

Court No. - 11

Case :- CRIMINAL MISC. BAIL APPLICATION No.1943 of 2023

Applicant :- Govind Prakash Pandey

Opposite Party :- Directorate Of Enforcement Govt. India
Represented By Its Assistant Director Lko.

Counsel for Applicant :- Aviral Raj Singh, Alok Kumar Singh, Dhruv Kumar Singh, Palash Banerjee, Ritwick Rai, Vaibhav Tiwari

Counsel for Opposite Party :- Rohit Tripathi

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri Jaideep Narain Mathur, learned Senior Advocate, assisted by Sri Ritwick Rai, Sri Rajiv Shaker Bhatnagar, Sri Birendra Kumar Mishra, Sri Anshuman Mohit Chaturvedi, Sri Agni Sen, Sri Vaibhav Tiwari and Sri Aviral Rai, learned counsel for the applicant as well as Sri Rohit Tripathi, learned counsel for the Enforcement Directorate.

2. Sri Rohit Tripathi has filed counter affidavit, the same is taken on record.

3. As per learned counsel for the applicant, the present applicant is in jail since 10.01.2023 in Sessions Case No.2791 of 2022, arising out of ECIR No.ECIR/04/PMLA/LZO/2012, under Sections 3 & 4 of the Prevention of Money Laundering Act, 2002, currently pending in the Court of learned Special Judge, PMLA, Lucknow.

4. Brief facts of the case are that the present case pertains to the National Rural Health Mission (hereinafter referred to as "NRHM") in the State of U.P., which was floated on the joint efforts of the Central Government and State Government. One M/s. Jagran Solutions was established in the year 2005 as a unit of Jagran Prakashan Ltd. (for short "JPL"). Jagran Solutions is a reputed concern involved in business activities of brand activation, Meetings Incentives Conferences and Events (for short "M.I.C.E"), retail & ISP, Rural Marketing and Activation Consulting. Jagran Solutions has so far executed more than 4500 projects with total turn-over of over Rs.500

Crores and has to its credit, 63 National-level and 76 International-level Awards.

5. The Applicant joined Jagran Solutions in the year 2007 as Senior Accounts Manager and is presently working as the business head of Jagran Solutions. As a part of his official duties, the applicant undertook business development and client servicing for Jagran Solutions.

6. The Director General, Family Welfare, U.P., published an advertisement seeking private bidders to operate MMUs in selected districts of U.P. for a period of three years. Jagran Solutions submitted a proposal for providing MMUs in all 15 districts as advertised in the Request For Proposal (for short "RFP"). The financial proposal submitted by Jagran Solutions quoted a composite price (Capital Expenditure plus Recurring Expenditure) of INR 1,36,97,098/- as the cost per MMU. The financial proposals of Jagran Solutions were approved and the Firm entered into four different agreements with the Director General, Family Welfare. On the complaint of huge bungling, fraud and forgery in the issue relating to the NRHM, the matter was referred to the CBI and CBI registered preliminary enquiry on 19.11.2011 pursuant to the order being passed by the High Court in Writ Petitions No.3611 (MB) of 2011, 3301 (MB) of 2011 and 2647 (MB) of 2011, dated 15.11.2011. Pursuant to the report of preliminary enquiry, CBI registered FIR No.RC 04(A)/2012, SCU-V/SC-II, New Delhi (FIR) on 05.02.2012, inter alia, against M/s. Jagran Solutions, under Section 420 IPC, Sections 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "PC Act").

7. The Enforcement Directorate also registered ECIR/04/PMLA/LZO/2012 (ECIR) on 14.04.2012.

8. Notably, after some litigations at the High Court and the Apex Court, the present applicant was sent to the judicial custody on 03.07.2014 by the Special Judge, P.C. Act in relation to the predicate offence due to his non-appearance in the court on the date fixed owing

to death of the father of the applicant. However, his counsel was duly appeared before the learned trial court. Thereafter, vide order dated 28.08.2015 passed in Criminal Misc. Second Bail Application No.934 of 2015 (Annexure No.11), the present applicant was granted bail by this Court. In the aforesaid order dated 28.08.2015, this Court has observed that the applicant has throughout cooperated in the investigation, has not absconded and there is no likelihood of tampering with the evidence by the applicant. This Court further directed the applicant to deposit a sum of Rs.4.89 Crores, the alleged misappropriated amount before the learned trial court. The applicant has deposited the aforesaid amount of Rs.4.89 Crores in compliance of the order dated 28.08.2015.

