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

+ **W.P.(C) 12074/2019 & CM APPL. 23974/2020**

AMIT KOHLI

..... Petitioner

Through: Mr. Amit Anand Tiwari, Sr. Advocate
with Ms. Devyani Gupta, Ms. Tanvi
Anand, Mr. Chanki Kohli, Advocates

versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr. Ravi Prakash, CGSC with Mr.
Ali Khan, Advocate for ED
Mr. Hemant Gulati, Adv. in CM
23974/2020

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

ORDER

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17.05.2024

1. The present petition is filed under Article 226 and 227 of the Constitution read with section 151 CPC for issuance of direction for quashing the provisional attachment order dated 28.08.2019, quashing OC no.1202/2019, quashing the show cause notice dated 10.10.2019 issued to the petitioner and also to quash consequential proceedings.
2. It is stated in the petition that the Narcotics Control Bureau (NCB) on the basis of the information conducted raids and allegedly recovered 87,480 tablets of Diazepam, Lorazepam, Alprazolam, Clonazepam, Phenobarbitone, Hydrocodone and Buprenorphine on 05.05.2008 and thereafter the petitioner and other accused persons were arrested on the allegation of involvement in



illicit smuggling of Prescription drugs and selling the same to clients based in the United States. Thereafter, the Intelligence Officer of the NCB proceeded to freeze 11 immovable properties and 5 movable properties belonging to the petitioner, other accused persons and their company/relatives/associates vide order no. VIII/12/DZU/2008-1613 dated 16.05.2008, Order No. VIII/12/DZU/2005-1633 dated 22.05.2008 and Order No. VIII/12/DZU/2008-1757 dated 18.06.2008 under Section 68F(1) of the NDPS Act, 1985. The orders passed under section 68F(1) of the NDPS Act, 1985 were confirmed by the Competent Authority under Section 68F(2) of the NDPS Act, 1985 vide order no. CA/DL/NDPS/18/08/863 dated 12.06.2008, order no. CA/DL/NDPS/19/08/885 dated 16.06.2008 and order no. CA/DL/NDPS/26/08/1100 dated 11.07.2008. The Narcotic Control Bureau (NCB) filed complaint bearing No. VIII/12/DLZO/2008 under sections 22/23/24/27A and 29 of the NDPS Act, against the petitioner and the other accused persons on 01.11.2008.

3. The Directorate of Enforcement (ED) vide ECIR/01/DLZO/2009 initiated proceedings against the Petitioner and the other accused persons under the Prevention of Money Laundering Act, 2002 (PMLA) on 15.07.2009. The petitioner filed an application bearing no. F.P.A-ND-47/DLI/2008/1426 before the competent authority for de-freezing of the properties of the petitioner, which were frozen under the Smugglers and Foreign Exchange Manipulators Act, 1976 (SAFEMA) vide orders dated 06.05.2008, 16.05.2008, 22.05.2008 and 18.06.2008. The said proceedings were dismissed and the said applications were stated to be rejected by the competent authority.

4. The petitioner on 16.11.2017 and 24.01.2019 was summoned by the



respondent/ED and his statement was recorded under Section 50 (2) (3) of the PMLA. Thereafter, the respondent/ED on 28.08.2019, issued a Provisional Attachment Order no. 11 of 2009 in ECIR bearing no. ECIR/01/DLZO/2009 with respect to the same properties, which had already been frozen/attached under SAFEMA. The petitioner was also sent show cause notice on 10.10.2019 with the direction to appear before the Chairman, Adjudicating Authority, PMLA on 15.11.2019.

5. The petitioner being aggrieved filed the present petition. This Court vide order 19.11.2019 has stayed the operation of the impugned order dated 28.08.2019 and also stayed the proceedings before the Adjudicating Authority qua the petitioner.

6. Mr. Ravi Prakash, Central Government Standing Counsel for the respondent/ED stated that as per section 26 of the PMLA, the appropriate remedy is to file an appeal before the appellate tribunal. Accordingly, he argued that the present petition is liable to be dismissed as before filing the present petition, the petitioner was required to exhaust the alternate remedy as provided under section 26 of the PMLA.

7. The learned Senior Counsel for the petitioner argued that the impugned attachment order and the subsequent show cause notice are bad in law as one property cannot be attached under 02 different statute. It is further argued that initially the property of the petitioner, subject matter of the present petition were ordered to be attached under SAFEMA and subsequently order for provisional attachment were issued by the Deputy Director Directorate of Enforcement which is bad in law. The learned Senior Counsel for the petitioner in his fairness stated that he shall be availing the legal remedies as provided under section 26 of the PMLA against the



attachment order dated 28.08.2019 and subsequent show cause notice wherein it shall be open to the petitioner to take all the pleas and contentions which are also mentioned in the present petition. In these circumstances, he seeks permission to withdrawn the present petition along with pending applications.

8. Accordingly, the petitioner is allowed to withdraw the present petition along with pending applications with the liberty to the petitioner to initiate appropriate legal proceedings as provided under PMLA or any other statute to impugn the attachment order and subsequent show cause notice. It shall be open for the petitioner to take all the pleas and contentions before the appellate authority or any other appropriate forum as stated in the present petition.

9. The present petition along with pending application stands disposed of.

DR. SUDHIR KUMAR JAIN, J

MAY 17, 2024/j/abk/ak