

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

MISC. CRIMINAL CASE No. 19631 of 2024

DILIP SISODIYA

Versus

ASSISTANT DIRECTOR

.....
Appearance:

Shri Anil Khare, learned Senior counsel with Shri Yogesh Hemnani and Shri Priyank Agarwal, counsel for the applicant.

Shri Himanshu Joshi, learned Addl. Solicitor General with Ms. Usha Thakur and Ms. Surbhi Bahal, counsel appearing on behalf of respondent Directorate of Enforcement.

.....

Reserved on: 30.07.2024

Delivered on: 01.08.2024

.....

ORDER

1. This is second bail application filed under Section 439 of Cr.P.C. on behalf of the applicant in Connection with Crime ECIR/INZO/42/2022 registered by Directorate of Enforcement, Indore Zone, Indore for the offence punishable under Section 3 and 4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the "PMLA Act, 2002". The applicant is in jail since, 03.06.2023.

2 . Earlier, first application of the applicant was dismissed in compliance of the peremptory order dated 29.11.2023 whereby the defects as pointed out by the registry could not be cured within the stipulated period as directed by the Court.

3. The allegations against the applicant is of involvement in money

laundering in connection with the following three societies and other individuals:

A. Majdoor Panchayat Grah Nirman Society Maryadit. B. Devi Ahilya Shramik Kamgar Sahkari Sanstha Maryadit DASKCS & C. Kalpatru Greh Nirman Society. 2002. In pursuant to financial transactions with regard to the aforesaid societies and others, total 11 FIRs were registered against the applicant and registration of the FIRs under the provisions of Sections 420, 467, 471, 120-B of IPC are the scheduled offences under Section 2(1)(y) of the PMLA Act and based on these FIRs, an ECIR/42/INSZO/2022 dated 17.6.2022 was recorded wherein an amount approximately 22 crores is under money trail has been alleged.

4. It is submitted by learned Senior counsel for the applicant that, by the present application, the Applicant is praying that he be released on regular bail in connection with ECIR No. 42 of 2022 filled by the Respondent/ED. It is submitted that the Applicant is not guilty of any offence of money laundering and is not likely to commit any offence. Learned Senior counsel has submitted five grounds for releasing the applicant on bail which are as under:

(i) First; Since there is non-compliance with the provisions of Section 19 of PMLA Act, as no 'reasons to believe' have been formed and recorded and a copy of the grounds of arrest has not been served upon the Applicant while arresting him and as such the rights of the Applicant is vitiated. It is submitted that there is a clear and flagrant violation of the mandatory provision as enshrined under Section 19 of the PMLA, 2002 and therefore,

on this ground alone the applicant is entitled to release on bail. Learned Senior counsel for the applicant submits that his main contention is that twin conditions (under Section 45 of the Act) become inapplicable once the complaint is filed under section 44 of PMLA before Special Court as in the present case cognizance has been taken by the Court. It is also submitted that the respondent/ED has not given the information regarding the grounds of arrest to the applicant properly and it is the case of the prosecution that they have tried to serve the said grounds on the same day written in English language, but the applicant has refused to accept the same and prays for giving the same in Hindi language is absolutely very strange. The mode of information of the said grounds of arrest to the applicant and his wife are questionable and not acceptable. And if that be so, the agency should have to provide the copy of said Arrest memo to the applicant. Hence, this story of the prosecution itself is suspicious and the applicant is entitled for bail on sole ground of non-compliance of provisions of Section 19 of PMLA Act, 2002.

(ii) **Second;** it is submitted that from the record of prosecution agency, it is a clear case of victimization and abuse of law as one after another 11 (eleven) FIRs had been filed against the Applicant after 17.2.2021 (out of which five are filed within 6 hours in the intervening night of 17.2.2021 and 18.2.2021) on the basis of the complaints made by individuals and the officials of the State and in some of the FIRs, the complainants are the similar. These FIRs have been registered in violation of the law laid down by the Constitution Bench of the Hon'ble Supreme Court. It is also submitted

that the applicant has already been granted bail in all predicate offences. Out of the five cases, in four cases anticipatory bail has been granted and in one case regular bail has been granted by co-ordinate Bench.

