

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF OCTOBER 2020

BEFORE

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

Criminal Petition No. 4580/2020

BETWEEN

Mohammad Mansoor Khan,
Son of Abid Ali Khan,
Aged about 54 years,
R/o No.9, Penthouse,
Bythal Mariyam Apartments,
5th Floor, Park Road, Tasker Town,
Bengaluru – 560 001.

...Petitioner

(By Sri.C.K.Nandakumar, Advocate)

AND

The Directorate of Enforcement,
Government of India,
Represented by its Assistant Director,
Shri Basavaraj Magdum,
Bengaluru Zonal Office,
3rd Floor, B Block, BMTC,
Shantinagar, TTMC, K.H.Road,
Bengaluru – 560 027.

Represented by :
The Special Prosecutor,
Central Government Counsel and
Special Prosecutor (for IMA Cases),
Directorate of Enforcement,
Bengaluru – 560 026.

...Respondent

(By Sri.Madhukar Deshpande, Advocate)

This CrI.P. is filed under Section 439 Cr.P.C. read with 65 of the Prevention of Money Laundering Act, 2002, praying to enlarge the petitioner on bail.

This CrI.P. coming on for orders this day, the court delivered the following:

ORDER

This is a petition under section 439 Cr.P.C. by the first accused who is facing trial in Special C.C. 1088/2019 on the file of XXI Additional City Civil and Sessions Judge, Bengaluru.

2. The petitioner is the Managing Director and Chief Executive Officer of a company called 'I Monetary Advisory' (IMA) and claims to be having vast experience in the finance sector as a portfolio manager and a manager of high net worth accounts of various individuals and companies. Many individuals made investments in the said company. One Mohammed Khalid Ahmed made a report to the Commercial Street Police, Bengaluru, complaining that he, his family members and relatives had invested a sum of

Rs.1,34,50,000/- in the petitioner's company as they were all allured of high returns. Till March 2019, the petitioner gave them profits and thereafter stopped. When he requested the petitioner to return the deposits, he failed. On receipt of this report, the State Government constituted a special investigating team and thereafter the investigation was transferred to CBI. It came to light that the petitioner had collected Rs.4,000 crore from more than fifty five thousand people by giving a false picture about the profits being made by IMA group of companies. Then the discrepancy to the tune of Rs.1001.80 crore was pointed out between the signed financial statements and the actual books of accounts of IMA Group of Entities. The Enforcement Directorate took over the investigation. In the light of the above facts, the petitioner and other accused have been implicated of committing offences punishable under sections 406, 409, 420, 120B of Indian Penal Code and section 9 of KPIDFE Act and section 3 of the Prevention of Money Laundering Act.

3. The trial court refused bail to the petitioner and hence the petitioner has approached this court now.

4. I have heard the arguments of the learned counsel for the petitioner Sri. G.K.Nandakumar and Sri Madhukar Deshpande, the learned Special Public Prosecutor for the respondent.

5. Sri G.K.Nanda Kumar, learned counsel for the petitioner, submitted that the petitioner himself returned to India after coming to know about criminal case being registered against him. He fully cooperated with the police during investigation, he surrendered his passport and he has been in custody since 1.8.2019. There is no complaint against the petitioner that he never cooperated with the police for completing the investigation. He disclosed all the information that the investigating officer wanted and that he also shared his passwords, e-mail addresses, etc., The investigation is completed and therefore the presence of the petitioner is not at all necessary for any further investigation. The petitioner is suffering from diabetes,

hyper tension for quite a long time; he has heart ailment and been diagnosed with unstable angina coronary artery disease and 100% blockage. In addition he is also suffering from spine degenerative spondylosis. He refers to a letter written by the Chief Medical Officer of the Central Prison, Bengaluru, to the Chief Superintendent of the Central Prison and argued that the health condition of the petitioner being so, it is expedient to release him on bail so that he can take better treatment in a hospital of his choice. The petitioner assures of appearing before the court regularly till conclusion of trial and he is also ready to abide by any conditions that the court imposes on him. He placed reliance on number of authorities in support of his argument that in extreme medical conditions, the courts have always taken a lenient view by granting bail and since a similar case has been made out, he argues for allowing the petition. He has also relied on the following judgments :-

