

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 25th OF JANUARY, 2024

MISC. CRIMINAL CASE No. 56523 of 2023

BETWEEN:-

**ASHOK PIPADA S/O MANAKLALPIPADA, AGED ABOUT 68 YEARS,
OCCUPATION: BUSINESS, R/O 106, NEW ROAD, RATLAM (MADHYA
PRADESH)**

.....APPLICANT

(BY SHRI ARJUN GARG, ADVOCATE.)

AND

**ASSISTANT DIRECTOR DIRECTORATE OF ENFORCEMENT ASSISTANT
DIRECTOR 209, PALIKA PLAZA, MTH COMPOUND, INDORE, (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI HIMANSHU JOSHI, ADVOCATE.)

*This application coming on for orders this day, the court passed the
following:*

ORDER

This is first application under Section 438 of the Code of Criminal Procedure, 1973 filed by the applicant who is apprehending his arrest in connection with Crime No.ECIR42/INSZO/2022, registered at Police Station Assistant Director, Enforcement Directorate, Indore (M.P.) for the offences punishable under Section 3, 4 of Prevention of Money Laundering Act, 2002 (for brevity “PMLA Act”).

02. Vide order dated 17.08.2021 passed in M.Cr.C. No.37077/2021, this Court rejected the application filed under Section 439 of Code of Criminal Procedure, 1973 in Crime No.161/2021 and vide M.Cr.C. No.36906/2021, rejected the bail application filed in Crime No.159/2021. Thereafter, this applicant approached the Apex Court by way of SLP (Crl.) Nos.8125/2021 and 8182/2021 and vide order dated 18.11.2022, the Apex Court has granted bail. Thereafter, the Assistant Director, Directorate of Enforcement (ED) Indore has registered a crime No.ECIR/INSZO/42/2022 under Section 45 of PMLA Act for prosecution under Section 3 and 4 of the PMLA Act.

03. On the basis of three different FIRs i.e. FIR No.119/2019 dated 05.02.2019, FIR No.159/2021 dated 17.02.2021 & FIR No.161/2021 dated 18.02.2021 registered at police station Khajrana, District Indore in respect of same sale-deed. The petitioner approached the Special Court for PMLA Act by way of application under Section 438 of Cr.P.C. which came to be rejected vide order dated 17.10.2023 hence, present application is filed under Section 438 of Cr.P.C. mainly on the ground that all the documents related to the crime have already been seized and ECIR has been filed before the Competent Court which is pending for adjudication. In the ECIR the applicant was called and his statements were recorded and he was never arrested by the respondent.

04. Shri Arjun Garg, learned counsel for the applicant submits that he was also made accused in the FIR registered in the year 2019 and 2022. In connection with both the FIRs he has been granted bail. Applicant is ready to cooperate in the matter. The prosecution has recorded the statements and applicant cooperated with the investigation

and even at the time of filing of charge-sheet no arrest was demanded. Learned Court has issued only a bailable warrant for appearance of the present applicant, therefore, trial Court ought to have granted the anticipatory bail to the applicant. Learned counsel has placed reliance on a judgment passed by the Apex Court in case of ***Mahdoo Bava V/s Central Bureau of Investigation*** reported in ***2023 SCC OnLine SC 299***.

05. The respondent filed the reply-cum-objection to oppose this bail application by submitting that under Section 45 of PMLA Act alleged offence is cognizable and non-bailable. The bail can be granted only if twin conditions are fulfilled in addition to the other conditions under Section 438 & 439 of Cr.P.C. It is further submitted that the economic offence comes under the category of heinous offence and cannot be considered as ordinary offence, therefore, even if the bail is granted, regular criminal cases which are registered against the accused but so far as the present criminal case is concerned, it relates to the economic offence which constitutes a class apart and need to be visited with a different approach in the matter of bail. It is submitted that unless the Court has satisfied that there are reasonable grounds to believe that he is not guilty of such offence and he is not likely to commit such offence while on bail he should not be released on bail. The accused should not be released on bail as held by the Apex Court in case of ***Y.S. Jaganmohan Reddy V/s CBI [2013 (7) SCC 439]*** and ***Vijay Madanlal Choudhary V/s Union of India [SLP (Crl.) No.4634/2014] decided on 27.07.2022***, therefore, this applicant is not entitled for bail.

