

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

BEFORE

HON'BLE SHRI JUSTICE VISHAL DHAGAT

ON THE 8th OF JULY, 2024

MISC. CRIMINAL CASE No. 19929 of 2024

(PUSHPENDRA SINGH

Vs

DIRECTOR OF ENFORCEMENT)

Appearance:

(BY SHRI AMIT KUMAR SINGH - ADVOCATE FOR APPLICANT)

(BY SHRI VIKRAM SINGH - ADVOCATE FOR RESPONDENT)

ORDER

This is the first bail application filed by applicant under Section 439 of Cr.P.C. (Now section 483 of the Bhartiya Nagrik Surksha Sanhita, 2023) for grant of regular bail relating to FIR/ECIR No. ECIR/AMZO/17/2020, registered at Directorate of Enforcement, Bhopal, District Bhopal (M.P.) for the offence under Sections 3, 4 and 70 of Prevention of Money Laundering Act, 2002.

2 . As per prosecution story, FIR was registered on 07.04.2017 by Central Bureau Investigation, on the basis of complainant made by one Surendranath Sahoo, Deputy General Manager of Canara Bank. Case was registered against K.D. Dubey, Branch Manager, Canara Bank, SME Branch, Jabalpur and M/s Jagdamba AMW Automatives Pvt. Ltd. (JAAPL) and other Directors. It is alleged that there was wrongful sanction of 50 loans. Loan amount was availed but vehicles were not delivered to the borrowers and money was used elsewhere by accused persons. Allegations are made that an amount about Rs.14.93/- crores public money of bank was misappropriated by cheating and forgery. Applicant was granted anticipatory bail on 07.07.2020 in M.Cr.C. No.6644/2020. Thereafter applicant co-operated in investigation. Charge sheet was filed on 18.12.2019 and six persons were charge sheeted. Later on,

Enforcement Directorate (hereinafter referred to as 'ED') took over the investigation in respect of offences under Sections 3 and 4 of Prevention of Money Laundering Act (in short as 'PMLA, Act'), 2002. ED filed complaint on 13.03.2024.

3. Learned counsel appearing for applicant prays for grant of bail on the ground that mandatory provisions of PMLA, 2002 is not followed by ED. It is submitted that there is non-compliance of Section 19 of PMLA, 2002. Reasons were not recorded by prosecution for arrest of applicant. It is further submitted that Section 50 of the PMLA, 2002 was also not complied with. No evidence and material was collected by ED. Reliance was placed upon the material which has been collected by CBI. It is submitted that offence under Sections 3 and 4 are independent offences and ED ought to have collected material as per procedure prescribed in Section 50 and thereafter has to reach satisfaction on reasonable grounds and belief regarding guilt of the accused. Same has not been done and therefore, arrest is illegal and not warranted. It is further submitted that prosecution has given reason that applicant is not co-operating in investigation of case. It is submitted that said reason is not sufficient to make arrest under Section 19 of PMLA, 2002. Reliance is placed on the judgment passed by the Apex Court in case of ***Pankaj Bansal Vs. Union of India, (2023) SCC Online SC 1244***, wherein it is held that failure of an accused to respond to the questions put by ED would not be sufficient in itself for investigating officer to form an opinion that he is liable to be arrested under Section 19. Reason has to be digged out by the investigating officer. Mere non-cooperation will not be a cause for arrest under section 19. Learned counsel for applicant further argued that twin conditions under section 45 will be attracted

only when mandatory provisions under Sections 19 and 50 has been complied with by ED. On failure to comply with mandatory provisions in section 19 and 50, twin conditions mentioned in section 45 will not apply. In these circumstances, applicant be released on bail.

4. Learned counsel appearing for Enforcement Directorate has filed a detailed reply to the application for grant of bail. It is submitted that twin conditions as mentioned in section 45 of the PMLA, 2002 is to be satisfied before an accused is released on bail. Provision is mandatory in nature. Unless Court comes to satisfaction that there are no reasonable grounds for believing that applicant-accused is guilty and he is not likely to commit any offence only then applicant-accused may be enlarged on bail. It is submitted that voluminous evidence has been collected which shows that applicant is involved in money laundering which is proceeds of crime. In view of same, applicant may not be granted bail and application be dismissed.

5. Heard learned counsel for the parties.

6. Relevant provisions of PMLA, 2002 and Rules there under which is to be looked into by the Court for considering arguments for bail is quoted as under:-

Section 3. Offence of money-laundering - Whosoever directly or indirectly *attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime* including its concealment, possession, acquisition or use and projecting or claiming it as *untainted property* shall be *guilty of offence of money-laundering*.

