NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 3.12.2021
Delivered on 13.12.2021

MCRCA No. 1308 of 2021

1. Anoop Kumar Das S/o Late Shri Bhola Nath Das Aged About 66 Years Presently R/o Flat No. 91, Ken Wood Apartment, British Park, Bhojpur Road, Tahsil & District Bhopal (M.P.) 462047.

2. C Adinarayana S/o Late Shri Ch S. Naidu Aged About 69 Years Presently R/o Door 1-3-46, Ramalayam St. Gandhinaram, Anakapalle, District Visakhapatnam (A.P.).

3. Rajesh Agrawal S/o Late Shri Vijay Kumar Agrawal Aged About 61 Years Presently R/o Wood Island Colony, House No. D 5/ B, Phase-2, Amleshwar, Near Kharun Bridge, Tahsil Patan, District Durg (CG)

4. Indranil Ghosh S/o Late Shri Subimal Chandra Ghosh Aged About 55 Years Presently R/o B -7, Kranti Nagar, Police Station Tarbahar, Bilaspur, Tahsil & District Bilaspur Chhattisgarh. 495004.

---- Applicants

Versus

- Enforcement Directorate Through Investing Officer, Enforcement Directorate, (Prevention of Money Laundering Act) Raipur Chhattisgarh.

---- Non-applicant

For Applicants	:	Mr. Pramod Kumar Verma, Sr. Advocate assisted by Mr. Ankit Pandey, Advocate
For Non-applicant	:	Dr. Saurabh Kumar Pande & Mr. Anil S Pandey, Advocates.

C A V Order

Per Parth Prateem Sahu, J

1. Applicants apprehending their arrest in connection with Complaint Case No.1/2021 pending in the Court of learned Special Judge (Prevention of Money Laundering Act) & 4th Additional Sessions Judge, Raipur for commission of offence under Sections 3 & 4 of the Prevention of Money Laundering Act,

2002 (for brevity 'PMLA, 2002'), have preferred this application under Section 438 of CrPC for grant of anticipatory bail to them.

2. Facts of case, in brief, are that non-applicant filed complaint under Section 45 of the PMLA, 2002 praying for registration of complaint; taking cognizance of offence; punishing all accused persons with maximum punishment for commission of offence under Section 3 of the PMLA, 2002 and confiscation of attached property in terms of Section 8 (5) of the PMLA, 2002. Complainant also crave leave of the Court to file supplementary complaint, if so warranted. In the complaint it is pleaded that based on information provided by the Income Tax Department, FIR No.6/2010 dated 19.2.2010 was registered by the Economic Offences Wing / Anti Corruption Bureau, Raipur against IAS officer Shri Babulal Agrawal for commission of offence under Sections 13 (1) (e) & 13 (2) of the Prevention of Corruption Act, 1988. As alleged offences are scheduled offences under Section 2 (1) (y) of the PMLA, 2002, the Enforcement Case Information Report bearing No.ECIR/01/NGR/2011 dated 10.1.2011 was registered by the Sub-Zonal Office, Raipur of non-applicant department. During investigation it revealed that Babulal Agrawal (IAS) with the help of his Chartered Accountant Sunil Agrawal and others created 13 shell companies and through these shell companies invested huge amount in M/s Prime Ispat Limited Company, owned by Pawan Agarawal & Ashok Kumar Agrawal, brothers of Babulal Agrawal (IAS). During the period from 2006-08, Sunil Agrawal, Chartered Accountant, with the help of Pawan Agarawal & Ashok Kumar Agrawal, his cousin Alok Agrawal and uncle Vinod Agrawal got opened 446 benami bank accounts in Pandri and Ramsagarpara branches of Union Bank of India, Raipur in the name of villagers of nearby villages. Initially, in these bogus bank accounts huge funds have been deposited, which was, in turn, invested in M/s Prime Ispat Ltd. through shell companies created by Chartered Account Sunil Agrawal. Statements of 107 bank account holders, out of total 446, were recorded under Section 50 of PMLA, 2002 in Case

