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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 19.12.2023
Pronounced on: 05.02.2024

+ **BAIL APPLN. 1549/2023**

DALIP JINDAL

..... Petitioner

Through: Mr. Mohit Mathur, Sr.
 Advocate along with Mr.
 Vikram Singh Panwar,
 Advocate

versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr. Ravi Prakash, Special
 Counsel for ED along with Mr.
 Varun Agarwal, Mr. Farman
 Ali, Mr. Aman Rewaria, Mr.
 Ali Khan, Ms. Astu
 Khandelwal, Mr. Yashrth
 Shukla and Mr. Ayushman
 Kishore, Advocates and Mr.
 Sanket, EO.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. By way of present application under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C') read with Section 45 of the Prevention of Money Laundering Act, 2002 ('PMLA') has been filed



by the applicant/petitioner, seeking grant of regular bail, in case titled 'Directorate of Enforcement vs. M/s Deluxe Cold Storage and Food Processors Ltd. & Ors.' bearing Complaint Case No. 33/2022, pending pending before the court of learned Special Judge-04, CBI (PC Act), Rouse Avenue Court Complex, New Delhi ('*Trial Court*'), registered under Section 3 and 4 of PMLA.

2. As per case set up by the prosecution/Directorate of Enforcement, Bankey Behari Group of Companies, namely M/s Deluxe Cold Storage and Food Processors Ltd., M/s Sargodha Oil Mills Pvt. Ltd., M/s Mangal Pulses Pvt. Ltd., M/s Shree Bankey Behari Food Processors Pvt. Ltd., M/s Gagan Pulses Pvt. Ltd., M/s Shree Nathji Roller Flour Mills Ltd., and M/s Teluram Amar Chand & Co, were all engaged in the business of manufacturing and trading of pulses, wheat etc. and these business entities had availed working capital funds from several banks. During the period from December 2016 to March 2017, all the aforementioned companies were declared as NPA due to default in repayment of loan amounts. Thereafter, the consortium of Banks had resorted to forensic audit and on the basis of Forensic Audit Reports, the Banks had lodged complaints with CBI, leading to registration of seven FIRs/RCs against seven companies/firms of Bankey Behari Group of Companies. On the strength of seven FIRs/RCs of CBI, seven ECIRs were recorded under PMLA, which are the subject matter of present complaint case. During investigation, from the analysis of relevant documents obtained from the banks, it was revealed that these entities



had availed credit facilities to the tune of Rs. 480 crore, and the total amount defrauded was around Rs. 527.32 crore. As per prosecution, this case involves default in payment of Cash Credit Limit availed by Bankey Behari Group of Companies and the CC limit had been extended on hypothecation of inventory, trade receivables (sundry debtors) and other moveable assets. Since large transactions in terms of volume and value had taken place for purchase of goods and sales of manufactured/traded goods, the analysis of the major debtors of Bankey Behari Group of Companies was crucial since the debtors were emanating from fake sales which had taken place under broker codes B00000, B00001, B00003 and B00033. It was discovered during investigation Bankey Behari Group of Companies were making entries for bogus/paper sale to its customers under different broker codes, and the broker codes such as B00000, B000001, B00003 and B00033 were used for making false sale bills in the accounting software. Further during investigation, it was found that the Company was involved in paper sale and purchase with paper companies, created at the behest of Director Amarchand Gupta, his son Ramlal Gupta and his nephew Sanjay Kansal. The details of total amount of bogus/paper sale and purchase within the entities of Bankey Behari Group of Companies have been mentioned in the prosecution complaint. As revealed during investigation, the proceeds of crime which was Bank fund, was used to project it as personal capital of director infused in the form of share capital in Bankey Behari Group of Companies. Thus, it was found that the CC limit



fund was siphoned in the form of share capital amounting to the tune of Rs. 149.02 crore, in the form of bank interest to the tune of Rs. 232.98 crore, and in the form of Income tax expenses to the tune of Rs. 38.66 crore, i.e. total amount of Rs. 420.66 crore. It was also found that 85-90% of the business of M/s Shree Bankey Behari Food Processors Pvt. Ltd., was on paper i.e. without actual movement of goods. Similarly, the debtors emanating out of these financial transactions were also false and were subsequently written off either through JVs or simple write offs. Thus, the surplus projected by M/s Shree Bankey Behari Food Processors Pvt. Ltd. was false and the interest and tax payments were sourced out of enhanced working capital limits and not out of business surplus, and thus, bank funds were siphoned of and diverted towards discharge of interest and tax liability. Therefore, it became clear during the course of investigation that the entire chicanery had revolved on the fulcrum of paper/bogus sale and purchase for projecting paper/bogus revenue and paper/bogus profit of Bankey Behari Group of Companies, so as to dissipate the proceeds of crime in share capital infusion and investment in fixed assets thereof, and a large portion of proceeds of crime was also used to pay the interest of the Banks. Investigation also revealed that set of debtors were also common for the Bankey Behari Group of Companies. During investigation, the Directorate of Enforcement had also found that the present applicant Dalip Jindal was involved, through his companies, in sales and purchase, when there was no actual movement of goods.



