

Neutral Citation No. - 2024:AHC-LKO:39804

Court No. 21

Reserved

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3206 of 2024

Applicant :- Udhaw Singh

Opposite Party :- Enforcement Directorate Thru. Assistant Director,
Lko.

Counsel for Applicant :- Dheeraj Awasthi

Counsel for Opposite Party :- Rohit Tripathi, Manoj Kumar
Srivastava, Satyendra Nath Srivastava

Hon'ble Jaspreet Singh, J.

1. The applicant has been arraigned in ECIR No.LKZO/05/2021 in terms whereof proceedings under Prevention of Money Laundering Act, 2002 (hereinafter referred to as PMLA) has been triggered into motion. The said ECIR has been lodged in context with numerous FIR relating to the predicate offence against M/s Shine City Infra Project Pvt. Ltd. (hereinafter referred to as M/s Shine City) and its Director/Officers by various home-buyers/investors and prospective purchasers who had deposited money and invested with the said company and its directors, office bearers and it was neither returned nor the property/promised allotted land was given to them.

2. Largely, about more than 225 FIRs were lodged between year 2018 and 2021 and primarily all the FIRs were lodged under Sections 406, 409, 419, 420, 467, 468, 471, 504, 506 and 120-B IPC. The ECIR has arraigned Smt. Sashibala, Abhishek Kumar Singh, Udhaw Singh and Durga Prasad as the accused. The instant bail application has been moved by the applicant Udhaw Singh.

3. It is primarily stated that a company under the name and style

of M/s Shine City is the prime accused alongwith its director in the predicate offence namely Rashid Naseem, Asif Naseem, Mohd. Jaseem Khan, Javed Iqbal and other persons who are alleged to have cheated innocent citizens by alluring them to invest in the M/s Shine City in terms of various lucrative schemes and all such persons have been duped and defrauded by the M/s Shine City and its directors and persons in control of the company.

4. As far as the present applicant is concerned, in the ECIR, it has been alleged that the firms of the present applicant, namely, Baseera Niwas Pvt. Ltd, Ekanga Infrastructure Pvt. Ltd, Hariom Construction, Yash Enterprises, A. K. Enterprises and Baseera Construction are involved in dealing with Proceeds of Crime which were generated by M/s Shine City and its directors.

5. It is further alleged that the applicant could not explain the transactions and movement of funds especially as it was shown that about rupees 7.68 crores had been received in the accounts of his above mentioned firms over a period of five years and majority of the large transaction of such money has been received primarily from one source i.e. from M/s Shine City.

6. It has further been alleged that the applicant has helped M/s Shine City in purchasing properties and it has not been satisfactorily explained as to how and why such huge transaction of money was transacted between M/s Shine City and the present applicant. The explanation as given by the applicant allegedly did not inspire

confidence and that the applicant is said to be in actual possession of proceeds of crime which has been used by him and it has been attempted to project the proceeds of crime as untainted money by layering the same.

7. Learned counsel for the applicant has submitted that the applicant is neither named nor he has any role in so far as the numerous FIRs lodged against M/s Shine City and its director and office bearers is concerned. Thus, the applicant is not named nor charged with any offence in the FIRs lodged relating to the predicate offence hence, he has been wrongly and falsely implication in the ECIR.

8. The further submissions of the learned counsel for the applicant is that the applicant is alleged to be in possession of alleged proceeds of crime. It is further submitted that the entire allegation made against the applicant is absolutely false and motivated. The applicant had provided sufficient documents to justify the amount which has come into the accounts of his firms which was related to pure business transactions.

9. It is further submitted that as and when the Enforcement Directorate summoned the applicant, he was always present and he cooperated in the investigation and on eight dates the statement of the applicant was recorded.

10. It has also been submitted that the applicant is engaged in the business of real estate and property dealing and he also provides

certain ancillary services such as consultancy relating to documentation involved in real estate deals,, sale and purchase of land and construction work.