(iii) **Third;** It is also submitted that all the other co-accused persons namely Keshav Nachani, Ompraksah Dhanwani, Ashok Pipada, Jakir Patel, Naseem Haider, Deepesh Jain and Ranveer Singh Sudan have already been granted anticipatory bail by co-ordinate Bench of this court and the applicant is the only accused person who is still behind the bar. Further, the applicant has already been enlarged on bail by co-ordinate Bench of this Court in predicate offences. Therefore, the applicant is also entitled for parity with the co-accused persons who have already been granted bail.

(iv) **Fourth;** learned Senior counsel has submitted that the applicant is facing several ailments including cardiac problem and he met with an angiography in last year, and therefore, considering the said ground, the learned co-ordinate bench of this Court has granted bail to the applicant.

(v) **Fifth:** learned Senior counsel appearing on behalf of the applicant further submits that all the other co-accused in the present case have already been enlarged on anticipatory bail. Even the applicant has already granted bail within a small period of custody, but, in the present case, the applicant is behind the bar since long and completed more than one year of his custody. Therefore, on the ground of custody period, the case of the applicant is on better footing. Hence, it is prayed that the applicant is entitled to release on bail. In support of this contention, counsel for the applicant placed reliance on a judgement of High Court of Bombay passed in the case of **Anil**

Vasantrao Deshmukh vs. State of Maharashtra [2022 SCC On Line Bom 3150].

5 . In support of his contention, learned Senior counsel for the applicant has placed reliance over the judgment of Hon'ble Apex Court passed in the case of **Pankaj Bansal vs. Union of India & others** [SLP (Cri.) No.9220/20-21/2023] wherein, the Hon'ble Apex Court has held that *"to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception."* Further, learned Senior counsel for the applicant further submits that co-ordinate Bench of this Court (Jabalpur) while considering the similar matter, in MCRC No.19929/2024 (**Pushendra Singh vs. Director of Enforcement**) decided on 08.07.2024, has granted bail to the accused person after considering the law laid down by Hon'ble Apex Court in the case of **Pankaj Bansal (supra)**.

6. In addition to the aforesaid, during the course of arguments, learned Senior counsel for the applicant has also raised objections regarding sealed cover envelope submitted by the respondent/ED before the trial Court and alleged that the ED has made forged documents. He has vehemently argued that Directorate of Enforcement is playing hide and seek, if such documents regarding grounds of arrest were available, why the ED would not file the same before the trial Court and why there is no mentioning about the same in the order sheets of the trial Court; thus, such conduct of respondent/ED

may be a matter of enquiry.

7. At the end, further, it is prayed that due to flagrant violation of the provisions enshrined under Section 19 of the PMLA Act, 2002, the applicant is entitled to be released on bail. That apart, on the basis of principles of parity and health status of the applicant as well as in view of the custody period of more than one year and three months, applicant may be enlarged on bail.

8. On the other hand, Mr. Himanshu Joshi, learned Additional Solicitor General appearing on behalf of respondent/ED has replied the contentions of counsel for the applicant in sequence as under:

(i) He expostulated that so far as the contention to non-compliance of provision of Section 19 of the PMLA Act is concerned, the information with regard to grounds of arrest were communicated to the applicant and his wife vide the arrest memo dated 03.06.2023 and signatures of the applicant and his wife both were taken on the said memo of arrest, therefore, first ground so raised by counsel for the applicant that provisions of Section 19 has not been complied with, is baseless and not tenable. Since, the provisions of Section 19 have been complied with, the twin conditions prescribed under Section 45 of the PMLA Act shall be applied in the case in hand. In support of this Contention, counsel for the respondent/ED has also placed reliance over the judgment of Hon'ble Apex Court passed in the case of **Ram Kishor Arora vs. Directorate of Enforcement (Criminal Appeal No.3865/2023)**.