9. Since the Enforcement Directorate (hereinafter referred to as “E.D.”) was continuing with its investigation under the Prevention of Money-Laundering Act, 2002 (hereinafter referred to as “PMLA”) in furtherance of ECIR, the applicant duly cooperated in the investigation and his statement was recorded by the E.D. under Section 50 of PMLA on 23.12.2016 and 10.06.2019. Since the present applicant was properly cooperating in the investigation, therefore, he was not arrested by the E.D. under Section 19 of the PMLA during the course of the investigation.

10. After more than 10 years from the registration of ECIR, the E.D. on 05.12.2022 filed a prosecution complaint under Section 44 read with Section 45 of the PMLA, inter alia, making the present applicant and JPL as accused no.3 & 4 therein. The Special Judge, PMLA took cognizance of the prosecution complaint on 17.12.2022 and issued summons on 22.12.2022 to the applicant for appearance on 10.01.2023, however, no proper service of summons was effected on the applicant and only a constructive service was effected. Learned Senior Advocate has stated that no property of the applicant or JPL has been attached by the E.D.

11. On 22.12.2022, summons have been issued against the applicant. Learned Senior Advocate has stated that the aforesaid

summons issued to the applicant did not contain copy of the prosecution complaint filed by the E.D., copy of statements and relevant documents of the complaint, which is a clear cut violation of Sections 204 (3) & 208 Cr.P.C. For the convenience, Sections 204 (3) & 208 Cr.P.C. are being reproduced herein below:-

“204. (3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

208. Supply of copies of statements and documents to accused in other cases triable by Court of Session. *Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 204 that the offence is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:-*

(i) the statements recorded under section 200 or section 202, of all persons examined by the Magistrate;

(ii) the statements and confessions, if any, recorded under section 161 or section 164;

(iii) any documents produced before the Magistrate on which the prosecution proposes to rely:

Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.”

12. Specific recital to this effect has been given in para-8 (xxix) of the bail application.

13. Sri Mathur has stated that the aforesaid fact has been admitted in the counter affidavit in para-37 thereof indicating that while proceedings were being conducted, the accused or his counsel never asked for the copies, however, the E.D. is always willing to provide copies of the documents to the accused-applicant and those copies can be collected from the office of E.D. As per Sri Mathur, despite the summons having not been served upon the applicant, he came to know the date, therefore, he appeared before the learned trial court on

10.01.2023 where he has been taken into custody. Admittedly, copies of the complaint and other relevant documents have not been provided to the applicant or his counsel. On the same date, the application for bail was pressed on behalf of the applicant; on that, learned counsel for the E.D. prayed time to file objection, therefore, the applicant pressed ad-interim bail apprising that the present applicant has not been arrested by the E.D. under Section 19 of the PMLA, he cooperated in the investigation, he never flouted the process of law and he further undertakes to cooperate with the proceedings, therefore, in the light of the dictum of the Apex Court in re; **Satender Kumar Antil Vs. Central Bureau of Investigation & Another, (2022) 10 SCC 51**, he may be given ad-interim bail but his ad-interim bail application was rejected by the learned trial court on 10.01.2023 and the applicant was sent to the judicial custody fixing the date as 18.01.2023. The regular bail application of the present applicant was rejected by the learned trial court on 24.01.2023 by observing that the twin conditions of Section 45 of PMLA are necessary and those conditions are not satisfied, therefore, the applicant is not entitled for bail.