Section 2(1)(u) in The Prevention of Money-Laundering Act, 2002 "proceeds of crime" which means *any property derived or obtained, directly or indirectly, by any person as a result of criminal activity* relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

Section 2(1)(j) "material" for the purpose of sub-section (2) of section 17 of the Act means the material in possession of the authority referred to in clause (d) of sub-rule (1) of rule 2, after search and seizure, under sub-section (1) of section 17 of the Act, including-

(i) a report forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974) in relation to an offence under paragraph 1 of Part A and Part B of the Schedule' or

(ii) a police report or a complaint filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) in relation to an offence under paragraph 2 of Part A of the Schedule;

3. Manner of forwarding a copy of the order of arrest and the material to the Adjudicating Authority. – (1) The Arresting Officer shall prepare an index of the copy of the order and the material in possession and sign each page of such index of the copy of the order and the material and shall also write a letter while forwarding such index, order and the material to

the Adjudicating Authority in a sealed envelope.

(2) The Arresting Officer shall place an acknowledgement slip in Form-I appended to these rules inside the envelope before sealing it.

(3) The Arresting Officer shall indicate a reference number and date of despatch on the sealed envelope.

(4) The sealed envelope shall be marked "Confidential" and "To be opened by the addressee only", the complete address of the Adjudicating Authority including his name shall be mentioned on the sealed envelope with the official seal.

(5) The Arresting Officer shall place the sealed envelope inside an outer envelope, along with an acknowledgement slip in Form-II appended to these rules.

(6) The outer envelope shall be sealed and complete address of the Adjudicating Authority shall be mentioned on the sealed outer envelope.

(7) The Arresting Officer shall maintain registers and other records such as acknowledgement slip register, dak register for the purposes of this rule and shall ensure that necessary entries are made in the register immediately as soon the copy of the order and the material are forwarded to the Adjudicating Authority.

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:

45. Offences to be cognizable and non-bailable. (1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] [Substituted by Act 20 of 2005, Section 7, for certain words (w.e.f. 1.7.2005).] shall be released on bail or on his own bond unless]

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who is under the age of sixteen years or is a woman or is sick or infirm [or is accused either on his own or along with other co-accused of money-laundering a sum of less than

one crore rupees] [Inserted by Finance Act, 2018 (Act No. 13 of 2018) dated 29.3.2018.], may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by

(i) the Director; or

(ii) any officer of the Central Government or State Government authorized in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.

[(1-A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed;] [Inserted by Act 20 of 2005, Section 7 (w.e.f. 1.7.2005).]

(2) The limitation on granting of bail specified in [***] [The words "clause (b)" omitted by Act 20 of 2005, Section 7 (w.e.f. 1.7.2005).] of subsection (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

50. Powers of authorities regarding summons, production of documents and to give evidence, etc.

(1) The Director shall, for the purposes of section 12, have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit

in respect of the following matters, namely:

- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a [reporting entity] [Substituted for the words "banking company or a financial institution or a company," by Act No. 2 OF 2013], and examining him on oath;
- (c) compelling the production of records;
- (d) receiving evidence on affidavits;
- (e) issuing commissions for examination of witnesses and documents; and
- (f) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings

under this Act:

Provided that an Assistant Director or a Deputy Director shall not

- (a) impound any records without recording his reasons for so doing; or
- (b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the [Joint Director]

62. Punishment for vexatious search.- Any authority or officer exercising powers under this Act or any rules made thereunder, who without reasons recorded in writing,

- (a) searches or causes to be searched any building or place; or
- (b) detains or searches or arrests any person, shall for every such offence be liable on conviction for imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both.

7. On going through the aforesaid provisions of law and judgment passed by Apex Court in case of *Vijay Mandal Choudhary Vs. Union of India and Ors. (2022) SCC Online SC 929*, it is clear that offence under PMLA, 2002 is a separate and distinct offence. PMLA, 2002 deals with the proceeds of crime which has been obtained by accused by committing scheduled offences. Accuse possess, conceals and acquire tainted property or money claiming it to be untainted and use the proceeds of crime. Said act of accused in dealing with ill gotten money or property constitutes separate and distinct offence from earlier offence committed to get the money.

8. Enforcement Directorate has registered a case in ECIR No.17/2020 on

20.03.2020. Applicant was arrested on 13.01.2024. Central Bureau of Investigation has registered offences under Section 420, 467, 471, 120-B of IPC and under Section 13(2), 13(1)(d) of Prevention of Corruption Act against the applicant on 07.04.2017. Final charge-sheet was filed on 18.12.2019. Applicant was released on anticipatory bail in said offence. As per case of CBI, offences were registered against Krishna Datt Dubey, Branch Manager Canara Bank, SME Branch Jabalpur, Shri Pushpendra Singh Director, Yogendra Singh, Shailendra Singh and Pratima Singh involved in business of M/s Jagdamba AMW Automotives Private Limited and against other unknown persons. Complaint was made that said accused persons between April, 2015 to March, 2016 got wrongful sanction of loan for disbursement of 50 vehicles and also credit facilities and caused loss to the Bank to the tune of Rs.4377.94 Lacs. In investigation, it is found that 50 loans were wrongfully sanctioned. Borrowers were not traceable and in some cases, vehicles have also not been distributed. During investigation, out of 30 loan accounts, tax invoices of 21 vehicles were submitted and in 13 loan accounts, Company has denied manufacturing of vehicles. Amount of Rs.14,93,67,500/- is said to have been received and funds have been diverted in respect of about Rs.10.73 Crores. Some amount has been withdrawn in cash and other amount is said to have been transferred in accounts of other persons. After filing of charge-sheet, enforcement department has taken investigation and filed it's complaint on 11.02.2024.

