

Neutral Citation No. -2024:AHC:197044

Reserved On: November 13, 2024

Delivered On: December 17, 2024

Court No. - 80

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52246 of 2023

Applicant :- Mohammad Kashif

Opposite Party :- Directorate Enforcement Special Task Force
Government Of India Pravartan Bhawan Dr. APJ Abdul Kalam

Counsel for Applicant :- Pratik Kumar, Raghuvansh Misra

Counsel for Opposite Party :- Jitendra Prasad Mishra, Pawan Kumar
Srivastava

Hon'ble Samit Gopal, J.

1. An ECIR was registered on 19.04.2023 by the opposite party/Enforcement Directorate on the basis of an F.I.R. lodged as Case Crime No. 0210 of 2023, under Sections 419, 420, 467, 468, 469, 471 I.P.C. and Section 66D of the Information Technology Act, 2000, Police Station Surajpur, Noida, District Gautam Budh Nagar, Uttar Pradesh on 19.04.2023 against the applicant Mohammad Kashif alleging therein that an information was received that the accused was involved in extortion of money from people for getting their works done from Government Department by impersonating himself as a close associate of Ministers of Government of India. Inputs were generated from surveillance regarding national security and suspicious activities were noticed with respect to him since the last two (02) years. Mohammad Kashif extorted money by impersonating himself as a person close to Prime Minister and other Ministers of Government of India by unauthorizedly posting morphed/edited photos with the Prime Minister and other Ministers of Government of India on his social media accounts being Facebook and

Instagram. Posting of the said photographs was to influence people to gain personal financial benefits. The scrutiny further revealed that by influence gained on people by impersonating closeness to Ministers, he has got work contracts from Government of Rajasthan and other departments. He was intercepted by Noida Police in a car bearing Registration No. UP16 BL 0088 (Mercedes make) alongwith three mobile phones. On further checking his phones, Facebook Account “<https://www.facebook.com/kashif.ahmed144?mibextidZbWKwL>” and Instagram account id “kashif3001” were found to be installed. Examination of said social media accounts revealed that he had posted photos with the Prime Minister of India and other Ministers of Government of India. He also posted an invitation card in his name for the Oath Taking Ceremony of Prime Minister of India for 30.05.2019, invitation card in his name for lunch with the Prime Minister of India on 20.02.2019 and other such documents. All the said photographs appeared to be morphed/edited. On interrogation by the police, he revealed that by impersonating himself as a close associate to the Prime Minister of India and other Ministers, he extorted money from the people for allotment of government works from various Ministries, getting Government Jobs and other such works. He has illegally earned money which has been deposited in his HDFC Bank Account No. 59108826546786, in bank account in the name of his firm M/s Advice Allys’s having number 50200051263638, in the account of his company M/s Allyy Techsoft Private Limited and in the bank account of his friend Tanu. The offences under Sections 419, 420, 467 and 471 of Indian Penal Code, 1860 are covered under the definition of schedule offences as per Sections 2(1)(x) and 2(1)(y) of the Prevention of Money Laundering Act, 2002 (PMLA). Thus the money collected by the accused due to his criminal activities related to the schedule offences are Proceeds Of Crime as per Section 2(1) (u) of PMLA, 2002. A prima facie case of money laundering under Section 3 of Prevention of Money Laundering Act, 2002 punishable under Section 4 of the said Act

appears to have been made out. An ECIR is thus assigned to the case and taken up for investigation under the provisions of PMLA, 2002, being ECIR bearing no. STF/03/2023 of 2023, HQ- STF Zone, dated 19.04.2023.

2. After investigation a complaint dated 28.07.2023 was filed before the Special Judge, Anti-Corruption, CBI/PMLA, Ghaziabad, Uttar Pradesh, under Section 44 read with Section 45 of PMLA, 2002, titled as “The Assistant Director, Special Task Force, Enforcement Directorate vs. Mohammad Kashif”, with the following prayers:-

“In the facts and circumstances stated hereinabove, it is most humbly prayed that

A) The Hon’ble Court may be pleased to take cognizance of the offence against the accused for the offence of money-laundering as defined under Section 3, punishable under Section 4 of PMLA, 2002, and issue process against the accused.

