

Directorate of Enforcement v. Raj Singh Gehlot

ECIR/14/HQ-STF/2019 dated 18.10.2019

u/s 3 / 4 PMLA,2002

10.09.2021

At 7.30 p.m.

Present: None.

Proceedings done through video conferencing.

It is certified that link was working properly and no grievance was agitated by either of the counsel in this regard.

1. By this order I propose to dispose off the bail application moved on behalf of the applicant/accused Raj Singh Gehlot for grant of regular bail.
2. It is submitted by Ld. counsel that applicant/accused is a senior citizen and he had been cooperating with Directorate of Enforcement (hereinafter referred to as 'ED') since 2019 on each and every occasion on receipt of notice u/s 50 of PMLA. It is submitted that no offence u/s 3/ 4 PMLA is made out against the applicant/accused. It is submitted that the arrest of applicant/accused in the present matter is in blatant violation of the provisions of Section 19 of PMLA and applicant/accused is languishing in j.c since 28.07.2021 and ED is also in blatant violation of procedural law for non-compliance with the provisions of Chapter XII of CrPC in sharing the copy of ECIR.
3. It is submitted that in the predicate offence, the investigating authorities of ACB (CK) Kashmir have already filed the charge-sheet before the concerned court of Jammu and Kashmir and

cognizance has also been taken of the offence and accused has been summoned. It is submitted that in the predicate offence, the charge-sheet was filed without the arrest of the accused.

4. It is further submitted that it is a trite law that in PMLA, offence u/s 3 of PMLA punishable u/s 4 of PMLA can only be invoked when the predicate offence is a scheduled offence enlisted under the Schedule of PMLA, 2002. It is submitted that the arrest of the applicant/accused in the instant matter is illegal as the predicate offence registered by ACB (J&K) is u/s 120 (B) of Ranbeer Penal Code (RPC) and 5 (1)(c) & 5 (1)(d) r.w 5(2) of J&K P.C. Act Samwat 2006 which is not a scheduled offence under PMLA till date.
5. It is further submitted that it is trite law as covenanted in Section 19 of PMLA that the legal pedestal for curtailing the liberty of an accused under the said provision is at a higher threshold in comparison to Section 41 CrPC, in as much as Section 41 enables the investigating authorities to arrest an accused "on the grounds of suspicion" whereas Section 19 of PMLA ordains ED to arrest an accused only on the grounds that he is "guilty of the offence u/s 3 of PMLA"; in the instant matter there are no reasons available with ED to indicate that applicant/accused is guilty of offence u/s 3 of PMLA.
6. It is further submitted that applicant/accused is a nationally acclaimed businessman and highly reputed real estate developer who has been involved in real estate business from 1986 and through his flagship organization "Ambience", he has delivered real estate projects of international quality. It is submitted that applicant/accused is the Director of M/s Aman Hospitality Pvt Ltd (hereinafter referred to as AHPL); the said company purchased a

plot of commercial land at Shahdara admeasuring 20,000/- sq. meters in an open auction held by DDA on 03.03.2006 for the purpose of construction and development of five star hotel in order to meet the requirements of Commonwealth Games but allotment letter could be issued by the Hon'ble Apex Court on 24.11.2006, the building plans were sanctioned by DDA only on 26.03.2009 and thus, depriving AHPL of an opportunity to launch the hotel for Commonwealth Games. It is submitted that for technical evaluation, AHPL requisitioned the services of M/s PNB Gilts Ltd which estimated the cost of project at Rs.867 crores to be financed by way of term loan of Rs.580 crores and promoter contribution of Rs.287 crores and it has also been acknowledged that the promoters have already spent Rs.267.33 crores at their own end in terms of promoter contribution which was towards the procurement of land and construction. It is submitted that AHPL vide agreement dated 09.04.2008 engaged M/s Ambience Pvt. Ltd (APL) on turnkey basis to obtain all permissions, clearances and approvals of various authorities and to undertake the construction, development and completion of the aforesaid hotel project and APL obtained various permissions, clearances, approvals, NOC and sanction etc from various government and statutory departments at its own costs and commenced the construction by raising funds from Ambience group with an intent to refund the same from the payments to be received from AHPL in terms of Turnkey contract out of disbursement of the loan to be got sanction by AHPL from various banks. It is submitted that APL completed the construction of three level of basements, ground floor and upper four levels by making investigation of **Rs.267.33** crores upto 31.03.2009 and the loan was sanctioned for construction and development of the hotel **only after 31.03.2009**.

