

IN THE HIGH COURT OF JHARKHAND AT RANCHI

B.A. No.13439 of 2021

Hemant Kumar Sinha @ Hement Kumar Sinha Petitioner
Versus
The State of Jharkhand Opp. Party

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Mr. Ashim Kumar Sahani, Advocate
For the State : Mr. Abhay Kumar Tiwari, A.P.P.
For the E.D. : Mr. Amit Kumar Das, Advocate

C.A.V. on 10.05.2022

Pronounced on 16.06.2022

Heard learned counsel for the applicant and learned A.P.P. for the State as well as learned counsel for the Enforcement Directorate.

2. This bail application has been filed on behalf of the abovenamed applicant with prayer to release on bail in connection with Enforcement Case Information Report (in short "ECIR") No.03 of 2020 registered under Section 4 of the Prevention of Money Laundering Act, 2002 (hereinafter to be referred as "the Act, 2002") pending in the court of learned Special Judge, C.B.I.-cum-PMLA, Ranchi.

3. Learned counsel for the applicant has submitted that the present case was instituted on the basis of complaint filed by Assistant Director (PMLA), Directorate of Enforcement under Section 44 read with Section 45 of the Act, 2002 for the offence under Section 4 of the said Act with these allegations that M.S.S. & Health Care Ayurvedic Trust (in short "Trust") was created under a trust deed 16th May, 2007 between the Settler and the Trustees. The present applicant—Hemant Kumar Sinha was the Chief Secretary of the trust and it was alleged that the trust was engaged in collecting money from the public by cheating the poor people and inducing them to invest money which would become fourfold within 16 months. The trust had enrolled the investors by collecting deposits of

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Rs.3000/- each and four post dated cheques of Rs.2300/- each were being issued to the investors in addition to four medicine coupons of Rs.700/- each. The trust was collecting money from the general public without prior permission of Reserve Bank of India while there is nothing in object clause of the said trust. F.I.R. No.281 of 2010 at Argora Police Station, Ranchi was lodged against the Chairman of the trust—Shri Gorakhnath Bhagat, Vice-Chairman—Rakesh Kumar Poddar, Chief Secretary—Hemant Kumar Sinha, Secretary—Sanjay Kumar and Treasurer-cum-Jr. Secretary—Mukesh Kumar Poddar under Sections 120-B, 406, 419, 420, 467, 468 and 471/34 of the Indian Penal Code. After investigation, the charge-sheet was filed against all these accused persons before the court concerned under the Act, 2002. During investigation, the statements of witnesses were recorded under Section 50 of the Act, 2002 and it revealed that the applicant—Hemant Kumar Sinha was the Chief Secretary of the Trust, who was monitoring the medical health camp related works. Various bank accounts of the said trust were scrutinized in which huge cash was deposited with regular withdrawal therefrom. On scrutiny of bank account maintained at Union Bank of India, Main Branch, Ranchi, it is found that a transfer of Rs.50 lakhs was made on 16th March, 2009 in the bank account of M.S.S. & Health Care Ayurvedic Trust. On scrutiny of bank account maintained at Union of Bank of India, Lohardaga, Branch, it is found that regular cash deposits multiple times in a single day more than 50 cash deposits transaction at times in a single day was made. There were two transfers of Rs.60 lacs and 70 lacs on 19th June, 2010 and 9th August, 2010 respectively was made in the bank account of the trust. Likewise in bank account maintained at Bank of Baroda, Ranchi Main Branch, Bank of

Baroda, Harmu Branch, Ranchi, Bank of Baroda, Hazaribag Branch, Bank of Baroda, Ramgarh Cant. Branch, Ramgarh and Bank of Baroda, Patna Branch, Patna frequent cash deposit along with many high cash deposit were transferred. Further in the bank account maintained at State Bank of India, Harmu Housing Colony Branch, Ranchi it was found that several cash deposits with frequent withdrawal were made. In fact, the said trust was never indulged in business of sell of land/social work. The aforesaid accused persons launched the deposit schemes by flouting all norms of SEBI, RBI & ROC with an ulterior motive and clear intention to cause pecuniary loss to the investors and corresponding pecuniary gain to themselves. The audit report also revealed that the trust had no other source of revenue to meet its promises to return the invested amount four-fold within 16 months. It would be evident from the audit report of financial year 2007-08 and 2008-09 that trust had very meagre income from sale of medicine while the liability towards investors to return them as promised was huge. Certain moveable properties were acquired out of the proceeds of the crime by the provisional attachment order dated 12th October, 2018 in ECIR No.ECIR/18/PAT/2012 dated 1st November, 2012 for provisional attachment of the moveable properties worth Rs.2,28,05,405/-, the detail of which was given in the schedule of the complaint. The total outstanding amount remained unpaid of the investors towards M.S.S. & Health Care Ayurvedic Trust was to the tune of Rs.10 crores approximate which was nothing but actually the proceeds of the crime as defined under Section 2 (1)(u) of the Act, 2002. The applicant Hemant Kumar Sinha was arrested on 13th August, 2010 in Doranda (Argora) P.S. Case No.281 of 2010 and was granted bail vide order dated 05.10.2010 passed in B.A. No.7357 of 2010.

4. Learned counsel for the applicant has submitted that the applicant was not trustee of the said trust as alleged. He was employee of the same and worked as Chief Secretary of the trust. He had never misused the privilege of bail granted to him in Doranda (Argora) P.S. Case No.281 of 2010. The applicant is a heart patient and had undergone surgery and is not having good health and he undertakes to abide all the conditions on being enlarged on bail. It is further submitted that co-accused persons, namely, Rakesh Kumar Poddar and Mukesh Kumar Poddar have already been granted bail by a co-ordinate Bench of this Court vide order dated 4th January, 2022 passed in B.A. No.9801 of 2020. The applicant has been languishing in jail since 19th June, 2021.