B) The cash amounting to Rs.1,10,50,0000/- recovered and seized from the residence of Mohammad Kashif may be confiscated under Section 8(5) of Prevention of Money Laundering Act, 2002.

C) To grant any other relief, which this Hon’ble Court deem fit and proper, in the facts and circumstances of the case.”

3. The present bail application has been filed by the applicant thus in the said case with the following prayers:-

“It is, therefore, most respectfully prayed that in view of the facts and circumstances and those detailed in the accompanying affidavit, it is in the interest of justice that this Hon’ble Court may kindly be pleased to grant the bail to the Applicant in Sessions Case No. 2576/2023 ECIR No. ECIR/STF/03/2023 U/S: 3/4 PMLA, 2002, PS: Enforcement Directorate New Delhi, in the interest of justice, on any condition which this court may deem fit and proper on the facts and circumstances of the case.

And the Hon'ble Court may further be pleased to pass such other and/or further order as may be deemed necessary under the facts and circumstances of the case.”

4. Heard Sri Purnendu Chakravarty and Sri Pratik Kumar who are present in the Court and Sri Raghuvansh Misra, who is appearing through Video Conferencing, learned counsels for the applicant, Sri Kuldeep Srivastava who is also present in Court, learned counsel for the Enforcement Directorate/opposite party and perused the records.

5. Counter affidavit and rejoinder affidavit have been exchanged.

6. Learned counsels for the applicant submitted as under:

(i) The applicant has been falsely implicated in the present case.

(ii) The applicant has been granted bail vide order dated 23.5.2023 passed by Ist Additional Sessions Judge, Gautam Budh Nagar in Bail Application No. 2697 of 2022, Mohammad Kashif vs. State of U.P., in Case Crime No. 210 of 2023, under Sections 419, 420, 467, 468, 469, 471 I.P.C. and Section 66D Information Technology Act, Police Station Surajpur, District Gautam Budh Nagar, copy of the said bail order has been placed which is annexure no. 2 to the affidavit.

(iii) Charge has been framed in the ECIR on 07.11.2023.

(iv) In the present case the trial has started which is numbered as Special Case No. 12 of 2023, Enforcement Directorate vs. Mohammad Kashif and others, in which Sharmila Dalmia has been examined as P.W.-1 and her testimony has been completed on 23.08.2024. (The statement of Sharmila Dalmia has been placed which has been filed as annexure no. S.A.-1 to the second Supplementary Affidavit dated 17.09.2024).

(v) In the F.I.R. case although charge sheet has been filed against the applicant but no charge has been framed yet and the matter is pending before the court concerned at Gautam Budh Nagar which has not yet been transferred to the court at Ghaziabad.

(vi) A seizure was done on 19.04.2023 of premises identified as Flat No. 1503, Block-M, Great Value Sharnam Apartment, Sector-107, Noida, Gautam Budh Nagar, Uttar Pradesh but no one responded from the said house and thus information from the security guard was gathered along with information from persons nearby and the team returned back.

(vii) A search was then against conducted on 28.04.2023 of the said premises and cash, documents, impressions of rubber stamp and note counting machine were recovered which were taken into possession and a seizure memo dated 28.04.2023 was prepared, the said seizure memo has been placed which is annexure no. 5 to the affidavit of the bail application.

(viii) Amit Singh a person also involved, has not been made an accused in the matter.

(ix) The search was conducted in April 2023 (19.04.2023) but the Proceeds Of Crime were taken on 16.01.2024.