11. It was further stated by the applicant that his firm Baseera Niwas Pvt. Ltd was established in the year 2016-17 alongwith his wife for the purposes of construction of flats. This company had raised residential apartments in Lakshmanpur, Shivpur and Varanasi. Out of the twenty flats constructed, twelve were owned by the applicant and the remaining eight were sold out to Shailendra Singh, Chotan Singh and Chunna Rai.

12. In so far as the money received from the investors is concerned, the same was returned upon the sale of the flats and all flats owner have been given the possession by the year 2020.

13. He further explained that the other firm Ekanga Infrastructure Pvt. Ltd. was taken over by him in the year 2019 alongwith his wife and the said company possessed two properties, one a commercial property purchased in the year 2019 near Saheed Path, Lucknow which generates Rs.50,000/- per month as rental income and the other property was purchased in the year 2020 in Lucknow which was purchased from M/s Shine City.

14. His third firm Hariom construction was established in the year 2016 and it is a proprietorship firm of the applicant and its deals with supply of construction goods and most of the supply was made to M/s Shine City. His other firm Yash Enterprises was again established in

the year 2016 of which the applicant is the proprietor and through this firm, the applicant was supplying material for civil construction and in this case, major supplies have been made to M/s Shine City.

15. His other firm A. K. Enterprises is again a proprietorship firm created in the 2016 and this firm also deal in supplying material for civil construction and has made supplies mostly to M/s Shine City. The firm Baseera Construction again established in 2016 as a proprietorship was used to supply material for civil construction and in this case also majority of supplies have been made to M/s Shine City.

16. The applicant further indicated that apart from the business income he earned rupees ten lakh a year from agriculture. He also earned rupees one crore per year from dealing with property, rupees thirty lakh per year earned from consultancy relating to documentation for real estate deals and rupees 3.5 crores was received as commission.

17. The applicant purchased various movable property in the shape of vehicle comprising a motorcycle, three Fortuner (four wheeler), one Jeep campus (for wheeler), one Scorpio (four wheeler), LIC policies, mutual funds, gold jewelry and a flat in Mumbai, a shop in Mumbai, one flat in the name of his wife in Varanasi, 19 shops in Surat in the name of Baseera Niwas Pvt. Ltd., a commercial property purchased in the name of Ekanga Infrastructure Pvt. Ltd. from where rentals are being generated. The applicant also owns eight bighas of

land and earns rupees ten lakhs per year from his ancestral agricultural property and further other properties which were developed by the applicant.

18. Further submission of the learned counsel for the applicant is that the applicant had entered into an agreement with M/s Shine City, a copy of which has been brought on record as annexure no.2. He was authorized on behalf of the company to procure the land for the company M/s Shine City by an order of engagement and for the same the applicant was assured a brokerage ranging between 5 to 12%.

19. It is also urged that in furtherance thereof the applicant entered into deals helping M/s Shine City to procure land from agriculturists. The sale deeds were executed by the agriculturists in the name of M/s Shine City and apart from the brokerage to which the applicant was entitled, he has no other role to play in any other transaction. All the money was paid by M/s Shine City to the agriculturists in their account and no money in this regard has come into the accounts of the applicant.

20. It is also urged that since M/s Shine City was procuring large tracts of land for its development, the applicant was required to construct boundary wall to secure the said land purchased by the company M/s Shine City and the applicant was paid for this work. Certain tracts of land was uneven and in order to level the same, the applicant procured and provided soil, which was sold to M/s Shine City.

21. It is thus urged that the applicant who is in legitimate business had offered his business services for which he has been paid commission, cost of material supplied and cost towards construction of boundary wall and other ancillary work and as such other than that the applicant had no deal with M/s Shine City. The applicant has paid his taxes and he has also been involved in other construction work such as construction of apartments which have been sold out from where he also earned, hence it cannot be said that the money in the hands of the applicant are the proceeds of crime rather it is his business earnings.

22. It is also urged that this is the sole reason why the applicant has not been named in any of the predicate offence despite numerous FIRs filed. The applicant has brokered and received commission and helped M/s Shine City acquire land from the farmers. However, it does not prove any complicity of the applicant. It is further urged that none of the seller of land to M/s Shine City have come forward to make any allegation against the applicant.