7. It is submitted that AHPL submitted application dated 27.04.2009 with Large Corporate Branch of Punjab National Bank to sanction the loan of Rs.150 crore to part finance the project for its construction and development of the project alongwith a request to sanction bank guarantee facility of Rs.60.0 crores in order to avail concessional custom duty under EPCG scheme of Government of India. It is submitted that a term loan of Rs.580 crores alongwith bank guarantee facility of Rs.60.0 crores through a consortium of bankers duly acknowledging that promoters have already spent an amount of Rs.267.33 crores was sanctioned. It is submitted that an Escrow Account for disbursement of sanctioned loan and making payment for construction and development of the hotel was opened with J &K Bank Limited, Ansal Plaza branch. It is submitted that all the banking facilities were used for the ultimate end use which was to construct the hotel and make it operational. It is submitted that the amount alleged to be siphoned off is infact repayment of funds earlier obtained for carrying out the construction. It is submitted that there is no siphoning or diversion of funds. It is submitted that a hotel worth about Rs 1200 crores, which is largest in Asia , is fully operational. It is further submitted that none of the eight lenders bank has till date moved any complaint against applicant accused alleging that he is a willful defaulter or that he is a fraud. It is submitted that in two forensic audits no misappropriation or diversion of funds has been reported till date. It is submitted that in all sincerity he attempted a onetime settlement (OTS) with the banks but that could not unfortunately fructify. It is submitted that applicant accused is absolutely innocent. It is thus prayed that applicant/accused may be released on bail.
8. In support of his submissions, Ld. counsel for applicant/accused has placed reliance upon the judgment in the matter of *Kiran*

Prakash Kulkarni v. ED SLP (Crl. No.) 1698/2019 decided on 11.04.2019, Amrendra Dharisingh v. ED Bail Application No. 2293/2021 decided on 21.06.2021, Sai Chandrashekhar v. Directorate of Enforcement 2021 SCC OnLine Delhi 1081, Okram Ibobi Singh v. E. 2020 Scc OnLine Mani 65, D. K. Shiva Kumar v. E. D Bail Application No. 2484/2019 decided on 23.10.2019, Bimal Kumar Jain & Naresh Jain v. E. D Bail Application no. 122/2021 decided on 11.08.201 and 13.08.2021, P. Chidambaram v. ED Criminal Appeal No. 1831/2019 decided on 04.12.2019 and Mehboob Dawood Shaikh v. State of Maharashtra 2004 (2) SCC 362.

9. Ld. Special Counsel for ED has vehemently opposed the bail application arguing that M/s AHPL is a Private Limited company in which the applicant/accused is one of the Directors w.e.f 25.09.2020 and is also the authorized signatory in bank accounts of M/s AHPL. It is submitted that M/s AHPL obtained a term loan of Rs.810 crores granted by consortium of banks wherein J & K Bank was the lead bank and also Bank Guarantee limit of Rs.60 crores was assessed for availing benefits of lower rate of custom and excise duty on the capital goods for the project under EPCG Scheme and besides this, M/s AHPL had availed working capital of Rs.3 crores from Punjab and Sind Bank. It is submitted that out of the total loan amount, the term loan amounting to Rs.227.01 crores was disbursed by J&K Bank in favour of M/s AHPL and thereafter, M/s AHPL turned defaulter and failed to repay the loan amount and the bank in furtherance of restructuring company's loan amount took a decision wherein a funded interest term loan of Rs.165.82 crores was sanctioned by all member banks in favour of the company out of which J&K Bank sanctioned amount of Rs.47.21 crores but since M/s AHPL failed to repay the loan amount, J&K

Bank declared the loan account of the company as NPA on 30.06.2018 and total outstanding towards J&K Bank is Rs.289.28 crores and total NPA of each of the banks as on 18.07.2017 was Rs.902.22 crores.