No.ECIR/1/NGR/2011 in which they have stated about their unawareness in respect of opening of bank accounts in their names. Statement of Sunil Agrawal, Chartered Accountant, was also recorded under Section 50 of the PMLA, 2002 in which he stated that after obtaining details of villagers i.e. identity proof, photograph etc., he got prepared PAN card in the name of villagers and based upon these documents, bank accounts were opened with help of bank officials/employees. FIR was registered against Sunil Agrawal, Chartered Accountant for commission of offence under Sections 420, 467, 468, 471 of IPC and after due investigation, charge sheet was filed in which after investigation it was reported that Sunil Agrawal with the help of his cousin Ashok Agrawal and uncle Vinod Agrawal got opened 446 forged bank accounts. Sunil Agrawal was arrested by non-applicant on 13.4.2017 and subsequently he was enlarged on regular bail on 19.6.2017 by the Special Court under PMLA, 2002. Statement of co-accused persons including applicants were recorded under Section 50 of PMLA, 2002 wherein applicants have stated that accounts have been opened, which *prima facie* establishes their involvement in commission of offence under Section3 of the PMLA, 2002.

3. After receiving of complaint dated 3.7.2018, the case was fixed for arguments before registration. Learned Special Court vide order dated 25.1.2021 registered case against all accused persons named in complaint including applicants and directed for issuance of notice for their presence. Applicants thereafter filed an application for grant of anticipatory bail apprehending their arrest in complaint case, which came to be dismissed by order dated 25.9.2021 (Annexure A-1).

4. Mr. Pramod Kumar Verma, learned Senior Counsel for applicants would submit that applicants are bank officials of Union Bank of India, Raipur. With intent to increase business of bank, they opened bank accounts after taking all necessary documents. They were not aware about commission of any offence. He

submits that initially in the year 2011 crime was registered against Babulal Agrawal (IAS) only, since then investigation through different agencies is being conducted. Even non-applicant has registered case bearing ECIR/1/NGR/2011 against Chartered Accountant Sunil Agrawal only. Applicants have not been arrayed as accused in aforementioned case. During the course of investigation by non-applicant Department, statements under Section 50 of PMLA, 2002 were recorded, all the documents of which applicants in some way related i.e. opening of bank accounts, have been seized. Statements of 107 bank account holders under Section 50 of PMLA, 2002 were also recorded. Complaint is registered and the Court competent issued notice for personal appearance of applicants. As offence under Section 3 of PMLA, 2002, punishable under Section 4, is cognizable offence, therefore, applicants apprehend that if they would appear before the Special Court, they may be arrested, therefore, they moved an application under Section 438 of CrPC seeking anticipatory bail. Applicants are not avoiding proceedings. No further investigation is required against applicants in facts and circumstances of case as appearing from complaint itself. In complaint it is mentioned that statement of applicants, other accused persons and villagers/account holders have already been recorded; no custodial interrogation is required warranting arrest of applicants, but even then the Court below illegally rejected application for grant of anticipatory bail. No purpose will be served by arresting applicants, who are bank officials. Out of four applicants, applicants No.1 to 3 have already retired from services on 31.1.2015, 31.8.2012 & 30.6.2021 respectively. Whereas, applicant No.4 is at the verge of attaining age of superannuation. Hence, applicants may be extended benefit of protection under Section 438 of CrPC. In support of submissions, learned Senior Counsel places his reliance on the order passed by Co-ordinate Bench of this Court in M.Cr.C.(A) No.436/2020, parties being Amar Kumar Sinha & anr vs. Union of India, and other connected matters; **Siddharth vs. State of**

UP & anr reported in **2021 SCC Online SC 615**.