23. Learned counsel for the applicant further submits that it may be that M/s Shine City and its director and office bearer may appear to have been involved in alluring investors and home buyers but that does not lead to any complicity of the applicant inasmuch as the business deals of the applicant is quite different from the transactions or deal between the aggrieved home buyers/investors and the company M/s Shine City, hence one cannot be used interchangeably

with the other, to implicate the applicant.

24. It has further been submitted that even though the applicant had given his statement and shared all necessary documents in support of his case with the Enforcement Directorate during investigation and even assuming, if the applicant may not have been able to justify the source of the funds or having properties which were beyond the value as indicated in his tax record even then, that, at best can be a case of non-disclosure of income that may be a contravention or violation of the provision of the income tax Act or any other taxation statute but by no stretch of imagination it can be said to be an offence in terms of Sections 3 and 4 of the PMLA. It is thus submitted that the applicant who otherwise is innocent has been framed and he has been in custody since 22.12.2023 and does not have any other criminal history to his credit.

25. It is lastly submitted that the applicant as and when required gave his statement to the Enforcement Directorate and throughout the investigation cooperated, under such circumstances, there is no chance for the applicant to either flee justice or tamper with any evidence. The trial is yet to commence and in light of the voluminous documentary evidence and the number of witnesses the said trial is not likely to conclude soon, in such circumstance, the applicant be enlarged on bail.

26. Shri Rohit Tripathi, learned counsel for the Enforcement Directorate has opposed the aforesaid bail application and he has

submitted that during investigation ample material was unearthed which clearly indicated that the applicant was directly involved in process of money laundering.

27. It is further urged that the offence of money laundering does not necessarily require that the applicant must be named accused in the predicate offence. Even if at all, the applicant is not named in the FIR lodged in context with the predicate offence but language of Section 3 of the PMLA is such that even if the applicant falls foul of the said section, he can be proceeded under the PMLA.

28. It has further been urged that during investigation it was found that large amount of money has been transferred into the various accounts of the applicant under the head of commission, ranging between 5 to 12 % which is said to have been paid which is exorbitantly high whereas in such real estate business generally the brokerage commission do not exceed 3%.

29. It has also been stated that there was not enough material or justification which could *prima facie* establish the justification and nexus between large amount of money said to have been received by the applicant, from M/s Shine City, with the supplies as well as for the construction work done. Hence, the submissions of the counsel for the applicant does not merit consideration.

30. During investigation, it was found that a total sum of rupees 7.80 crores were received by the applicant in his different bank accounts, this amount was also utilized by the applicant to purchase an

of immovable property in Lucknow which was earlier in the name of M/s Shine City. Upon further investigation, it was also found that in the books of account of M/s Shine City, the amount paid to the applicant has been shown as advance for land and not for the construction work which allegedly as per the applicant was done by him.

31. There was no justification or explanation regarding the payment of high brokerage and this clearly indicated the complicity that the applicant was assisting the prime accused in money laundering and the proceeds of crime have been projected to be untainted by layering it through the accounts of the applicant, in such circumstances, the applicant is *prima facie* involved in the offence of money laundering and as such the bail application deserves to be rejected.

32. The Court has heard the learned counsel for the parties and also perused the material on record.

33. Before dealing with the respective submissions of the learned counsel for the parties, it will be appropriate to take a glance at the certain relevant provisions relating to PMLA.

Section 2(u) of the PMLA defines '*proceeds of crime*' as under:-

(u) "proceeds of crime" 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]

[Explanation- For the removal of doubts, it is hereby clarified that 'proceeds of crime' including property not

only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence]

34. Scheduled offence has been defined in Section 2(y) which reads as under:

- (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;]

35. The offence of money laundering has been defined in Section 3 while the punishment for money laundering has been provided in Section 4 which reads 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 [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.*

[Explanation- For the removal of doubts, it is hereby clarified that -

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:-

- (a) concealment, or*
- (b) possession; or*
- (c) acquisition; or*
- (d) use; or*
- (e) projecting as untainted property; or*
- (f) claiming as untainted property,*

in any manner whatsoever;

(ii) *the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever]*

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 involve 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.