10. It is submitted that out of the total loan amount of Rs.810 crores, amount of Rs.781 crores was routed through the escrow account maintained with J&K Bank, Ansal Plaza. It is submitted that out of total Rs.781 crores received in the said Escrow account, Rs.145.5 crores was transferred to turn key contractor M/s Ambience (P) Ltd, Rs. 66 crores to M/s AHPL and Rs. 11.5 crores to Ambience Ltd. and Rs.443 crores were transferred to 21 entities and Rs.49 crores was transferred to four individuals who were not connected with the hotel project in any manner nor they provided any services or goods for the hotel project nor there is any proof to show that they were connected with the project. It is submitted that out of these 25 recipients, almost all of them were controlled by applicant/accused and he was the authorized signatory of most of these entities. It is submitted that immediately upon receipt of payment by these 25 entities, more than 95% of the aforesaid amount was transferred to the credit of two entities, namely M/s Raj Commercial and Agencies and M/s M&N Commercial controlled by Raj Singh Gehlot which was again transferred to other companies of Ambience Group and diverted for other purposes such as to settle the loan of other companies of Ambience Group and making Fixed Deposit. It is submitted that applicant/accused entered into a criminal conspiracy with other persons to fraudulently siphon off the loan amount by diverting the funds for other purposes and money so siphoned off by him as a result of criminal conspiracy qualifies as proceeds of crime and thus, a case u/s 3 of PMLA is made out against the

applicant/accused and the applicant/accused does not deserve to be released on bail.

11. In support of his submissions, Ld. Special Counsel has placed reliance upon the judgment in the matter of *Ahsan Ahmad Mirza v. ED WP(C) no. 408/2021 decided on 01.04.2021*, *Farooq Abdullah v. Directorate of Enforcement WP © No. 408/2021 decided on 01.04.2021*, *State of Maharashtra v. Vikram Anantrao Doshi & Ors (2014) 15 SCC 29*, *Radha Mohan Lakhota v. Deputy Director, PMLA 2010 SCC OnLine Bom 1116*, *Babulal Verma v. Enforcement Directorate 2021 SCC OnLine Bom 392*, *Smt. K. Sowbaghya v. Union of India & Ors, 2016 SCC OnLine Kar 282*, *Shyam Sunder Singhvi v. Union of India, S. B. Criminal Revision Petition No. 273/2019 decided on 24.01.2020* and *Dyani Antony Paul & Ors v. Union of India & Ors W. P No. 38642/2016 decided on 11.12.2020*.

12. I have heard the rival submissions made by both the parties and also carefully gone through the material available on record.

13. Before dealing with the rival contentions on merits, it would be apt to observe that at this stage, the court is not required to delve deep into the merits of the case and the court is merely required to form a prima facie opinion as to if applicant/accused deserves bail or not. The creditworthiness of the material available on record is a subject matter of trial. I am fortified in my opinion with the judgment of Hon'ble apex Court in the matter of **Kalyan Chandra Sarkar v. Rajesh Ranjan (2004) 7 SCC 528**, wherein it has been held as under:-

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the

case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
- (c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598 and Puran v. Rambilas (2001) 6 SCC.)

Now, let us deal with the contentions of Ld. defence counsel.