5. Per contra, Dr. Saurabh Kumar Pande and Mr. Anil S Pandey, Advocates for non-applicant Department oppose the submissions of learned Senior Counsel for applicants and submit that Pawan Agrawal and Ashok Kumar Agrawal, brothers of accused Babulal Agrawal (IAS), gave Rs.35 Crores approximately to Chartered Accountant Sunil Agrawal, who with the help of his cousin Vimal Agrawal & uncle Vinod Agrawal, got opened 446 benami bank accounts in the name of villagers of nearby villages by using their particulars without their knowledge. Non-applicant Department is having jurisdiction to issue summons under Section 15 of the PMLA, 2002. In statement recorded under Section 50 of PMLA, 2002 accused Sunil Agrawal, Chartered Accountant, accepted that he formed 13 shell companies; amount deposited in benami bank accounts have been invested in those 13 shell companies, which in turn was invested in M/s Prime Ispat Ltd. Bank accounts, 446 in numbers, were opened by bank officials by-passing rules and norms prescribed for opening of bank accounts. Purpose of opening of bank accounts is to deposit dirty money and thereafter to invest the same into shell companies. Statements of villagers were also recorded in which they have shown their unawareness of opening bank account in their names. Further, some of villagers are illiterate, but their bank account opening form contain their signatures. Account opening forms were verified by different bank officials. Offence alleged is cognizable. Section 45 of the PMLA, 2002 provides for filing of complaint under which non-applicant has filed complaint and the Special Court has taken cognizance of the same. He submits that Section 71 of the PMLA, 202 is having overriding effect and provisions of CrPC are having limited application. Section 45 of the PMLA, 2002 imposes two riders for considering application for grant of bail. Applicants are not entitled to relief as sought for in this application. In support of their submissions, they relied upon decision of Hon'ble Supreme Court in **State of Gujarat vs.**

Mohanlal Jitamalji Porwal & another reported in **(1987) 2 SCC 364**; **Rohit Tandon Vs. Directorate of Enforcement** reported in **(2018) 11 SCC 46**; Satender Kumar Antil vs. CBI & anr. 2021 SCC Online SC 922

6. Mr. Pramod Kumar Verma, learned Senior Counsel for applicant submitted in rebuttal that under first proviso to Section 45 (1) of PMLA, 2002 certain relaxations have been made for considering application for grant of anticipatory bail for certain category of persons involved in offence under PMLA, 2002. Applicants are senior citizens and infirm. Applicants No.1 to 3 are retired bank officials, whereas applicant No.4 is at the verge of retirement. Looking to nature of accusation, application may be considered in favour of applicants.

7. At this stage when specific query is put by this Court to learned counsel for non-applicant Enforcement Department whether any custodial interrogation of applicants is required, it is submitted that no further custodial interrogation of applicants is necessary.

8. I have heard learned counsel for parties and perused record of anticipatory bail application.

9. Applicants before this Court are employees of Union Bank of India, Raipur posted at Ramsagarpara and Pandri Branches respectively. Applicants No.1 & 2 were posted in Ramsagarpara Branch, applicant No.3 was posted in Pandri Branch and applicant No.2 is posted at Pandri Branch. Allegations against them are that they being officials got the 446 bank accounts (in both branches) opened without properly following procedure prescribed and without verifying documents annexed along with account opening application forms. Allegation against applicants is that they verified application forms for opening of bank accounts. There is specific submission by learned counsel for both sides that there is no requirement of custodial interrogation of applicants. Hence, considering nature of accusation in instant crime and background of applicants, without commenting

anything on merits of case, I am inclined to extend benefit of anticipatory bail to applicants.

10. Accordingly, anticipatory bail application is allowed and it is directed that in the event of arrest of applicants in connection with crime in question, they shall be released on anticipatory bail by the Officer arresting them on their executing a personal bond in the sum of Rs.25,000/- each with one surety in the like sum to the satisfaction of Arresting Officer. Applicants shall also abide by following conditions:

(i) that they shall make themselves available for interrogation before Investigating Officer as and when required;

(ii) that they shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of case so as to dissuade him/her from disclosing such facts to Court or to any police officer;

(iii) that they shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and

(iv) that they shall appear before trial Court on each and every date given to them by said Court till disposal of trial.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-