(ii) Further, counsel for the respondent/ED has submitted that so far as the contention of counsel for the applicant regarding grant of bail to the

applicant in predicate offence is concerned, looking to the grievousness of the offence and the act of the applicant, he cannot claim benefit of grant of bail. In support of this contention, he has placed reliance over a Judgement of Delhi High Court passed in the case of **Directorate of Enforcement vs. Arvind Kejriwal (Cri.M.C 4858/2024)**.

(iii) He further submitted that so far as the ground of parity with co-accused persons is concerned, all the co-accused person have granted bail, were the purchaser only whereas the case of the applicant is very different on factual matrix of the case. In support of this argument, counsel for the respondent/ED has placed reliance over the judgment of Hon'ble Apex Court passed in the Case of **Tarun Kumar vs. Assistant Director Directorate of Enforcement (SLP (Cri.) No.9431/2023)**.

(iv) So far as question of sickness of the applicant is concerned, it is replied that the applicant has undergone a minor surgery regarding cardiac problem in the year 2023, which is general in nature nowadays, and no life threatening disease is diagnosed and the respondent agency is having all concerned to provide better treatment to the applicant. In support of this Contention, reliance has been placed on a judgment of Delhi High Court passed in the case of **Sameer Mahandru vs. Directorate of Enforcement [2023 SCC On Line Del 6680]**.

(v) So far as the custody period of the applicant is concerned, counsel for the respondent/ ED has submitted that in the Economic Offences, the period of custody of one year and there months cannot be assumed as a long period in rigour of Section 45 of the PMLA Act. Hence, looking to the

factual matrix of the present case, money laundering of huge amount involved, the applicant is not entitled to be released on bail, hence, prays for dismissal of the application.

9. At the end, learned ASG has emphatically replied the objections of learned Senior counsel for the applicant with regard to sealed cover envelope, that all the documents produced before the Court are well available in the charge-sheet and as the applicant has denied to accept the grounds of arrest in English language, the same were immediately prepared in Hindi and communicated to the applicant and his wife and their signatures were taken accordingly and the same were also filed before the trial Court. Learned ASG has further submitted that he has no objection if the enquiry is to be conducted in the matter and if the said documents were found forged or fabricated, the Investigating Officer of this case undertakes and is ready to face the consequences.

10. I have heard rival submissions of the the learned Senior counsel for applicant and learned Addl. Solicitor General for respondent at length and perused the record.

11. Since, learned counsel for the applicant has emphasized on non-compliance of Section 19 of the PMLA Act, 2002, it would be appropriate to reproduce Section 19 of of the PMLA Act, 2002, which reads as under:-

19. Power to arrest.

(1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (that reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the

grounds for such arrest.

(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a [Special Court or] *[Inserted by Finance Act, 2018 (Act No. 13 of 2018) dated 29.3.2018.]* Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction: Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the [Special Court or] *[Inserted by Finance Act, 2018 (Act No. 13 of 2018) dated 29.3.2018.]* Magistrates Court.

12. Learned Senior counsel has submitted that since ground of arrest and reasons for such belief that the applicant is guilty for the offence punishable under this Act has not been complied with, then twin conditions prescribed under Section 45 of the Act of 2002 cannot be applied. On this aspect, learned counsel has relied upon on para no.15 of the judgment of **Pankaj Bansal (supra)** which reads as under:-

"15. This Court had occasion to again consider the provisions of the Act of 2002 in V. Senthil Balaji vs. The State represented by Deputy Director and others², and more particularly, Section 19 thereof. It was noted that the authorized officer is at liberty to arrest the person concerned once he finds a reason to believe that he is guilty of an offence punishable under the Act of 2002, but he must also perform the mandatory duty of recording reasons. It was pointed out that this exercise has to be followed by the information of the grounds of his arrest being served on the arrestee. It was affirmed that it is the bounden duty of the authorized officer to record the reasons for his belief that a person is guilty and needs to be arrested and it was observed that this safeguard is meant to facilitate an element of fairness and accountability. Dealing with the interplay between Section 19 of the Act of 2002 and Section 167 Cr.P.C, this Court observed that the Magistrate is expected to do a Criminal