14. Sri Jaideep Narain Mathur, learned Senior Advocate, has submitted that the Apex Court in re; **Aman Preet Singh vs. C.B.I. Through Director, 2021 SCC OnLine SC 941**, has held that if during investigation, the accused has cooperated in the investigation and has not been arrested by the Investigating Agency, merely because charge sheet has been filed, he should not be arrested. He has referred paragraphs 10, 11 & 12 of the aforesaid judgment, which are as under:-

“10. A reading of the aforesaid shows that it is the guiding principle for a Magistrate while exercising powers under Section 170, Cr.P.C. which had been set out. The Magistrate or the Court empowered to take cognizance or try the accused has to accept the charge sheet forthwith and proceed in accordance with the procedure laid down under Section 173, Cr.P.C. It has been rightly observed that in such a case the Magistrate or the Court is required to invariably issue a process of summons and not warrant of arrest. In case he seeks to exercise the discretion of issuing

warrants of arrest, he is required to record the reasons as contemplated under Section 87, Cr.P.C. that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him. In fact the observations in Sub-para (iii) above by the High Court are in the nature of caution.

11. Insofar as the present case is concerned and the general principles under Section 170 Cr.P.C., the most apposite observations are in sub-para (v) of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this.

12. If we may say, the observation hereinabove would supplement our observations made in *Siddharth v. State of Uttar Pradesh*, 2021 SCC OnLine SC 615 and must be read together with that judgment.

15. Sri Mathur has further drawn attention of this Court towards the dictum of the Apex Court in re; **Satender Kumar Antil** (supra) referring para-2 where three categories have been indicated for applying the judgment; para-2 reads as under:-

“2. After allowing the application for intervention, an appropriate order was passed on 7-10-2021 [*Satender Kumar Antil v. CBI*, (2021) 10 SCC 773 : (2022) 1 SCC (Cri) 153] . The same is reproduced as under : (*Satender Kumar Antil case [Satender Kumar Antil v. CBI, (2021) 10 SCC 773 : (2022) 1 SCC (Cri) 153]* , SCC pp. 774-76, paras 2-11)

“2. We have been provided assistance both by Mr S.V. Raju, learned Additional Solicitor General and Mr Sidharth Luthra, learned Senior Counsel and there is broad unanimity in terms of the suggestions made by the learned ASG. In terms of the suggestions, the offences have been categorised and guidelines are sought to be laid down for grant of bail, without fettering the discretion of the courts concerned and keeping in mind the statutory provisions.

3. We are inclined to accept the guidelines and make them a part of the order of the Court for the benefit of the courts below. The guidelines are as under:

'Categories/Types of Offences

(A) Offences punishable with imprisonment of 7 years or less not falling in Categories B & D.

(B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D(5)], Companies Act, [Section 212(6)], etc.

(D) Economic offences not covered by Special Acts.

REQUISITE CONDITIONS

(1) Not arrested during investigation.

(2) Cooperated throughout in the investigation including appearing before investigating officer whenever called.

(No need to forward such an accused along with the charge-sheet (*Siddharth v. State of U.P.* [*Siddharth v. State of U.P.*, (2022) 1 SCC 676 : (2022) 1 SCC (Cri) 423])

CATEGORY A

After filing of charge-sheet/complaint taking of cognizance

(a) Ordinary summons at the 1st instance/including permitting appearance through lawyer.

(b) If such an accused does not appear despite service of summons, then bailable warrant for physical appearance may be issued.

(c) NBW on failure to appear despite issuance of bailable warrant.

(d) NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

(e) Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided.

CATEGORIES B/D

On appearance of the accused in court pursuant to process issued bail application to be decided on merits.

CATEGORY C

Same as Categories B and D with the additional condition of compliance of the provisions of Bail under NDPS (Section 37), Section 45 of the PMLA, Section 212(6) of the Companies Act, Section 43-D(5) of the UAPA, POSCO, etc.'

4. Needless to say that Category A deals with both police cases and complaint cases.

5. The trial courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications. The caveat which has been put by the learned ASG is that where the accused have not cooperated in the investigation nor appeared before the investigating officers, nor answered summons when the court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with.