(x) The following judgements have been relied on behalf of the applicant:-

- (1) Abbas Ansari v. Directorate of Enforcement, Allahabad, Criminal Misc. Bail Application No. 6914 of 2023, para- 36. (ix) and 37;
- (2) Pavana Dibbur v. Enforcement Directorate: 2023 SCC OnLine SC 1586;
- (3) P. Chidambaram v. Directorate of Enforcement: (2020) 13 SCC 791;
- (4) Rohit Tandon v. Directorate of Enforcement: (2018) 11 SCC 46;
- (5) Nikesh Tarachand Shah v. Union of India: (2018) 11 SCC 1;

(6) Tarun Kumar v. Enforcement Directorate: 2023 SCC OnLine SC 1486;

(7) Directorate of Enforcement v. Aditya Tripathi: 2023 SCC OnLine SC 619;

(8) State (NCT of Delhi) v. Sanjeev Kumar Chawla: 2020 SCC OnLine Del 1970;

(9) Directorate of Enforcement v. M. Gopal Reddy: 2022 SCC OnLine SC 1862;

(10) Manish Sisodia v. CBI: 2023 SCC OnLine SC 1393, Para-27;

(11) Saumya Chaurasia v. Enforcement Directorate: 2023 SCC OnLine SC 1674.

(12) Prem Prakash v. Union of India: SLP (Crl.) No. 5416 of 2024: 2024 INSC 637, decided on 28.08.2024.

(xi) The applicant has no criminal history as stated in para-36 of the affidavit except for the predicate offence being F.I.R. No. 0210/2023.

(xii) The applicant is in jail since 25.05.2023 and he be ordered to be released on bail.

7. Per contra, learned counsel for the Enforcement Directorate/Opposite Party vehemently opposed the prayer for bail and submitted as under:

(i) The applicant is actively involved in suspicious activities and impersonating himself as a person close to the Prime Minister of India and other Ministers of Government of India.

(ii) The applicant has posted morphed and edited photographs of himself along with the Prime Minister of India and other Ministers of Government of India on his social media account to give an impression

that he is close to them so that he may easily extort money from persons by impersonating himself as close to the said persons.

(iii) There has been recovery from the place where the applicant was living which also gets connected with the nature of work he was doing.

(iv) The recovery memo of the said recovery has been prepared on 28.04.2023, copy of the said recovery memo is annexure no. 5 to the affidavit, which corroborates with the prosecution story and has relevance since the recovery is directly related and in consonance to the nature of work which the applicant was doing.

(v) The statement of the applicant, copy of which is annexure no. 6 to the affidavit, clearly shows his implication in the matter.

(vi) The version given by Tanu Sharma regarding seizure of money and articles from the said house also goes to show the implication of the applicant, (para- 11.1.b of the complaint).

(vii) Explanation given by the applicant regarding cash money and articles also corroborates the prosecution version, (para- 11.2 of the complaint).

(viii) Twin conditions as per Section 45 of PMLA, 2002, create a bar in granting bail to the applicant since there is credible evidence against him being the statement of Tanu Sharma during investigation, the statement of Sharmila Dalmia/P.W.-1 recorded before the trial court, CDR and collection of money by him.

(ix) The trial in the matter is going on in which the statement of P.W.-1/Sharmila Dalmia has been recorded and as such there is no delay in trial proceedings.

(x) No ground is made out in the bail application which may be rejected.

8. After having heard learned counsels for the parties and perusing the record, it is evident that the applicant was involved in posting
Criminal Misc. Bail Application No. - 52246 of 2023

morphed and edited photographs of himself along with the Prime Minister of India and other Ministers of Government of India. He had been impersonating and thus misrepresenting his status and extorting money from people for getting their work done through Government Agencies for personal financial gains. His Facebook Account and Instagram Account revealed posting of the said photographs along with the other documents (invitation card in his name of Oath Taking Ceremony of the Prime Minister of India, invitation card in his name for lunch with the Prime Minister of India etc.) just for persons to believe that he was a person well known to them and thus was successful in extorting them. The recovery of huge amount of money and other related documents and articles corroborate his deeds. The trial in the matter has started in which evidence of one prosecution witness (Sharmila Dalmia/P.W.-1) has been recorded. There is nothing credible to overcome the twin conditions of Section 45 of PMLA, 2002.

9. Looking into the facts and circumstances of the case as well as nature and gravity of the offence, I am not inclined to release the applicant on bail.

10. The bail application is, accordingly, rejected.

(Samit Gopal, J.)

Order Date :- 17.12.2024

Naresh