36. In so far as the issue regarding consideration of an application for bail is concerned, the same is provided under Section 45 which reads as under:-

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] 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], 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 office of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.

[(1A) 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.]

(2) The limitation on granting of bail specified in subsection (1) is in addition to the limitation under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

[Explanation- For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfillment of conditions under Section 19 and subject to the conditions enshrined under this section.]

37. Having taken a glance at the aforesaid statutory provisions it now will be worthwhile to notice certain decisions of the Apex Court on the issue of the offence of money laundering and the approach of courts while dealing with an application for bail.

38. The Apex Court in ***Rohit Tandon v. Directorate of Enforcement***, (2018) 11 SCC 46 has held as under:-

"19. The sweep of Section 45 of the 2002 Act is no more res intergra. In a recent decision of this Court in Gautam Kundu v. Directorate of Enforcement (2015) 16 SCC 1, this Court has had an occasion to examine it in paras 28-30. It will be useful to advert to paras 28 to 30 of this decision which read thus : (SCC pp. 14-15)

"28. Before dealing with the application for bail on merit, it is to be considered whether the provisions of Section 45 of PMLA are binding on the High Court while considering the application for bail under Section 439 of the Code of Criminal Procedure. There is no doubt that PMLA deals with the offence of money laundering and Parliament has enacted this law as per commitment of the country to the United Nations General Assembly. PMLA is a special statute enacted by Parliament for dealing with money laundering. Section 5 of the Code of Criminal Procedure, 1973 clearly lays down that the provisions of the Code of Criminal Procedure will not affect any special statute or any local law. In other words, the provisions of any special statute will prevail over the general provisions of the Code of Criminal Procedure in case of any conflict.

29. Section 45 of PMLA starts with a non obstante clause which indicates that the provisions laid down in Section 45 of PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. Section 45 of PMLA imposes the following two conditions for grant of bail to any person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule of PMLA:

(i) That the prosecutor must be given an opportunity to oppose the application for bail; and

(ii) That the court must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is not likely to commit any offence while on bail.

30. The conditions specified under Section 45 of PMLA are mandatory and needs to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PMLA. Section 65 requires that the provisions of CrPC shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of CrPC would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under Section 439 CrPC. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant."

(emphasis supplied)

20. In para 34, this Court reiterated as follows : (Gautam Kundu case, SCC p. 16)

"34. ... We have noted that Section 45 of PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. As mentioned earlier, Section 45 of PMLA imposes two conditions for grant of bail, specified under the said Act. We have not missed the proviso to Section 45 of the said Act

which indicates that the legislature has carved out an exception for grant of bail by a Special Court when any person is under the age of 16 years or is a woman or is sick or infirm. Therefore, there is no doubt that the conditions laid down under Section 45-A of PMLA, would bind the High Court as the provisions of special law having overriding effect on the provisions of Section 439 of the Code of Criminal Procedure for grant of bail to any person accused of committing offence punishable under Section 4 of PMLA, even when the application for bail is considered under Section 439 of the Code of Criminal Procedure.”

The decisions of this Court in Subrata Chattoraj v. Union of India (2014) 8 SCC 768, Y.S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439 and Union of India v. Hassan Ali Khan (2011) 10 SCC 235 have been noticed in the aforesaid decision.

21. The consistent view taken by this Court is that economic offences having deep-rooted conspiracies and involving huge loss of public funds need 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. Further, when attempt is made to project the proceeds of crime as untainted money and also that the allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifts on the accused persons under Section 24 of the 2002 Act.

22. It is not necessary to multiply the authorities on the sweep of Section 45 of the 2002 Act which, as aforementioned, is no more res integra. The decision in Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra (2005) 5 SCC 294 and State of Maharashtra v. Vishwanath Maranna Shetty, (2012) 10 SCC 561, dealt with an analogous provision in the Maharashtra Control of Organised Crime Act, 1999. It has been expounded that the Court at the stage of considering the application for grant of bail, shall consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the Court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail.