5. Learned counsel appearing on behalf of the Directorate of Enforcement opposed the contentions made by the learned counsel for the applicant and contended that most of the transaction in the bank account of the trust was made by the present applicant. He was having all operating and signing rights of the bank accounts of the trust. He along with his wife Pratima Sinha had made deposit of considerable amount in cash. In support of the allegations made in the complaint, the documentary evidence and counter affidavit has been filed on behalf the E.D. along with this bail application. It is further submitted that after declaring twin conditions of Section 45(1) of the Act, 2002 unconstitutional by the Hon'ble Apex Court in the case of **Nikesh Tarachand Shah vs. Union of India & Anr.** reported in **(2018) 11 SCC 1**, the said defects have been cured by the Parliament by way of **Amendment No.13 of 2018**, whereby the provisions of Section 45(1) revived and same would be applicable while considering the bail application of the applicant.

6. For disposal of this bail application, the following provisions of the Act, 2002 are being reproduced as under:-

Section 2(p) of the Act, 2002 provides:-

"(p) "money-laundering" has the meaning assigned to it in Section 3."

Sections 2(y) of the Act, 2002 provides:-

"(y) "scheduled offence" means –

(i) the offences specified under Part A of the Schedule; or

[(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is [one crore rupees] or more; or

(iii) the offences specified under Part C of the Schedule;]"

Sections 3 and 4 of the Act, 2002 provides as under:-

"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.

4. Punishment for money-laundering. – Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted."

7. Learned counsel for the applicant has submitted that there are no reasonable ground from the materials on record, against the applicant, that he has committed the alleged offence of money laundering. It is further submitted that the provisions of Section 45 of the Act, 2002 had been declared unconstitutional by the Hon'ble Apex Court in the case of ***Nikesh Tarachand Shah vs. Union of India & Anr.*** reported in ***(2018) 11 SCC 1***. After that judgment, the Section 45 of the Act, 2002 was amended by the Parliament by Act 13 of 2018 w.e.f. 19th April, 2018 and the amended provisions of Section 45 of the said act are under challenge before the Hon'ble Apex Court, therefore, the Section 45 of the

Act, 2002 would not apply in the present case.

8. Learned counsel for the Directorate of Enforcement opposed this contention and contended that the provisions of Section 45 which was declared unconstitutional by the Hon'ble Apex Court in the case of ***Nikesh Tarachand Shah (supra)*** was amended by Act 13 of 2018. Consequently, the presumption in regard to the constitutionality of the Section 45 of the Act, 2002 would be raised. It is further submitted that the amendment in Section 45 of the said act is under consideration before the Hon'ble Apex Court but the amended provision has not been stayed by the said Court, therefore, the same will be applied while considering the bail application of the applicant.

9. This Court is of the considered view that the provisions of Section 45 of the Act, 2002 prior to judgment of Hon'ble Apex Court in the case of ***Nikesh Tarachand Shah (supra)*** was declared unconstitutional; but the defects of provisions of the said act was cured by the Parliament by way of Amendment Act 13 of 2018 and consequently, the twin conditions of Section 45 while disposing of the bail applicant under the Act, 2002 stood revived.

10. The Hon'ble Apex Court in the case of ***Cheviti Venkanna Yadav vs. State of Telangana*** reported in ***2017 (1) SCC 283*** has held as under :-

"27. In State of Himachal Pradesh v. Narain Singh while dealing with the validation of statute the court ruled that:-

"It is therefore clear where there is a competent legislative provision which retrospectively removes the substratum of foundation of a judgment, the said exercise is a valid legislative exercise provided it does not transgress any other constitutional limitation."

11. The twin conditions under Section 45 (1) for the offences classified thereunder in Part-A of the Schedule was held arbitrary and discriminatory and invalid in ***Nikesh Tarachand Shah (supra)***.

Subsequently, the Section 45 of the Act, 2002 has been amended by Amendment Act 13 of 2008, whereby the words "***imprisonment for a terms of imprisonment of more than three years under Part A of the schedule***" has been substituted with "***accused of an offence under this Act.....***"

12. The Hon'ble Apex Court in ***Assistant Director Enforcement Directorate vs. Dr. V.C. Mohan 2022 LL (SC) 16*** held once the prayer for bail is made for the offence under PMLA 2002, the rigors & principle underlying Section of 45 get triggered on.

13. The Hon'ble Apex Court in the case of ***Prakash Gurbaxani v. The Directorate of Enforcement*** reported in ***2021 SCC Online P & H 1567*** has held as under :-

".....18. By Act 13 of 2018 Section 45(1) of the PMLA was sought to be amended w.e.f. 19.04.2018. Through such amendment the words "punishable for a term of imprisonment of more than three years under Part A of the Schedule" as occurring in Section 45(1) before the judgment of the Supreme Court in Nikesh Tarachand Shah's case (supra) were substituted with the words "under this Act". As per learned ASG, after such amendment, the defect on the basis of which the Supreme Court had declared Section 45(1) of the PMLA to be unconstitutional was cured and consequently the twin conditions prescribed in Section 45(1) stood revived.

14. The Hon'ble Apex Court in the case of ***State Of Gujarat vs. Mohanlal Jitamalji Porwal and Ors.*** reported in ***1987 (2) SCC 3645*** has held as under:-

".....5. 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....."

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15. In view of the submissions made and materials on record there are reasonable ground to believe that the applicant is guilty of the offence of money laundering and he is likely to commit the offence, if enlarged on bail. Accordingly, the bail application of the applicant is, hereby, rejected.

(Subhash Chand, J.)

Rohit/AFR