06. The role of present applicant – Ashok Pipada described in the ECIR is as under:

“Deepak Jain @ Dilip Sisodiya defrauded the Kalptaru Grih Nirman Society by diverting the amount of Rs.4.89 Crores into his own personal account. Later, 70 Lakhs Rupees have been returned to the Bank Account of Kalptaru Society, Thus, effectively 4.19 Crores have been diverted from Society’s Bank Account to the personal Bank Account of Shri DilipSisodiya @ Shri Deepak Jain. The remaining amount Rs. 4.19 Crores was utilized by Shri Dilip Sisodiya @ Shri Deepak Jain immediately for purchase of two immovable properties. During investigation, he admitted that he transferred the ownership of one of the properties in the name of his own relative Shri Ashok Pipada. The Sale Deed thus executed was done in utmost hurry, just to change the title of the property so as to avoid it from being attached/seized by law enforcement agencies. In fact he claims that he even did not receive the consideration amount as shown in the Sale Deed and transferred the property to his own relative. It clearly shows that the said transfer was not a genuine transaction, as no exchange of money took place and only title got changed in hurry to avoid the clutches of law. Ownership of one another property which was house of Shri Deepak Jain was also transferred in the name of his own relative Shri Ashok Pipada. The sale deed thus executed was done in utmost hurry, just to change the title of the property, so as to avoid it from being attached, seized by law enforcement agencies. Shri Dilip Sisodiya and Ashok Pipada could not get any authentic reason for such ownership transfer of these two properties in the name of Shri Ashok Pipada. Thus it appears that Shri Ashok Pipada was assisting him to launder the proceeds of crime. Thus it is apparent that Shri Ashok Pipada has committed the Offence U/s. 3 of PMLA Act and he knowingly assisted Dilip Sisodiya and knowingly is a party, is actually involved in the process or activity connected with proceeds of crime including its concealment, possession, acquisition, use and projecting and claiming as untainted property, which is punishable U/s. 4 of PMLA Act, 2002.”

07. Learned counsel for the respondent has also placed reliance on the following judgments passed by the Apex Court:

(a) ***P. Chidambaram v. Directorate of Enforcement, (2019) 9 SCC 24***, wherein the Supreme has Court observed that -

"the power under Section 438 of CrPC is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind. Repelling the submission that anticipatory bail is a facet of Article 21 of the Constitution of India and its denial would amount to denial of the right conferred upon under the said Article, the Apex Court stated that "We are conscious of the fact that the legislative intent behind the introduction of Section 438 CrPC is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary. However, the Court must also keep in view that a criminal offence is not just an offence against an individual; rather the larger societal interest is at stake. Therefore, a delicate balance is to be established between the two rights – safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India." It is further stated that while granting bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. With regard to the economic offences, the Court said that economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless to the consequence to the community. Such offences constitute a class apart as they affect the economic fabric of the society, therefore, in such offences; the accused is not entitled to anticipatory bail.

(b) In case of *U.P. 8 SCC 21 v. Amarmani Tripathi (2005)* held that the matters to be considered in an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence.
- (ii) nature and gravity of the charge;

- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behavior, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being tampered with; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

(c) It is also submitted that Hon'ble Apex Court in the matter of ***Gurcharan Singh VS. State (Delhi Administration) 1978 SCC (Cr) 41***, held that while granting bail under Code of Criminal Procedure, 1973 the following should be considered:

- (i) the nature and gravity of the circumstances in which the offence is committed
- (ii) the position and the status of the accused with reference to the victim and witnesses;
- (iii) the likelihood of the accused fleeing from justice;
- (iv) of repeating the offence,
- (v) of jeopardizing his own life being faced with a grim prospect of possible conviction in the case;
- (vi) of tampering with witnesses;
- (vii) the history of the case as well as of its investigation; and
- (viii) other relevant grounds which, in view of so many variable factors, cannot be exhaustively set out.

(d) In the case of ***X vs. Arun Kumar 2022 SCC OnLine SC 1529 Order Dated 21 October 2022*** wherein the Apex court held that in many anticipatory bail matters, one common argument is being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. The Court further observes that:-

There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an

application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail."

The first and foremost thing that the court hearing an anticipatory bail and application should consider is the prima facie case put up against the accused, Thereafter, the nature of the offence should be looked into along with the severity of the punishment. In the instant case even though the said applicant was not arrested but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. As economic offences constitute a very serious nature of offence and need to be visited with a serious approach in the matter of bail. 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.

08. The applicant said to have purchased the plots from Keshav Nachani who has been granted anticipatory bail by this Court vide M.Cr.C. No.51485 of 2023.

So far as the role of this applicant is concerned, he only assisted Dipak Jain in the crime. Deepak Jain transferred the property in the name of this applicant. The arrest is not required for custody/ interrogation as investigation is over now.

09. Shri Himanshu Joshi, learned Standing Counsel for the respondent submits that at the time of filing of ECIR, the arrest of this applicant was not demanded by the prosecution agency hence, bailable warrant was issued for his appearance by the Special Judge.

10. Accordingly, this M.Cr.C. is allowed and it is directed that in the event of arrest, the applicant – **Ashok Pipada** shall be released upon his furnishing personal bond in the sum of **Rs.5,00,000/- (Rupees Five Lacs only/-)** with one surety in the like amount to the satisfaction of the arresting officer. This order shall be governed by the conditions No.1 to 3 of sub-Section (2) of section 438 Cr.P.C. The applicant shall also co-operate with the investigation.

11. With the aforesaid, this M.Cr.C. stands disposed of.
Certified copy, as per rules.

(VIVEK RUSIA)
JUDGE

Divyansh