14. It is forcefully argued by Ld. counsel for applicant/accused that no offence u/s 3 of PMLA is made out in the instant matter as there are no proceeds of crime as defined u/s 2 (1)(u) of PMLA. It is submitted that the allegations in the predicate offence i.e. FIR No. 15/2019 dated 24.07.2019 regarding the scheduled offence is with regard to an attempt made by the applicant/accused to enter into a One Time Settlement (OTS) with J&K Bank for an amount of Rs.128.94 crores. It is submitted that such OTS was never executed. It is further argued that the charge-sheet filed in the scheduled offence does not allege that J&K Bank was defrauded or that the loan sanctioned in 2009 was based upon some fraudulent or dishonest misrepresentation of M/s Aman Hospitality Pvt Ltd (AHPL). It is further argued that there is no allegation of fraud or mis-use of power with regard to sanction and disbursal process of remaining seven banks as such entire loan of Rs.810 crores cannot be termed as proceeds of crime. It is further pointed out that none of the bank has filed any criminal complaint against AHPL alleging any fraud or cheating. It is further pointed out that there is no allegation that intention of AHPL was to cheat the banks right from

the very beginning. It is submitted that AHPL had already invested Rs.267.33 crores even before availing the disbursal of loan from the banks. It is thus argued that since there are no proceeds of crime, the main essential ingredient of offence u/s 3 of PMLA is absent in the instant matter.

15. On the contrary, Ld. SPP for ED has contended that the disbursed loan amount to J&K Bank itself qualifies as proceeds of crime as the same was disbursed to the applicant pursuant to a criminal conspiracy to cheat J&K Bank for the purpose of misappropriating bank's funds for personal use.
16. Perusal of the charge-sheet filed in the scheduled offences would reveal that applicant/accused in association with other accused persons hatched a criminal conspiracy to cheat the J&K Bank with an objective to divert/misappropriate bank's funds for personal use and pursuant to the criminal conspiracy so hatched, applicant/accused obtained three term loans and funded interest term loan from J&K Bank.
17. Perusal of the record would reveal that the initial loan proposal of the applicant/accused dated 12.03.2009 for sanction of Rs.75 crores and Bank Guarantee facility of Rs.15.0 crores from J&K Bank was rejected by the then Branch Head on 20.04.2009. The concerned bank officer gave very sound and convincing reasons while rejecting the proposal of the applicant/accused. However, unfortunately, the said Branch Head was mischievously transferred from Delhi to Srinagar and within a fortnight of her transfer, an enhanced loan of Rs.100 crores was sanctioned by the conniving bank officials to the applicant/accused without even making a mention of the earlier rejection note. The record further reveals that

the said loan was sanctioned upon the strength of expired sanctioned letter of other banks. The proposal of the applicant accused failed to make any disclosure about the turn key contractor. The loan process note not only fails to mention the sanction date but also mischievously omitted to make a reference of earlier loan rejection, leave aside any sound or convincing reason to disagree with the Predecessor. Evidently, one can safely infer that not only an inconvenient officer was conveniently transferred but the loan amount was disbursed to the applicant/accused against all sagacity and fiscal discipline.

18. One of the essential condition for disbursement of the loan required that the company shall not utilize the funds for any other purpose other than for implementation of the project. The term and conditions of the sanction order were flouted by applicant/accused with impunity and the concerned bank officials actively cooperated with the applicant/accused, turning a Nelson's eye towards the financially deviant behaviour of the applicant/accused. The term loan was released to the applicant/accused without adhering to the pro-rata mechanism. The record further reveals that instead of releasing first tranche of Rs.6.34 crores, as per J&K bank pro rata share of 17.24% in total Rs.580 crores, an amount of Rs.35 crores was released to the applicant/accused.
19. Thus, there is sufficient material available on record to support the prosecution case that the loan amount was disbursed to the applicant/accused pursuant to a criminal conspiracy to embezzle bank funds. Consequently, it cannot be contended that offence u/s 3 of PMLA cannot be validly invoked due to absence of proceeds of crime.
20. Further, Section 120 B of Indian Penal Code is a scheduled offence under the provisions of PMLA. The material available on record reveals that in the Predicate Offences, the applicant/accused has

