

**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. 1156 of 2024

BETWEEN:-

**OMPRAKASH DHANWANI S/O LATE SHRI RADHAMALJI DHANWANI,
AGED ABOUT 60 YEARS, OCCUPATION: BUSINESS, R/O 91, GUMASTA
NAGAR, INDORE (MADHYA PRADESH)**

.....APPLICANT

**(SHRI AJAY BAGADIA, LEARNED SENIOR ADVOCATE ASSISTED BY SHRI
MOHAMMAD IBRAHIM, ADVOCATE.)**

AND

**ASSISTANT DIRECTOR DIRECTORATE OF ENFORCEMENT 209, PALIKA
PLAZA, MTH COMPOUND, INDORE 452001 (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.ECIR/INSZO/42/2022, registered at Police Station Assistant Director, Directorate of Enforcement, Indore (M.P.) for the offences punishable 44 & 45 of Prevention of Money Laundering Act, 2002 (for brevity "PMLA Act") for commission of

offence defined under Section 3 punishable under Section 4 of 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.

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 applicant approached the Special Court for PMLA Act by way of application under Section 438 of Cr.P.C. which came to be rejected hence, present application is filed under Section 438 of Cr.P.C. It is submitted 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 Ajay Bagadia, learned senior 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 *Mahdoom Bava V/s Central Bureau of Investigation* reported in **2023 SCC OnLine SC 299**.

05. Shri Himanshu Joshi learned Standing Counsel for the respondent submits 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. So far as the present criminal case is concerned, it relates to the economic offence which constitutes a class apart from need to visit with a different approach in the matter of bail. It is further submitted that unless the Court has satisfied that there are reasonable ground 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 – Omprakash Dhanwani described in the ECIR is as under:

“Omprakash Dhanwani entered into conspiracy with Keshav Nachani and others to defraud the housing cooperative society and cheat the original buyers of land which were in the rightful possession of those plots sold by Majdoor Panchayat Grih Nirman Co-operative Society, Indore. Shri Omprakash Dhanwani fraudulently acquired the already allotted plots of the society. Shri Naseera Haider, the manager of the Society was not authorised to sell the plots without the District Registrar's permission. Omprakash Dhanwani purchased a land of 2.5 acre at Khajrana through his maternal uncle Shri Keshav Nachani. The said land belonged to Majdoor Panchayat Grih Nirman Society which is a housing co-operative society. In connivance with Shri Deepak Jain and his Maternal uncle, Shri Keshav Nachani who had also purchased land of 2.5 acres at

Khajrana from the Majdoor Panchayat Grih Nirman Society. Shri Omprakash Dhanwani, also purchased 2.5 acres land from unauthorised person and paid amount of Rs. 2 crores in the unauthorised bank account number of 57064 of Majdoor Panchayat Grih Nirman Society. The subject land is still in his name and civil suit is pending before the court. At the time of the purchase of subject land, neither Shri Omprakash Dhanwani nor Shri Keshav Nachani was the member of the society.”

07. Learned counsel 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.

09. This applicant and other accused persons in conspiracy with the office bearers of the housing societies have purchased the land which had already been sold to the members and now they are not in a position to construct their house for which they are already facing trial and civil suit.

10. So far as the role of this applicant is concerned, he got executed the sale-deed by paying of Rs.2,00,00,000/- in the forged account in the name of society. It is submitted that this is the only case registered against the applicant. He is ready to appear in the trial Court to get the regular bail.

11. 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.

12. Accordingly, this M.Cr.C. is allowed and it is directed that in the event of arrest, the applicant – **Omprakash Dhanwani** 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.

13. With the aforesaid, this M.Cr.C. stands disposed of.

Certified copy, as per rules.

(VIVEK RUSIA)
JUDGE

Divyansh