Appeal Nos. 2284-2285 of 2023, decided on 07.08.2023 balancing act as the investigation is to be completed within 24 hours as a matter of rule and, therefore, it is for the investigating agency to satisfy the Magistrate with adequate material on the need for custody of the accused. It was pointed out that this important factor is to be kept in mind by the Magistrate while passing the judicial order. This Court reiterated that Section 19 of the Act of 2002, supplemented by Section 167 Cr.P.C., provided adequate safeguards to an arrested person as the Magistrate has a distinct role to play when a remand is made of an accused person to an authority under the Act of 2002. It was held that the Magistrate is under a bounden duty to see to it that Section 19 of the Act of 2002 is duly complied with and any failure would entitle the arrestee to get released. It was pointed out that Section 167 Cr.P.C is meant to give effect to Section 19 of the Act of 2002 and, therefore, it is for the Magistrate to satisfy himself of its due compliance by perusing the order passed by the authority under Section 19(1) of the Act of 2002 and only upon such satisfaction, the Magistrate can consider the request for custody in favour of an authority. To put it otherwise, per this Court, the Magistrate is the appropriate authority who has to be satisfied about the compliance with safeguards as mandated under Section 19 of the Act of 2002. In conclusion, this Court summed up that any non-compliance with the mandate of Section 19 of the Act of 2002, would enure to the benefit of the person arrested and the Court would have power to initiate action under Section 62 of the Act of 2002, for such non-compliance. Significantly, in this case, the grounds of arrest were furnished in writing to the arrested person by the authorized officer."

13. Further, learned Senior counsel for the applicant has also placed his reliance on **Pushendra Singh (supra)** and submitted that in non-compliance of Section 19 of the Act, 2002, rigor of Section 45 of the Act, 2002 will be wiped out. On this aspect, para no.10 of **Pushendra Singh (supra)** is worth to mention here:-

"10. Now, it is to be seen that if Section 19 of the PMLA, 2002 has not been complied with, then whether Court can grant bail without satisfying itself on twin conditions mentioned in Section 45 of PMLA, 2002. Due to non-compliance of Section 19 of the Act, whether rigors of Section 45 of the PMLA, 2002 will be wiped out. Arresting Officer has to asses the material available in charge-sheet of predicate offence and also unearthed during

enquiry and investigation by authorized officer. Such officer must have material on basis of which he forms opinion that accused is guilty of offence under the Act only then discretion, vested in him to arrest, is to be exercised. After arrest in bail application, Court will examine the material and reasons given by authorized officer if accused is not guilty of offence under PMLA, 2002. Authorized officer has to give reasons of belief of guilt and Court has to give reasons of belief of not guilty of offence to exercise power of grant of bail. Reason to believe is *sin qua non* for exercising power under Section 19 by authorized officer & under Section 45 by the Court. Accused will also have proper opportunity, if reason of belief are in writing and clearly spelt out in arrest order. There is a thread running between Section 19 & Section 45 of PMLA, 2002. Rights of liberty of a person may be jeopardized, if reason of belief of guilt under Act is not in writing in arrest order, as condition for grant of bail is rigorous under PMLA, 2002. In such conditions, Court while considering the bail application has to see that arrest has been made by complying with provisions of Section 19 of the Act. In this case, provisions of Section 19 of the Act has not been complied with. Total sum, which is said to have been diverted is Rs.10.93 Crores according to the report of CBI though allegations were made in respect of about Rs.14,93,67,500/-. Enforcement Department is making allegation in respect of Rs.4377.94 Lacs. Search has been conducted. In complaint, it has been mentioned that there is non-cooperation by applicant and he tried to hide facts, therefore, he was arrested under Section 19 of the PMLA, 2002 but reason of belief of guilt under the Act for arrest is not stated in complaint nor in arrest order. Assets and properties of applicant have been seized by authorized officer. Applicant is in jail and his custodial investigation may not be required. No application has been filed by investigating agency for further interrogation of applicant in custody of Court and nothing is brought on record to support apprehensions that applicant is likely to commit any offence in future, if he is released on bail."