3. In view of these facts, all the seven ECIRs against the Bankey Behari Group of Companies were amalgamated into one complaint, in order to present a holistic view of the criminal conspiracy. The complaint was filed against 44 accused persons. Six accused were arrested in this case including the applicant Dalip Jindal.

4. One more ECIR had also been registered in pursuance to one more FIR registered by CBI against Shree Bankey Bihari Exports Ltd. and others in which the present applicant is also the accused no. 41. In that case, there are allegations of defrauding the banks and causing a wrongful loss to the tune of Rs. 604.81 crore. Separate complaint bearing Complaint No. 25/2022 was filed for that ECIR, and the present applicant was not arrested in that case and the complaint was filed without arrest. The applicant herein was admitted to bail in that case on 17.12.2022 since complaint was filed without arrest.

5. In the present case, the bail application filed by the applicant was dismissed by the learned Trial Court *vide* order dated 21.04.2023. The relevant portion of the order reads as under:

“9. I have heard the submissions and have perused the record.

10. It was contended on behalf of the applicant that there is no justification on the part of the ED in filing one complaint for one ECIR and one complaint for seven ECIR since they all arise from same conspiracy. It was also contended that cognizance cannot be taken twice on the same cause of action. As far as the contention regarding clubbing the ECIR(s) and filing separate complaint for one ECIR and separate complaint for seven ECIR is concerned, it is sufficient to mention that ECIR is an internal document created by ED before initiating prosecution against the person involved in the process of money laundering and same is not similar to an FIR registered in



terms of Section 154 of the Code of Criminal Procedure. There is no provision in PMLA requiring registration of ECIR for the offence of money laundering. Hon'ble Supreme Court in the landmark judgment of Vijay Madan Lal Choudhary (supra) from paragraph 176 onwards has clarified the position of ECIR vis a vis normal FIR registered at police station. It was further held that it is open to the ED authorities to file formal complaint before the Special Court for the offence of money laundering U/s 3 of the Act and further in para 177 stated that the authorities U/s 48 of the PMLA Act alone are competent to file such complaint and considering the mechanism of enquiry/investigation under this act, there is no need to formally register an ECIR. It implies that registration of ECIR is an internal process of ED and does not give any right to the accused to claim that seven ECIR cannot be clubbed for filing one complaint or that only one complaint should be filed for all the eight ECIR. Otherwise also, this court has already taken cognizance in the two complaints resulting out of eight ECIR registered against Shree Bankey Bihari Group of companies & others including Deluxe Cold Storage, which is accused no. 1 in this case. There is no force in the argument of counsel for the applicant that the present complaint should be considered only as a supplementary complaint to the complaint no. 25/2022 or that since the applicant was not arrested in that complaint/ECIR, he ought to be released in the present complaint. ED is not bound to register an ECIR nor to file one complaint for all the eight ECIR, which otherwise are based on different materials though might be arising out of the same conspiracy. The application seeking release of applicant is not maintainable.

11. Considering this application as one for bail, we have to consider the merits of the application. Coming to the merits, there is material on record to show that the applicant was actively involved in the process of money laundering and did transactions of sale and purchase only on bogus entries from his concerns. His transactions apropos of Shree Banke Behari Food Processors Ltd. and with Deluxe Cold Storage are separate though he used similar accounts for those transactions. As per prosecution complaint, a total loss of Rs. 527.32 Crore was caused to the banks by the process of money laundering and this



amount is independent of the other complaint filed against Shree Bankey Bihari group of companies. The twin conditions of Section 45 of the PMLA that there are grounds for believing that he is not guilty of such offence; and that he is not likely to commit any offence while on bail do not exist in this case. The applicant has not been able to show that he is not involved in the offence of money laundering. The applicant has failed to show that the twin conditions of Section 45 of PMLA Act do not apply to him. So, as far as the merits of the application are concerned, accused prima facie appears to be clearly involved in the offence of money laundering. As far as the case law relied upon by parties is concerned, every case has its own facts more so when it comes to bail. In the present case applicant has failed to pass the test of twin conditions of section 45 PMLA. So the judgments relied are of no help to him.

12. I find no merits in the application seeking release from custody nor a case for bail is made out, even if it is considered as an application seeking bail. The application is dismissed. Nothing said herein above shall amount to have an expression on the merits of the case.”