6. We may also notice an aspect submitted by Mr Luthra that while issuing notice to consider bail, the trial court is not precluded from granting interim bail taking into consideration the conduct of the accused during the investigation which has not warranted arrest. On this aspect also we would give our imprimatur and naturally the bail application to be ultimately considered, would be guided by the statutory provisions.

7. The suggestions of the learned ASG which we have adopted have categorised a separate set of offences as "economic offences" not covered by the special Acts. In this behalf, suffice to say on the submission of Mr Luthra that this Court in Sanjay Chandra v. CBI [Sanjay Chandra v. CBI, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] has observed in para 39 that in determining whether to grant bail both aspects have to be taken into account:

(a) seriousness of the charge, and

(b) severity of punishment.

Thus, it is not as if economic offences are completely taken out of the aforesaid guidelines but do form a different nature of offences and thus the seriousness of the charge has to be taken into account but simultaneously,

the severity of the punishment imposed by the statute would also be a factor.

8. We appreciate the assistance given by the learned counsel and the positive approach adopted by the learned ASG.

9. The SLP stands disposed of and the matter need not be listed further.

10. A copy of this order be circulated to the Registrars of the different High Courts to be further circulated to the trial courts so that the unnecessary bail matters do not come up to this Court.

11. This is the only purpose for which we have issued these guidelines, but they are not fettered on the powers of the courts.”

16. Sri Mathur has stated that the present case is relating to the category ‘C’, which has been dealt in para-86 of the judgment, which reads as under:-

“Special Acts (Category C)

86. Now we shall come to Category C. We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code.”

17. Sri Mathur has also drawn attention of this Court towards the judgment and order dated 09.01.2023 passed by the Apex Court in re; **Katar Singh Vs. Directorate of Enforcement, Petition(s) for Special Leave to Appeal (Crl.) No(s).12635 of 2022**, to submit that the Apex Court protected the liberty of that accused considering the fact that the Investigating Agency did not arrest the accused under

Section 19 of the PMLA when investigation begins. For the convenience, the order dated 09.01.2023 reads as under:-

“Applications for exemption from filing documents/facts/annexures and exemption from filing O.T. are allowed.

Learned counsel for the petitioners submit that the petitioners have already suffered pre trial custody for more than four years in respect of the scheduled offence, the investigating agency did not arrest the petitioners under Section 19 PMLA when investigation begins, that they are senior citizens of approximately 66,70, 68 and 67 years of age respectively and properties of petitioners in SLP (Crl.) Nos. 12635/2022 and 12615/2022 have even attached worth Rs. 8,00,000/- and Rs. 5,50,000/- and petitioners in SLP (Crl.) Nos. 12646/2022 and 12919/2022 have deposited the alleged amount of Rs. 11,88,000/- and 50,00,000/- in the respective matters. It is further submitted that the total period of incarceration in case of conviction is only seven years and Section 45 PMLA will not be applicable as it is pre-amendment.

Issue notice.

In the meantime, the petitioners be not arrested but shall continue to cooperate with further investigation.”

18. Sri Mathur has also referred the judgment of the High Court of Delhi in re; **Rana Kapoor Vs. Directorate of Enforcement, 2022 SCC OnLine Del 4065**, to submit that in more or less in similar facts and circumstances, the Delhi High Court has granted bail to the accused persons. The ratio of the judgment has been indicated in paras 33 & 34, which reads as under:-

“33. The applicant was not implicated in FIR bearing RC No.2232021A0005 registered by CBI. The applicant was implicated in present criminal complaint filed by the respondent/ED and arrayed as accused no 2. The investigating officer consciously did not arrest the applicant. The applicant participated in investigation as his three statements under section 50 PMLA were recorded. The respondent also did not allege that the applicant neither participated nor cooperated in investigation. The concerned Special Court after taking cognizance on present criminal complaint ordered for summoning of the accused persons including the applicant. The investigating officer even after filing of