14. In view of aforesaid, the contention of counsel for respondent/ED has considered. Learned counsel for the respondent/ED has placed the documents in sealed envelope wherein the arrest memo dated 03.06.2023 has been perused. In the said arrest memo, it is clearly mentioned that ***"Certified that the person arrested had been informed and communicated***

the ground of his arrest and is also being informed to his wife Smt. Samta jain of his arrest or detention" and signatures of applicant and his wife, both were also taken. During the course of arguments, learned Senior counsel has objected the same, nevertheless, at the time of considering the bail application, such type of contentions cannot be ruminated by this Court.

15. It is also found that the grounds of arrest and reasons for belief dated 03.06.2023 has also been placed before this Court, which are *prima facie*, cannot be suspected or disbelieved. The contention and dispute regarding genuineness of such documents, cannot be considered by this Court while considering the bail. The applicant is at liberty to raise such grounds before competent court of law at appropriate stage. In this way, the contention of learned Senior counsel for the applicant regarding non-compliance of Section 19 of the Act of 2002 is not acceptable and is hereby discarded. In this regard, counsel for the Respondent/ED has also placed heavy reliance over para no.23 the judgment of **Ram Kishor Arora (supra)** which is condign quote here:-

"23. As discernible from the judgment in **Pankaj Bansal** Case also noticing the inconsistent practice being followed by the officers arresting the persons under **Section 19** of PMLA, directed to furnish the grounds of arrest in writing as a matter of course, "henceforth", meaning thereby from the date of the pronouncement of the judgment. The very use of the word "henceforth" implied that the said requirement of furnishing grounds of arrest in writing to the arrested person as soon as after his arrest was not the mandatory or obligatory till the date of **the said judgment**. The submission of the learned Senior Counsel Mr. Singhvi for the Appellant that **the said judgment** was required to be given effect retrospectively cannot be accepted when the judgment itself states that it would be necessary "henceforth" that a copy of such written grounds of arrest is furnished to the arrested

person as a matter of course and without exception. Hence non furnishing of grounds of arrest in writing till the date of pronouncement of judgment in **Pankaj Bansal** case could neither be held to be illegal nor the action of the concerned officer in not furnishing the same in writing could be faulted with. As such, the action of informing the person arrested about the grounds of his arrest is a sufficient compliance of **Section 19** of PMLA as also **Article 22(1)** of the Constitution of India, as held in **Vijay Madanlal** (supra)."

16. It is undisputed that the Judgement of **Pankaj Bansal** (supra) has been pronounced on 03.10.2023 wheres the arrest of the applicant is being effected since 03.06.2023. Hence, in view of the aforesaid law settled in **Ram Kishor Arora** (supra), non-compliance of Section 19 of the Act of 2002 is having no effect in the case at hand. Be that as it may, in view of aforesaid analysis, this court is of the considered opinion that ED has properly complied with the mandatory provision of Section 19 of the Act of 2002. As such, upon meticulous examination, this Court does not find any merit in the said assertion regarding non-compliance of Section 19 of the Act of 2002.

17. Now, so far as the contention of granting bail in predicate offences is concerned, on this aspect, Full Bench of Hon'ble Apex Court in the case of **Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors** [SLP (Cri.) No.4634/2014] in para no.lxvii has considered as under:-