6. Learned Senior Counsel for the accused/applicant argues that the arrest of the applicant in this case was made in complete ignorance of the fact that the entire incriminating material against the applicant was same and was already in the possession of the agency at the time of filing of prosecution complaint in the other complaint case where he had not been arrested by the agency and was later granted bail by the learned Trial Court *vide* order dated 17.12.2022, and therefore, the arrest of the applicant on the very same material in the present case is completely unjust and nothing but only an arbitrary exercise of power to arrest provided under Section 19 of PMLA without assigning any grounds which show that how the



agency had reached a conclusion that the applicant was guilty of an offence punishable under PMLA. It is also submitted that the prosecution cannot be permitted to club seven ECIRs in one complaint and leave out one ECIR to be filed separately through another complaint, and there is no justification as to why all the eight ECIRs have not been clubbed in one complaint though they are alleged to be from the same larger conspiracy. It is submitted that as per the prosecution complaint, the proceeds of crime were the bank funds which had been siphoned off by the Directors of Bankey Bihari Group of Companies, however, the applicant herein holds no position in these companies and thus, admittedly, no direct role has been assigned to the applicant in commission of alleged offence. It is also stated that as per the role assigned to the applicant in the prosecution complaint, he had “assisted in the process and activity of offence of money laundering” but no *mens rea* can be attributed to the applicant that he had knowledge of any ‘proceeds of crime’. It is argued by the learned Senior Counsel that the applicant herein has been in judicial custody since 01.12.2022 and considering the period undergone by him i.e. more than 13 months, the applicant should be enlarged on bail even without considering the merits of the case, and in this regard, reliance is placed on decision of Hon’ble Apex Court in case of ***Benoy Babu v. Directorate of Enforcement SLP (Crl.) No. 11644-11645/2023***. Therefore, it is prayed that present application be allowed.



7. On the other hand, learned Special Counsel for the Directorate of Enforcement argues that the investigation in this case had revealed the role of the present applicant in the commission of offence of money laundering, and based on the evidence and material in possession against the applicant, it can be safely concluded that he is involved in the offence of money laundering. It is contended that at this stage, the material placed on record is sufficient to arrive at a finding that no satisfaction, as required under Section 45 of PMLA, can be reached, which provides that no person shall be released on bail unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. It is argued that there is difference between an FIR and ECIR, and a prosecution complaint under PMLA can be filed even without recording an ECIR and therefore, the argument that seven ECIRs could not have been clubbed, is without any merit. It is further submitted that it is settled law that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail, and the classification of economic offences in a different class itself is a clear jurisprudential recognition of gravity of the offence being recognised as an extremely relevant factor while considering matters regarding bail. It is also argued that the nature of allegations in the present case, the gravity of the offence, especially in light of the economic offence which primarily entails the present case, needs to be analysed while deciding the present bail application. It is stated that this case pertains



to defrauding the banks to the tune of Rs. 527.32 crore, by availing cash credit limits from the banks, and siphoning of the funds. It is argued that the applicant herein manipulated the books of accounts of his companies to help in laundering the money of the entities of Bankey Behari Group of Companies. Therefore, it is vehemently argued by learned Special Counsel that the present bail application be dismissed.

8. This Court has heard arguments addressed by learned Senior Counsel for the applicant and learned Special Counsel for the respondent, and has gone through the material available on record.

9. Since the applicant is an accused for commission of offence of money laundering under PMLA, it will be apposite to take note of Section 45 of PMLA, which reads as under:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence under this Act shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given a opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by-



(i) the Director; or

(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.

(2) The limitation on granting of bail specified in subsection (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

Explanation.--For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfillment of conditions under section 19 and subject to the conditions enshrined under this section.

10. Thus, Section 45(1) of PMLA lists the twin conditions that must be satisfied before an accused in case of money laundering can be enlarged on bail. In this context, it will be relevant to take note of the observations of Hon'ble Apex Court in case of ***Vijay Madanlal Choudhary v. Union of India*** 2022 SCC OnLine SC 929, on the satisfaction of mandatory twin conditions under Section 45 of PMLA, which are extracted hereunder:

“387. Having said thus, we must now address the challenge to the twin conditions as applicable post amendment of