present complaint did not apply for custody of the applicant. The co-accused Gautam Thapar was arrested consciously by the investigating officer during investigation and was denied bail by the Special Court and High Court and as such the applicant is standing on different footing from co-accused Gautam Thapar. The applicant was taken into custody due to dismissal of bail application vide order dated 20.01.2022 passed by the court of Sh. Sanjeev Aggarwal, Special Judge (PC Act) (CBI)-02 Rouse Avenue District Court, New Delhi. The applicant primarily not seeking bail on merit but on basis of observation made by the Supreme Court in para no 65 of Satinder Kumar Antil decision and as such applicant is not required to pass the test of section 45 PMLA. The conditions as per section 45 PMLA would be applicable, had the applicant filed an application either under section 439 of the Code after arrest during investigation or under section 438 of the Code apprehending his arrest during investigation. As mentioned in present criminal complaint filed by the respondent, the applicant was not arrested during investigation by the investigating agency. There is legal force in argument advanced by the learned Senior Counsel of the applicant that applicant is entitled to bail in view of observations/legal proposition as laid down by the Supreme Court in Satinder Kumar Antil. It is not mandate of section 170 of the Code that if the accused is not taken into custody or arrested during investigation can be arrested or taken into custody after appearance in court post summoning order particularly when neither investigation agency nor prosecution agency sought arrest of accused.

34. The arguments advanced by the learned Special Counsel for the respondent that the applicant has misinterpreted para no 65 of Satinder Kumar Antil is misplaced. There is no force in argument advanced by the learned Special Counsel for the respondent that the applicant before grant of bail required to pass test of 45 of PMLA. The position would have been different, had the applicant arrested during investigation. The investigating agency as mentioned hereinabove consciously preferred not to arrest the applicant during investigation or post filing of charge sheet. The arguments advanced and case law relied on by the Special Counsel for the respondent are considered in right perspective to the given facts and circumstances but they do not provide much legal help to the respondent in opposing present bail application.”

19. Therefore, to sum up, Sri Mathur, learned Senior Advocate, has submitted that while granting the bail to the present applicant in the predicate offence, this Court has observed that the applicant has never flouted the process of law and has cooperated in the investigation

properly. The direction was issued to deposit a sum of Rs.4.89 Crore, which has been deposited by the applicant in the year 2015 itself. Since then, the applicant is cooperating in the investigation being conducted by the Enforcement Directorate as he has been called twice to record his statement under Section 50 of the PMLA and the present applicant has recorded his statement. The E.D. did not arrest the applicant under Section 19 of the PMLA as the Investigating Agency did not find it appropriate to arrest the applicant during investigation as he was cooperating. After filing of the prosecution complaint, the learned trial court took cognizance and issued summons to the applicant without making compliance of the mandatory provisions of Section 204 (3) Cr.P.C. as neither copy of the complaint has been supplied to the applicant nor any relevant documents have been provided. Even when the present applicant appeared before the learned trial court on 10.01.2023, none of the documents either the prosecution complaint or its supporting documents have been provided. Not only the above, copies of statements and other documents have not been provided to the applicant in compliance of Section 208 Cr.P.C. when the applicant appeared before the learned trial court. The present applicant could have been given ad-interim bail in the light of the dictum of the Apex Court in re; **Aman Preet Singh** (supra) and **Satender Kumar Antil** (supra), but his ad-interim bail application has been rejected and he has been sent to the judicial custody in a sheer illegal and unwarranted manner. Thereafter, his bail application has been rejected observing that the twin conditions of Section 45 of the PMLA are not being satisfied, without considering the relevant aspect that the Investigating Agency has never arrested the applicant under Section 19 of the PMLA nor any request was made before the learned trial court on 10.01.2023 when the applicant appeared before the learned trial court. Therefore, as per Sri Mathur, in such circumstances, the rigour of Section 45 of the PMLA would not be attracted in the present case. The present applicant undertakes that he shall cooperate in the trial proceedings and shall not misuse the

liberty of bail and shall abide by all terms and conditions of the bail order, if he is enlarged on bail.

