PMLA; nor it is the case of E.D. that they have complied with the mandatory provisions of Section 19 (*ibid*). Therefore, in such a scenario, it cannot be accepted that petitioner was arrested by the E.D. in ECIR No.12 under the PMLA.

(6.2) Although, E.D. has tried to justify the arrest on the premise that petitioner himself made an application under Sections 207 & 208 of the Cr.P.C. on 18.03.2024 before learned Special Judge to supply the copy of complaint, filed by E.D. in ECIR No.12 and the same was allowed by learned Special Judge on the same day i.e. 18.03.2024 (P-14) while issuingproduction warrants of the petitioner for 19.03.2024.

But in the opinion of this Court, mere issuance of production warrants by learned Special Judge on asking of the petitioner cannot be construed that he was arrested in ECIR No.12 under the PMLA, especially when there was neither any order of arrest; nor grounds of arrest were served upon the petitioner by E.D. in terms of Section 19, thereof.

(6.3) *A fortiori*, it is well settled that when a power is given to do a certain thing in a certain way, the things must be done in that way or not at all. Reference in this regard can be made to the following judicial precedents:-

(i) *In '**Taylor** Versus **Taylor', (1875) 1 Ch. D. 426,** it was held that 'when a statutory power is conferred for the first time upon a Court, and the mode of exercising it is pointed out, it means that no other mode is to be adopted'.*

(ii) *In **Nazir Ahmad** Versus **K Emperor, 63 Indian Appeals 372,** it was observed that 'where a power is* *given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden'.*

(iii) *Similarly, in **BabuVerguese**Versus **Bar Council of Kerala, (1999) 3 SCC 422,** it was laid down that 'it is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any Statute, the act must be done in that manner or not at all'.*

(iv) *Likewise, in **Dhanajaya Reddy**Versus **State of Karnataka, 2001 (4) SCC 9**, it was held that 'it is settled principle of law that where a power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all'.*

In the present case, there remains no doubt that petitioner was never arrested in ECIR No.12 by the E.D.

(6.4) Apart that, there is no dispute that complaint in ECIR No.12 had been filed on 14.03.2024 and cognizance was taken on 15.03.2024 by learned Special Judge;therefore, in view of the judgment of Hon'ble the Supreme Court, titled as '***Tarsem Lal*** *Versus* ***Directorate of Enforcement, Jalandhar Zonal Office', (2024) 7 SCC 61***, petitioner has a right to be released on bail under Section 88 of the Cr.P.C. on furnishing bail/surety bonds to the satisfaction of learned Special Judge, unless the arrest is ordered by learned

Special Judge after recording its satisfaction on the basis of a request made by the E.D.

(7) In view of the discussions made hereinabove, there is no option except to allow the present petition.

(8) Ordered accordingly.

(9) Petitioner be admitted to bail pending trial in the present caseon his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court/Special Judge concerned.

(10) Petitioner shall fully co-operate with the learned trial Court/Special Judge without seeking any unnecessary adjournments.

(11) Needless to say that the observations, made above, be not construed as an expression of opinion on merits of the controversy in any manner.

(12) It is clarified that in case there is any misuse of concession of bail on the part of petitioner, E.D. would be at liberty to move an appropriate application for recalling of this order.

Pending application(s), if any, shall also stand disposed off.

20th September, 2024 **(MAHABIR SINGH SINDHU)**
Gagan **JUDGE**

Whether speaking/reasoned	*Yes*
Whether Reportable	*Yes*