31. Suffice it to observe that the appellant has not succeeded in persuading us about the inapplicability of the threshold stipulation under Section 45 of the Act. In the facts of the present case, we are in agreement with the view taken by the Sessions Court and by the High Court. We have independently examined the materials relied upon by the prosecution and also noted the inexplicable silence or reluctance of the appellant in disclosing the source from where such huge value of demonetised currency and also new currency has been acquired by him. The prosecution is relying on statements of 26 witnesses/accused already recorded, out of which 7 were considered by the Delhi High Court. These statements are admissible in evidence, in view of Section 50 of the 2002 Act. The same makes out a formidable case about the

involvement of the appellant in commission of a serious offence of money laundering. It is, therefore, not possible for us to record satisfaction that there are reasonable grounds for believing that the appellant is not guilty of such offence. Further, the courts below have justly adverted to the antecedents of the appellant for considering the prayer for bail and concluded that it is not possible to hold that the appellant is not likely to commit any offence ascribable to the 2002 Act while on bail. Since the threshold stipulation predicated in Section 45 has not been overcome, the question of considering the efficacy of other points urged by the appellant to persuade the Court to favour the appellant with the relief of regular bail will be of no avail. In other words, the fact that the investigation in the predicate offence instituted in terms of FIR No. 205/2016 or that the investigation qua the appellant in the complaint CC No. 700 of 2017 is completed; and that the proceeds of crime are already in possession of the investigating agency and provisional attachment order in relation thereto passed on 13-2-2017 has been confirmed; or that charge-sheet has been filed in FIR No. 205/2016 against the appellant without his arrest; that the appellant has been lodged in judicial custody since 2-1-2017 and has not been interrogated or examined by the Enforcement Directorate thereafter; all these will be of no consequence."

39. Similarly, the Apex Court in ***Nikesh Tarachand Shah v.***

Union of India, (2018) 11 SCC 1 has held as under:-]

"11. Having heard the learned counsel for both sides, it is important to first understand what constitutes the offence of money laundering. Under Section 3 of the Act, the kind of persons responsible for money laundering is extremely wide. Words such as "whosoever", "directly or indirectly" and "attempts to indulge" would show that all persons who are even remotely involved in this offence are sought to be roped in. An important ingredient of the offence is that these persons must be knowingly or actually involved in any process or activity connected with proceeds of crime and "proceeds of crime" is defined under the Act, by Section 2(1)(u) thereof, to mean any property derived or obtained directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence (which is referred to in our judgment as the predicate offence). Thus, whoever is involved as aforesaid, in a process or activity connected with "proceeds of crime" as defined, which would include concealing, possessing, acquiring or using such property, would be guilty of the offence, provided such persons also project or claim such property as untainted property. Section 3, therefore, contains all the aforesaid ingredients, and before somebody can be adjudged as guilty under the said provision, the said person must not only be involved in any process or activity connected with proceeds of crime, but must also project or claim it as being untainted property."

40. In ***Vijay Madanlal Choudhary v. Union of India, 2022 SCC***

OnLine SC 929 the Apex Court has held as under:-

"269. From the bare language of Section 3 of the 2002 Act, it is amply

clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.

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295. *As aforesaid, in this backdrop the amendment Act 2 of 2013 came into being. Considering the purport of the amended provisions and the experience of implementing/enforcement agencies, further changes became necessary to strengthen the mechanism regarding prevention of money-laundering. It is not right in assuming that the attachment of property (provisional) under the second proviso, as amended, has no link with the scheduled offence. Inasmuch as Section 5(1) envisages that such an action can be initiated only on the basis of material in possession of the authorised officer indicative of any person being in possession of proceeds of crime. The precondition for being proceeds of crime is that the property has been derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence. The sweep of Section 5(1) is not limited to the accused named in the criminal activity relating to a scheduled offence. It would apply to any person (not necessarily being accused in the scheduled offence), if he is involved in any process or activity connected with the proceeds of crime. Such a person besides facing the consequence of provisional attachment order, may end up in being named as accused in the complaint to be filed by the authorised officer concerning offence under Section 3 of the 2002 Act.*