20. *Per contra*, Sri Rohit Tripathi, learned counsel for the E.D. has submitted that a person accused of the offence of money laundering can only be released when the conditions stipulated under Section 45 of the PMLA are satisfied i.e. prosecution/E.D. is given an opportunity to oppose the release/bail of the accused applicant and if the accused is released, reasons have to be recorded that there is a reasonable satisfaction that the accused has not committed the offence of money laundering. In support of his aforesaid submission, he has placed reliance upon paragraphs 398 & 399 of the dictum of the Apex Court in re; **Vijay Madanlal Choudhary and Others Vs. Union of India and Others, 2022 SCC OnLine SC 929**, which reads as under:-

“398. Thus, it is well settled by the various decisions of this Court and policy of the State as also the view of international community that the offence of money-laundering is committed by an individual with a deliberate design with the motive to enhance his gains, disregarding the interests of nation and society as a whole and which by no stretch of imagination can be termed as offence of trivial nature. Thus, it is in the interest of the State that law enforcement agencies should be provided with a proportionate effective mechanism so as to deal with these types of offences as the wealth of the nation is to be safeguarded from these dreaded criminals. As discussed above, the conspiracy of money-laundering, which is a three-staged process, is hatched in secrecy and executed in darkness, thus, it becomes imperative for the State to frame such a stringent law, which not only punishes the offender proportionately, but also helps in preventing the offence and creating a deterrent effect.

399. In the case of the 2002 Act, the Parliament had no reservation to reckon the offence of money-laundering as a serious threat to the financial systems of our country, including to its sovereignty and integrity. Therefore, the observations and in particular in paragraph 47 of Nikesh Tarachand Shah vs. Union of India, (2018) 11 SCC 1, are in the nature of doubting the perception of the Parliament in that regard, which is beyond the scope of judicial review. That cannot be the basis to declare the law manifestly arbitrary.”

21. Sri Tripathi has also cited para-37 of the judgment of the Apex Court in re; **Gautam Kundu v. Directorate of Enforcement (Prevention of Money-Laundering Act), Government of India through Manoj Kumar, Assistant Director, Eastern Region, (2015) 16 SCC 1**, which reads as under:-

“37. We do not intend to further state the other facts excepting the fact that admittedly the complaint was filed against the appellant on the allegation of committing offence punishable under Section 4 of PMLA. The contention made on behalf of the appellant that no offence under Section 24 of the SEBI Act is made out against the appellant, which is a scheduled offence under PMLA, needs to be considered from the material collected during the investigation and further to be considered by the competent court of law. We do not intend to express ourselves at this stage with regard to the same as it may cause prejudice to the case of the parties in other proceedings. We are sure that it is not expected at this stage that the guilt of the accused has to be established beyond reasonable doubt through evidence. We have noted that in Y.S. Jagan Mohan Reddy v. CBI [Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439 : (2013) 3 SCC (Cri) 552] , this Court has observed that: (SCC p. 449, para 34)

“34. ... The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country....”

22. On being confronted Sri Rohit Tripathi as to whether the Investigating Agency has ever thought to arrest the applicant during investigation on the basis of material, evidences and allegations against the applicant, Sri Tripathi has fairly stated that during investigation, the Investigating Agency did not think to arrest the applicant pursuant to the ECIR dated 14.04.2012. He has also submitted that the summons were issued to the applicant to cooperate in the investigation and to record his statement under Section 50 of the PMLA and the applicant duly appeared before the E.D. on 23.12.2016 and 10.06.2019, therefore, Sri Tripathi has submitted that the present applicant has not been arrested under Section 19 of the PMLA.

23. On being further confronted as to why the applicant has not been provided copy of complaint and copies of statements and relevant documents to the applicant in compliance of Section 204 (3) and 208 Cr.P.C., Sri Tripathi has stated that such copies have not been demanded by the applicant or his counsel, therefore, the same were not provided. However, he has submitted that the same shall be provided to the applicant or his counsel but at this juncture, he could not dispute that the mandatory compliance of Sections 204 (3) & 208 Cr.P.C. has not been made.