- i) *Sanjay Chandra vs CBI [(2012) 1 SCC 40]*
- ii) *P.Chidambaram vs Directorate of Enforcement [2019 SCC Online SC 1549]*

- iii) *D.K.Shivakumar vs Directorate of Enforcement*
[2019 SCC Online Del 10691]
- iv) *Dipak Shubhashchandra Mehta vs CBI and*
Another [(2012) 4 SCC 134]
- v) *Syed Abdul Ala vs NCB* [ILR 2003 KAR 474]
- vi) *P.Chidambaram vs CBI* [2019 SCC Online SC
1380]
- vii) *Jayendra Saraswathi Swamigal vs State of Tamil*
Nadu [(2005) 2 SCC 13]
- viii) *Afroz Mohmad Hasanfatta vs Deputy Director*
and Another in Cr.M.A.No. 17000/2014 [High
Court of Gujarat at Ahmedabad]

6. Sri Madhukar Deshpande, learned counsel for the respondent, refers to the statement of objections filed by him and argued that the petitioner has been implicated of committing serious offences including the offences punishable under the Prevention of Money Laundering Act. The petitioner collected an amount of Rs.4,015/- crore from many individuals. Though he returned Rs.1,323/- crores, it has been identified by the investigating officer that he

purchased many properties worth about Rs.209 crores being the proceeds of crime. The investigating officer has collected ample evidence against the petitioner. In a circumstance like this, if the petitioner is released on bail, he is likely to alienate the properties which he might have purchased from the proceeds of crime and in that event the interest of the investors will be affected.

6.1. Regarding the health condition of the petitioner, it was the argument of Sri Madhukar Deshpande that the petitioner's health condition is stable as has been reported by the Chief Medical Officer of the Central Prison. The trial court has observed the same in its order. Diabetes and hyper tension are all common ailments which can be managed and therefore this ground cannot be considered for granting bail to the petitioner. He has placed reliance on umpteen authorities, namely,

- (i) *Y.S.Jagan Mohan Reddy vs Central Bureau of Investigation [(2013) 7 SCC 439]*

- (ii) *Rohit Tandon vs Directorate of Enforcement* [(2018) 11 SCC 46]
- (iii) *Ram Narayana Popli vs CBI* [(2003) 3 SCC 641]
- (iv) *Manoranjana Singh Gupta vs CBI* [(2017) 5 SCC 218]
- (v) *Nimmagadda Prasad vs CBI* [(2013) 7 SCC 466]
- (vi) *State of Gujarat vs Mohanlal Jitmalji Porwal and Another* [(1987) 2 SCC 364]
- (vii) *State of Bihar vs Amit Kumar* [(2017) 13 SCC 751]
- (viii) *Union of India vs Hassan Ali Khan and Another* [(2011) 10 SCC 235]
- ix) *Serious Fraud Investigation Office vs Nittin Johari and Another* [(2019) 9 SCC 165]
- x) *CBI vs Ramendu Chattopadhyay* [2019 SCC Online SC 1491]
- xi) *Mohammad Arif vs Directorate of Enforcement, Government of India* [2020 SCC Online Ori 544]
- xii) *Zafar Iqbal vs State of J & K* [2020 SCC Online J & K 101]

7. Now if the points of arguments of the learned counsel are considered, what can be stated is that the petitioner is urging for his release on bail in the background of his health conditions. Of course in the two authorities cited by Sri Madhukar Deshpande in the cases of ***CBI vs Ramendu Chattopadhyay and Zafar Iqbal (supra)*** it has been held by the Hon'ble Supreme Court and the High Court of Jammu and Kashmir that in cases where there are allegations of laundering huge amounts of money, bail should not be granted. Even in the other cases the same view has been taken by the Hon'ble Supreme Court. In the light of the observations made in these decisions, it is possible to say that even in the case on hand also, there are prima facie materials against the petitioner and in this background there is no scope for granting bail. But the learned counsel for the petitioner did not argue for granting bail on the point that there are no prima facie materials, he emphasized two points namely health condition of the petitioner and his availability for the purpose of trial.