been charged for commission of offence punishable under Section 120-B of Ranbir Penal Code and u/s 5 (1)(d) of Jammu & Kashmir Prevention of Corruption Act, which are peri materia with Section 120-B IPC and Section 13(1)(d) of Prevention of Corruption Act respectively. Admittedly, Section 120-B IPC and Section 13(1)(d) of Prevention of Corruption Act are scheduled offences under the provisions of PMLA and thus ED is justified in invoking Section 3 of PMLA against the applicant/accused. Reliance is placed upon the observations made by Hon'ble Jammu and Kashmir High Court in the matter of **Ahsan Ahmad Mirza v. Enforcement Directorate WP(C) No. 2780/2020D.O.D 15.10.2019.**

21. The contention of Ld. defence counsel that no guilty intention can be imputed against the applicant/accused right from the very inception as he has already spent Rs.267.33 crores upto 31.03.2009 before the sanction of the loan falls flat in the teeth of material available on record. The amount spent, if at all that was spent, is nothing more than the spade work towards the ultimate objective of defalcating the public money.
22. It is contended by Ld. counsel for applicant/accused that arrest of the applicant/accused was unjustified as he has joined the investigation as and when called for by the ED. It is pointed out that statement of applicant/accused u/s 50 of PMLA was recorded on as many as nine times. It is thus argued that the arrest of the applicant/accused was not at all justified under the mandate of Section 19 of PMLA.

In my considered opinion, considering the intricate nature of offence and seriousness of allegations, a detailed and sustained custodial interrogation of the applicant/accused is desirable for

unearthing the entire conspiracy and to unravel the modus operandi of the alleged offence in entirety. Thus, the contention of the Ld. counsel for applicant/accused is bereft of any merits and the same is accordingly rejected.

23. It is forcefully argued that the relevant information about the transactions concerning the loan and its utilization have been mischievously withheld by ED. It is submitted that even prior to disbursement of the loan amount in question, construction was commenced with the funds of the promoters. It is submitted that there is no siphoning or mis-appropriation of loan amount and the amount alleged to be siphoned off was in fact the money that was paid back by AHPL under the instructions of turn key contractor to the persons who supplied material and rendered services to AHPL before disbursement of the said loan.

Record would further reveal that the loan amount disbursed was siphoned off by the applicant/accused through various entities which are in the control of applicant/accused or his family members/relatives and some of the firms are found to be existing only on papers.

Further the said contention, when viewed from another perspective, deserves to be dismissed on an additional count. The representation of the applicant/accused dated 15.09.2020, submitted with ED, has been placed on record by the applicant/accused himself makes an interesting read in this regard. In his representation, the applicant/accused admits that around Rs.486.9 crores, were transferred to these 25 entities from escrow account without any bills/invoices raised by these entities. It is also interesting to note that in the written submissions, the applicant/accused has claimed that AHPL invested about Rs.267.33 crores before availing disbursement of loan from the banks. It is

claimed that the alleged sanction of funds is infact repayment of amount already invested by these entities towards the construction of the project. Perusal of the record further reveals that around Rs.188 crores are reported to have been invested towards the purchase of land. It is not the case of the applicant/accused that these entities have invested any money towards the purchase of land. Rather it is claimed that the money was paid towards the return of funds which was earlier obtained for carrying out the **construction**. Therefore, at the pertinent point of time, out of Rs.267.33 crores, only Rs. 79.33 crores (267.33-188.00) appears to have been invested towards the construction of the project. Now, it is really baffling to note that why would any sane person return back Rs.486 crores to these entities against an outstanding liability of Rs.79.33 crores.