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387. *Having said thus, we must now address the challenge to the twin conditions as applicable post amendment of 2018. That challenge will have to be tested on its own merits and not in reference to the reasons weighed with this Court in declaring the provision, (as it existed at the relevant time), applicable only to offences punishable for a term of imprisonment of more than three years under Part A of the Schedule to the 2002 Act. Now, the provision (Section 45) including twin conditions would apply to the offence(s) under the 2002 Act itself. The provision post 2018 amendment, is in the nature of no bail in relation to the offence of money-laundering unless the twin conditions are fulfilled. The twin conditions are that there are reasonable grounds for believing that the accused is not guilty of offence of money-laundering and that he is not likely to commit any offence while on bail. Considering the purposes and objects of the legislation in the form of 2002 Act and the background in which it had been enacted owing to the commitment made to the international bodies and on their recommendations, it is plainly clear that it is a special legislation to deal with the subject of money-laundering activities having transnational impact on the financial systems including sovereignty and integrity of the countries. This is not an ordinary offence. To deal with such serious offence, stringent measures are provided in the 2002*

Act for prevention of money-laundering and combating menace of money-laundering, including for attachment and confiscation of proceeds of crime and to prosecute persons involved in the process or activity connected with the proceeds of crime. In view of the gravity of the fallout of money-laundering activities having transnational impact, a special procedural law for prevention and regulation, including to prosecute the person involved, has been enacted, grouping the offenders involved in the process or activity connected with the proceeds of crime as a separate class from ordinary criminals. The offence of money-laundering has been regarded as an aggravated form of crime “world over”. It is, therefore, a separate class of offence requiring effective and stringent measures to combat the menace of money-laundering.

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400. *It is important to note that the twin conditions provided under Section 45 of the 2002 Act, though restrict the right of the accused to grant of bail, but it cannot be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. The discretion vests in the Court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the 2002 Act. While dealing with a similar provision prescribing twin conditions in MCOCA, this Court in **Ranjitsing Brahmajeetsing Sharma(2005) 5 SCC 294**, held as under:*

“44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter

deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby”
(emphasis supplied)

401. We are in agreement with the observation made by the Court in **Ranjitsing Brahmajeetsing Sharma**. The Court while dealing with the application for grant of bail need not delve deep into the merits of the case and only a view of the Court based on available material on record is required. The Court will not weigh the evidence to find the guilt of the accused which is, of course, the work of Trial Court. The Court is only required to place its view based on probability on the basis of reasonable material collected during investigation and the said view will not be taken into consideration by the Trial Court in recording its finding of the guilt or acquittal during trial which is based on the evidence adduced during the trial. As explained by this Court in **Nimmagadda Prasad(2013) 7 SCC 466** the words used in Section 45 of the 2002 Act are “reasonable grounds for believing” which means the Court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubt."

41. Similarly, the Apex Court in **Tarun Kumar v. Enforcement Directorate, 2023 SCC OnLine SC 1486** has held as under:-

"15. In our opinion, there is hardly any merit in the said submission of Mr. Luthra. In **Rohit Tandon v. Directorate of Enforcement (2018) 11 SCC 46**, a three Judge Bench has categorically observed that the statements of witnesses/accused are admissible in evidence in view of Section 50 of the said Act and such statements may make out a formidable case about the involvement of the accused in the commission of a serious offence of money laundering. Further, as held in **Vijay Madanlal** (supra), the offence of money laundering under Section 3 of the Act is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The offence of money laundering is not dependent or linked to the date on which the scheduled offence or predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with the proceeds of crime. Thus, the involvement of the person in any of the criminal activities like concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so, would constitute the offence of money laundering under Section 3 of the Act.