"lxvii. The offence of money-laundering is a new offence created by the PMLA, which has a high threshold of arrest as given under Section 19, which itself justifies high threshold for grant of bail. Nature of the offence being peculiar, makes manner of investigation far more difficult than in ordinary penal offences. The PMLA is a complete Code in itself, which creates a separate machinery to tackle the social menace, having adequate safeguards. It is submitted that Legislature has on numerous occasions made departures from the ordinary penal and procedural laws as and when the situation arrived. The classification of the offence on the basis of public policy and underlying purpose of

the Act cannot be said to be unreasonable or arbitrary. Therefore, the Parliament is fully competent to deal with special type of cases by providing a distinct and different procedure which in the circumstances, cannot be said to be unreasonable. **Therefore, it is submitted that a different standard for bail can be provided in an offence which serves a special purpose.** To buttress these submissions, reliance has been placed on Kathi Raning Rawat vs. State of Saurashtra, Kedar Nath Bajoria 262 AIR 1952 SC 123 & Anr. vs. The State of West Bengal, Special Reference No.1 of 1978264 and Kartar Singh."

18. It is clear that the offence under the PMLA Act, 2002 is distinct from the predicate offences and only the bail can be granted when the Court is satisfied in accordance with the provisions of Section 45 of the Act, 2002. Hence, the contention regarding grant of bail in predicate offence is discarded and the same shall not be apply in the present case.

19. So far as the contention of learned Senior counsel for the applicant regarding parity with co-accused persons who have already been granted bail is concerned, certainly other co-accused persons have been granted bail, but they were the purchaser of land of the societies in question while the applicant is involved in selling to those lands, therefore, he is main accused of the case, hence, the benefit of parity cannot be afforded to the present applicant. In this regard, the law laid down by Hon'ble Apex Court in para no.19 in the case of **Tarun Kumar (supra)** is worth to mention here:-

"19. It is axiomatic that the principle of parity is based on the guarantee of positive equality before law enshrined in Article 14 of the 20 Constitution. However, if any illegality or irregularity has been committed in favour of any individual or a group of individuals, or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing similar wrong order. Article 14 is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage conferred on one or a set of people by any authority or by the court, without legal basis or justification, other persons could not claim as a matter of right the

benefit on the basis of such wrong decision."

Hence, on the sole ground of parity, the applicant is not entitled for bail.

20. With regard to the contention of sickness is concerned, as per the medical records and submission of Senior counsel, the applicant has undergone a minor surgery regarding cardiac problem in the year 2023 and hospitalized from 09.08.2023 to 25.08.2023, but there is nothing on record that applicant is facing life threatening disease at present. On the other hand, the respondent agency is undertaking to provide all medical facilities to the applicant. Therefore, such ground cannot be considered to be a fit ground for granting bail.

21. So far as ground of custody period is concerned, In this regard, the law laid down by Hon'ble Apex Court in para no.20 in the case of **Tarun Kumar (supra)** is worth to mention here:-

"20. It is also difficult to countenance the submission of learned Counsel Mr. Luthra that the investigation qua the appellant is complete and the trial of the cases likely to take long time. According to him the appellant ought not to be incarcerated indefinitely merely because the investigation is kept open with regard to the other accused. In this regard, it may be noted that the appellant has not been able to overcome the threshold stipulations contemplated in Section 45 namely he has failed to prima facie prove that he is not guilty of the alleged offence and is not likely to commit any offence while on bail. It cannot be gainsaid that the burden of proof lies on the accused for 21 the purpose of the condition set out in the Section 45 that he is not guilty of such offence. Of course, such discharge of burden could be on the probabilities, nonetheless in the instant case there being sufficient material on record adduced by the respondent showing the thick involvement of the appellant in the alleged offence of money laundering under Section 3 of the said Act, the Court is not inclined to grant bail to the appellant."

Therefore, in view of the aforesaid, in the offences committed under PMLA Act, 2002, the involvement of the applicant cannot be discarded,

therefore, the accused person cannot be granted bail considering the period of custody.

22. In conspectus of the aforesaid analysis and after perusal of entire record, this Court found that there is sufficient material available on record against the applicant, there is no reasonable grounds for believing that the applicant is not guilty of the offence punishable under Section 3 r/w 4 of the Act of 2002. Hence, this Court found that this is not a fit Case to grant bail to the applicant. Accordingly, the bail application is rejected.



(PREM NARAYAN SINGH)
JUDGE

amit