8. The Hon'ble Supreme Court in the case of **Sanjay Chandra (supra)**, considered the health condition as one of the reasons for granting bail. This court in the case of **Syed Abdul Ala (supra)** has clearly held as below : -

“10. On careful reading of the decisions of the Supreme Court in Kishan Lal's case, supra, I find that there is no ratio laid down to the effect declaring that Section 37 of the NDPS Act, operates as a total blanket ban on the powers of High Court under Section 439 of the Cr. P.C. In the present case, the accused is seeking bail on medical grounds and the Court is considering the cases of the petitioner de hors, prima facie material of guilt placed by the prosecution. On humanitarian considerations, the powers of High Court under Section 439 of the Cr. P.C., to grant bail is not eroded or affected by the provisions of Section 37 of the NDPS Act”.

9. The Chief Medical Officer of the Central Prison in her letter dated 18.2.2020 addressed to the Chief

Superintendent, Central Prison, Bengaluru, has noted about the actual ailments of the petitioner. The sessions court has observed while rejecting the bail application on 18.8.2020 that a six months old medical report cannot be acted upon. Whatever may be the observations of the Sessions Court, the report clearly says that the petitioner has been a diabetic since the year 2013, suffering from hyper tension since the year 2010 and has cardiac problem and has also been suffering from degenerative spondylosis since October 2018. The Chief Medical Officer might have stated that petitioner's health condition is stable, but it does not mean that the petitioner can continue to manage those ailments being inside the jail. Certainly the ailments that he has requires constant monitoring; the treatment that he may take outside the jail may be of different standard. It is pertinent to note that the Chief Medical Officer has clearly made an observation about the chronic disease conditions of the petitioner. Therefore, certainly this aspect can be considered for granting bail.

10. As has been argued by the learned counsel for the petitioner, the latter came to India voluntarily from abroad, surrendered before the police and cooperated with them by sharing his passwords and other data required for investigation. Sri Madhukar Deshpande did not dispute these aspects while arguing. Now, the only question that remains is, whether there is any chance of his fleeing away from India and thereby hampering the trial. The answer should be definitely not because the petitioner has surrendered his passport. Investigation is over, it is not the case of the prosecution that petitioner is required for further investigation. Sri Madhukar Deshpande argued that accused No.9 is to be arrested and if the petitioner comes out of jail he may deviate the proceeds of crime. This apprehension can be obviated by subjecting the petitioner to conditions. Hence, I am of the opinion that the petition deserves to be allowed and the following order :-

- (a) Petition is allowed.
- (b) Petitioner shall be released on bail on obtaining from him a bond for Rs.5,00,000/- and two

sureties for the likesum to the satisfaction of the trial court. The trial court shall ascertain the whereabouts of the sureties before accepting the surety bonds. The petitioner is also subjected to the following conditions : -

- (i) He shall regularly appear before the trial court till conclusion of trial.
- (ii) He shall not tamper with the evidence and threaten the witnesses.
- (iii) He shall not alienate any of his properties till conclusion of trial and in case a need arises to alienate, he shall disclose to the trial court the purpose which necessitates alienation and obtain permission of the trial court. The trial court may impose conditions if it decides to permit alienation.
- (iv) Till conclusion of trial, he shall mark his attendance in the office of the respondent once in a fortnight,

preferably on a Monday in between
9.00 AM and 12.00 Noon.

- (v) He shall not leave the jurisdiction of
the trial court without prior
permission.

**Sd/-
JUDGE**

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