9 . On aforesaid factual background, arguments made by counsel appearing for applicant and non-applicant are to be appreciated. Perused the arrest order dated 13.01.2024 passed by Assistant Director. In order, it has been mentioned that applicant has been arrested exercising power under Section 19(1) of Prevention of Money Laundering Act, 2002. On what basis and

material, reason to believe regarding guilt of applicant was formed, is not mentioned in the order. Order is accompanied by grounds of arrest. Most of the grounds of arrest are based on investigation done by CBI and on statement of applicant and other witnesses recorded under Section 17 of PMLA 2002. It is mentioned in grounds that during recording of statement, applicant did not cooperate, gave evasive answers and suppressed facts. Director failed to mention reason to believe guilt of applicant under the Act of PMLA, 2002. Under Section 19 of the PMLA, 2002, arrest is discretionary. Discretion is to be exercised wisely and arrest is not required in all cases. Arrest is to be made, when custodial investigation regarding proceeds of crime is to be made or where there are chances that applicant, if remains at large, will disappear the evidence or threaten witnesses or is in a position to hide proceeds of crime to be unearthed during investigation. Discretion is to be exercised by investigating agency after complying with Section 19 of the PMLA, 2002. No reason has been mentioned in arrest order. Reason to believe has to be more than only a prima-facie case. In absence of reference to material on which reason to believe regarding guilt is based, arrest of applicant stands vitiated. Provision of Section 19 of the PMLA, 2002 is mandatory. Provisions of PMLA, 2002 places reverse burden on the accused to show that he is not guilty and there is presumption under law that applicant has committed the offence, therefore, provision under Prevention of Money Laundering Act, 2002 is to be strictly followed.

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 assess 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.

11. Apex Court in the case of V.Senthil Balaji Vs. State represented by Deputy Director & Ors. reported in (2024) 3 SCC 51 has summarized the law in respect of Section 19 of the PMLA, 2002. Paragraph-97 of aforesaid judgment reads as under :

97. Summation of law

97.1 When an arrestee is forwarded to the jurisdictional Magistrate under Section 19(3) of PMLA, 2002 no writ of habeas corpus would lie. Any plea of illegal arrest is to be made before such Magistrate since custody becomes judicial.

97.2 Any non-compliance of the mandate of Section 19 of the PMLA, 2002 would enure to the benefit of the person arrested. For such non-compliance, the Competent Court shall have the power to initiate action under Section 62 of the PMLA, 2002.

97.3 An order of remand has to be challenged only before a higher forum as provided under the CrPC, 1973 when it depicts a due application of mind both on merit and compliance of Section 167(2) of the CrPC, 1973 read with Section 19 of the PMLA 2002.

97.4 Section 41-A of the CrPC, 1973 has got no application to an arrest made under the PMLA 2002.

97.5 The maximum period of 15 days of police custody is meant to

be applied to the entire period of investigation – 60 or 90 days, as a whole.

97.6 The words “such custody” occurring in Section 167(2) of the CrPC, 1973 would include not only a police custody but also that of other investigating agencies.

97.7 The word “custody” under Section 167(2) of the CrPC, 1973 shall mean actual custody.

97.8 Curtailment of 15 days of police custody by any extraneous circumstances, act of God, an order of Court not being the handy work of investigating agency would not act as a restriction.

97.9 Section 167 of the CrPC, 1973 is a bridge between liberty and investigation performing a fine balancing act.

97.10 The decision of this Court in Anupam J. Kulkarni (supra), as followed subsequently requires reconsideration by a reference to a larger Bench.

12. In paragraph-97.2, it has been held that any non-compliance of mandate of Section 19 of the PMLA, 2002 would enure to benefit of the person arrested.

13. Considering the aforesaid facts and circumstances of the case, bail application filed by the applicant is allowed. It is directed that applicant shall be released on bail on furnishing a bail bond in the sum of **Rs.5,00,000/- (Rupees Five Lacs Only)** with two solvent sureties in the like amount to the satisfaction of the trial court for his regular appearance before Court on all such dates as may be fixed in this regard.

14. The applicant shall also abide by the following conditions of Section 480 (3) of B.N.S.S. as under:-

- (a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter;*
- (b) that such person shall not commit any offence similar to the offence of which the is accused, or suspected of the commission of which they are suspected and;*
- (c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case as to dissuade them from disclosing such facts to the Court or to any police officer or tamper with the evidence.*

15. C.C. as per rules.

pn/nd



**(VISHAL DHAGAT)
JUDGE**