24. Heard learned counsel for the parties and perused the material available on record.

25. At the very outset, it would be apt to deal the rigours of Section 45 of the PMLA, which provides that before granting bail, the twin conditions have to be seen carefully. In the present case, this is an admitted case of the prosecution that after lodging the ECIR on 14.04.2012, the E.D. has not tried to arrest the present applicant under Section 19 of the PMLA. Even after release of the present applicant from jail in the predicate offence in the year 2015, the present applicant was called twice by the E.D. under Section 50 of the PMLA to record his statement on 23.12.2016 and 10.06.2019 where the applicant appeared and recorded his statement but the E.D. has not arrested the applicant under Section 19 of the PMLA. Therefore, it is clear that considering the proper cooperation of the present applicant in the investigation and evidences, material and allegations against the applicant, the Investigating Officer did not find it proper to arrest the applicant under Section 19 of the PMLA. In other words, his arrest was not warranted during investigation. It is also clear from the records that after proper cooperation of the applicant in the investigation, the prosecution compliant was filed by the E.D. where the learned trial court took cognizance and issued summons to the applicant and the applicant appeared before the learned trial court pleading his bonafide conduct apprising each facts and circumstances seeking bail giving undertaking that he shall cooperate in the trial

proceedings in the same manner as he has cooperated in the investigation, but on the request of learned counsel for the E.D. to file objection, the bail application was adjourned; then the applicant prayed for ad-interim bail making submission regarding his bonafide but ad-interim bail application of the applicant has been rejected without considering the dictums of the Apex Court in re; **Aman Preet Singh** (supra) and **Satender Kumar Antil** (supra). Even his regular bail application has been rejected on the ground that the twin conditions of Section 45 of the PMLA are not being satisfied whereas in the present case, the applicant has not been arrested by the Investigating Agency under Section 19 of the PMLA and the counsel for the E.D. was properly heard by the trial court, therefore, rigours of Section 45 of the PMLA should not be made applicable in the present case.

26. Sub-clause (2) of Section 44 of PMLA provides that nothing contained in this section shall be deemed to affect the special power of the High Court regarding bail under Section 439 Cr.P.C. The Apex Court vide para 400 in re; **Vijay Madanlal Choudhary** (supra) has observed as under:-

“400. It is important to note that the twin conditions provided under Section 45 of the 2002 Act, though restrict the right of the accused to grant of bail, but it cannot be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. The discretion vests in the Court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the 2002 Act....”

27. Notably, the statutory rights of the present applicant defined under Section 204 (3) & 208 Cr.P.C. have been violated by the Investigating Agency inasmuch as he has not been provided copy of complaint, copy of statements and other relevant documents.

28. The Apex Court in re; **Aman Preet Singh** (supra) and **Satender Kumar Antil** (supra) has categorically observed that arrest of any person is not mandatory in each and every case but before

curtailing the liberty of an accused person, the relevant facts and circumstances should be visualized. In the present case, prima facie, there was no requirement to take the applicant into custody when he appeared before the learned trial court pursuant to the summons being issued inasmuch as he has never flouted the process of law, he cooperated in the investigation throughout, the Investigating Agency has never thought to arrest him under Section 19 of the PMLA despite he appeared before the E.D. to record his statement twice pursuant to the summons being issued under Section 50 of the PMLA and there was no request of the E.D. before the learned trial court to the effect that arrest of the present applicant is warranted. Therefore, it appears that the learned trial court has taken the custody of the present applicant without following the settled proposition of law of the Apex Court in re; **Aman Preet Singh** (supra) and **Satender Kumar Antil** (supra).

29. Therefore, in view of the above, the bail application is **allowed**.

30. Let applicant- Govind Prakash Pandey be released on bail in the aforesaid crime case on his furnishing a personal bond and two sureties of Rs.1,00,000/- each before the Trial Court concerned with the following conditions:-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is

issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

(v) The applicant shall not leave India without previous permission of the court.

31. Before parting with, it is made clear that I have not entered into merits of the issue, therefore, learned trial court shall conduct and conclude the trial without being influenced from any observation or finding of this order as the observations are only confined to the disposal of this bail application.

[Rajesh Singh Chauhan,J.]

Order Date :- 20.02.2023
RBS/-