- 24.Ld. SPP has drawn my attention to the statements recorded u/s 50 of PMLA wherein the witnesses have categorically alleged that money was received by them under the instructions of applicant/accused and they have never ever supplied any material or rendered any services to AHPL. The witnesses also claimed that money was returned back to the applicant/accused by them through various channels.
- 25.The material available on record suggests meticulous siphoning off funds and its deft layering by the applicant/accused, who happens to be a qualified Chartered Accountant. The material available on record, at this stage, sets out a formidable case of money laundering against the applicant/accused.

26. It is further contended by Ld. defence counsel that banks have not declared the account of AHPL as willful defaulter or fraud and none of the banks have ever filed any criminal complaint against AHPL. It is further submitted that the banks even invoked strategic debt structuring and even 51% of the shareholding worth about Rs.666.13 cr was transferred to the banks.

However, in my considered opinion, mere indolence of the bank authorities would not absolve the applicant/accused of his misdeeds. More so, when the bank officials are seen to be hand in glove with the applicant/accused, it is no surprise that they never reported the misdeed of the applicant/accused to the authorities.

27. It is further pointed out that the hotel in question has successfully been inaugurated and it is one of the largest hotel in Asia and total worth of the hotel is about Rs.1200 crores and its valuation has been done independently by various banks and even two forensic audits filed their report but they did not mention any misappropriation/diversion of funds by the company.

However, in the teeth of the material available on record, various banks and forensic audits comes under the scanner of doubt. Further, the representation of the applicant/accused dated 15.09.2020 reveals that the highest bid received under the swiss challenge method towards the value of the hotel was a paltry sum of Rs.287 crores, which certainly alludes to the fact that the alleged valuation of about Rs.1200 crores of the said hotel by the applicant/accused is grossly manipulated.

28. It is submitted that One Time Settlement (OTS) was tentatively agreed for Rs.470 crores as a base price as per swiss challenge method and the OTS letter was subsequently recalled on 08.03.2021. It is submitted that the FIR in the scheduled offences is

purely with regard to attempt to enter into an OTS and not with regard to any irregularity in grant of loan. It is submitted that the said OTS was a sincere attempt on the part of the applicant/accused to clear his debts, necessitated by the bad hotel business on account of covid.

Perusal of the record would reveal that out of the total outstanding liability of about Rs.783.96 crores towards the principle amount, leave aside the interest portion, in January, 2018, the applicant/accused in collusion with the conniving bank officials attempted to settle the outstanding principle amount for a paltry sum of Rs.286.95 crores, which speaks volumes about the intention of the applicant/accused to embezzle the public money with the help of mischievous bank officials.

29. In the end, it is argued that the applicant/accused is an old and ailing man with firm roots in the society and he is neither at flight risk nor in a position to temper with the evidence or influence the witnesses and thus, he deserves to be admitted on bail.

In the case at hand, the applicant/accused is a qualified Chartered Accountant. The crucial witnesses in the instant case are his acquaintances or relatives and being an influential person owing to his financial status and professional expertise, he would certainly attempt to influence the fair course of investigation in the case at hand.

Further, It has been observed by the Hon'ble Apex Court in **State of Gujarat v. Mohan Lal Jitmalji Porwal & Ors (1987) 2 SCC 364** as under :

"..The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the

Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest...”

In the matter of **Y. S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439**, Hon’ble Apex Court has observed that:

“..15) Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs 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.

16) 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...”

Therefore, the economic offences are required to be treated as a separate class and bail cannot be granted as a matter of routine.

30. Considering the nature of allegations, intricate nature of investigation and the possibility of the applicant/accused attempting to influence the course of investigation, I am of the considered opinion that the instant bail application is bereft of any merits and the same is accordingly dismissed.

31. Needless to say that nothing observed herein shall have any bearing upon the merit of the case.

32. Application is disposed off accordingly.

33. Instant order be uploaded on the court website immediately.

(Dharmender Rana)

ASJ-02/NDD/PHC/ND

10.09.2021