2018. That challenge will have to be tested on its own merits and not in reference to the reasons weighed with this Court in declaring the provision, (as it existed at the relevant time), applicable only to offences punishable for a term of imprisonment of more than three years under Part A of the Schedule to the 2002 Act. Now, the provision (Section 45) including twin conditions would apply to the offence(s) under the 2002 Act itself. The provision post 2018 amendment, is in the nature of no bail in relation to the offence of money-laundering unless the twin conditions are fulfilled. The twin conditions are that there are reasonable grounds for believing that the Accused is not guilty of offence of money-laundering and that he is not likely to commit any offence while on bail. **Considering the purposes and objects of the legislation in the form of 2002 Act and the background in which it had been enacted owing to the commitment made to the international bodies and on their recommendations, it is plainly clear that it is a special legislation to deal with the subject of money-laundering activities having transnational impact on the financial systems including sovereignty and integrity of the countries. This is not an ordinary offence. To deal with such serious offence, stringent measures are provided in the 2002 Act for prevention of money-laundering and combating menace of money-laundering, including for attachment and confiscation of proceeds of crime and to prosecute persons involved in the process or activity connected with the proceeds of crime. In view of the gravity of the fallout of money-laundering activities having transnational impact, a special procedural law for prevention and regulation, including to prosecute the person involved, has been enacted, grouping the offenders involved in the process or activity connected with the proceeds of crime as a separate class from ordinary criminals. The offence of money-laundering has been regarded as an aggravated form of crime "world over". It is, therefore, a separate class of offence requiring effective and stringent measures to combat the menace of money-laundering."**

(emphasis supplied)



11. In case of *Tarun Kumar v. Enforcement Directorate 2023 SCC OnLine SC 1486*, the Hon'ble Apex Court had held as under:

“17. As well settled by now, the conditions specified under Section 45 are mandatory. They need to be complied with. The Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail. It is needless to say that as per the statutory presumption permitted under Section 24 of the Act, the Court or the Authority is entitled to presume unless the contrary is proved, that in any proceedings relating to proceeds of crime under the Act, in the case of a person charged with the offence of money laundering under Section 3, such proceeds of crime are involved in money laundering. Such conditions enumerated in Section 45 of PML Act will have to be complied with even in respect of an application for bail made under Section 439 Cr. P.C. in view of the overriding effect given to the PML Act over the other law for the time being in force, under Section 71 of the PML Act.”

(emphasis supplied)

12. Having perused the prosecution complaint filed in the present case and statements of applicant recorded under Section 50 of PMLA as well as other material on record, it appears *prima facie* that the applicant herein, through his companies namely M/s Jindal Agro International, M/s Fagir Chand Dalip Kumar and M/s Jindal Green Crop International Pvt. Ltd., had indulged in paper/bogus sales and purchase of goods, even though there was no actual movement of goods. As per prosecution complaint, the applicant was asked during his examination to provide transportation bills, *kanta parchi* or any other supporting documents in order to prove the movement of goods from his entity to Bankey Behari Group of Companies or vice -versa.



However, he had failed to provide any documents to prove his transactions with Bankey Behari Group of companies as genuine. Further, he had accepted in his statement that he had shown paper purchase and paper sales with Bankey Behari Group of Companies.

13. It is *prima facie* reflected from the records that the applicant herein, through his entities, had sold goods of about Rs. 314.57 crore and purchased goods of Rs. 200.83 crore, between the period 2013-14 to 2016-17. However, on account of such false sale and purchase, the applicant had settled these transactions by passing journal voucher entries to the tune of Rs. 201.32 crore between the period 2013-14 to 2016-17, and a sum of Rs. 113.25 crore had been diverted to the bank accounts of the applicant. Therefore, the applicant, through his companies, had carried out a series of sham transactions wherein he had purchased and sold goods with the entities of Bankey Behari Group of Companies and had passed adjustment entries by way of journal vouchers, and about Rs. 111.05 crore were paid to entities controlled by the applicant with intent to conceal and siphon off of money and assets (inventory).

14. Though the learned Senior Counsel for the applicant took this Court through the entries and other documents so as to point out as to how the same will not lead to conclusion of money laundering, however, while dealing with the present bail application, this Court is of the opinion that it cannot go through the entire list of entries of accounts for the purpose of appreciating their genuineness or authenticity. The cognizance of prosecution complaint has already



been taken by the learned Trial Court *vide* order dated 24.02.2023. As far as the reliance on decision in case of ***Binoy Babu (supra)*** is concerned, the facts of that case and the role of accused therein are entirely different from the facts of the present case and thus, the same can be of no help to the present applicant.

15. In view of material available on record against the applicant and considering the same at a first glance, this Court is of the opinion that twin conditions under Section 45 of PMLA are not satisfied since the material on record at this stage points out that the applicant herein was involved in the process of acquisition, possession, concealment of proceeds of crime obtained by way of cheating and forgery and projecting the same as untainted, thereby committing an offence of money-laundering under Section 3 of PMLA.

16. Therefore, this Court is not inclined to grant bail to the present accused/applicant, at this stage.

17. Accordingly, the present application stands dismissed.

18. It is however clarified that the observations made hereinabove are solely for the purpose of deciding present bail application and shall not be construed as opinion of this Court on the merits of the case.

19. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 5, 2024/at