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17. As well settled by now, the conditions specified under Section 45 are mandatory. They need to be complied with. The Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any

offence while on bail. It is needless to say that as per the statutory presumption permitted under Section 24 of the Act, the Court or the Authority is entitled to presume unless the contrary is proved, that in any proceedings relating to proceeds of crime under the Act, in the case of a person charged with the offence of money laundering under Section 3, such proceeds of crime are involved in money laundering. Such conditions enumerated in Section 45 of PML Act will have to be complied with even in respect of an application for bail made under Section 439 Cr. P.C. in view of the overriding effect given to the PML Act over the other law for the time being in force, under Section 71 of the PML Act."

42. Again, the Apex Court in ***Pavana Dibbur v. Enforcement***

Directorate, 2023 SCC OnLine SC 1586 has held as under:-

15. *The condition precedent for the existence of proceeds of crime is the existence of a scheduled offence. On this aspect, it is necessary to refer to the decision of this Court in the case of **Vijay Madanlal Choudhary**. In paragraph 253 of the said decision, this Court held thus:*

"253. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause "proceeds of crime", as it obtains as of now."

(underline supplied)

16. *In paragraphs 269 and 270, this Court held thus:*

"269. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or

activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.

270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.

(underline supplied)

17. Coming back to Section 3 of the PMLA, on its plain reading, an offence under Section 3 can be committed after a scheduled offence is committed. For example, let us take the case of a person who is unconnected with the scheduled offence, knowingly assists the concealment of the proceeds of crime or knowingly assists the use of proceeds of crime. In that case, he can be held guilty of committing an offence under Section 3 of the PMLA. To give a concrete example, the offences under Sections 384 to 389 of the IPC relating to “extortion” are scheduled offences included in Paragraph 1 of the Schedule to the PMLA. An accused may commit a crime of extortion covered by Sections 384 to 389 of IPC and extort money. Subsequently, a person unconnected with the offence of extortion may assist the said accused in the concealment of the proceeds of extortion. In such a case, the person who assists the accused in the scheduled offence for concealing the proceeds of the crime of extortion can be guilty of the offence of money laundering. Therefore, it is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged must have been shown as the accused in the scheduled offence. What is held in paragraph 270 of the decision of this Court in the case of **Vijay Madanlal Choudhary** supports the above conclusion. The conditions precedent for attracting the offence under Section 3 of the PMLA are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in clause (u) of

sub-section (1) of Section 3 of the PMLA.

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31. While we reject the first and second submissions canvassed by the learned senior counsel appearing for the appellant, the third submission must be upheld. Our conclusions are:

a. It is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged, must have been shown as the accused in the scheduled offence;

b. Even if an accused shown in the complaint under the PMLA is not an accused in the scheduled offence, he will benefit from the acquittal of all the accused in the scheduled offence or discharge of all the accused in the scheduled offence. Similarly, he will get the benefit of the order of quashing the proceedings of the scheduled offence;

c. The first property cannot be said to have any connection with the proceeds of the crime as the acts constituting scheduled offence were committed after the property was acquired;

d. The issue of whether the appellant has used tainted money forming part of the proceeds of crime for acquiring the second property can be decided only at the time of trial; and

e. The offence punishable under Section 120-B of the IPC will become a scheduled offence only if the conspiracy alleged is of committing an offence which is specifically included in the Schedule.

43. Having examined the statutory provisions as well as the dictum of the Apex Court in the aforesaid mentioned decisions and applying the principles as laid therein to the facts of the instant case. The position as obtained, *prima facie*, is as under:-

(i) Apparently, the record reflects that the applicant has six business firms and almost all the firms have come in existence some time in and around the year 2016 and onwards. The private limited company, namely Baseera Niwas Pvt. Ltd., Ekanga Infrastructure Pvt. Ltd., are closely held companies comprising of the applicant and his wife. Hariom Construction, Yash Enterprises, A. K. Enterprises and Baseera Construction and sole proprietorship firms of the applicant.

(ii) It is in the accounts of the aforesaid firms that an amount of rupees 7.80 crores have been received from M/s Shine City (the prime accused) over a period about five years.

(iii) A letter of engagement has been brought on record by the applicant as annexure no.2 to indicate that in terms of the said letter the applicant was authorized to procure land from the farmers on behalf of the M/s Shine City and for which commissions ranging between from 5 to 12% were paid.

(iv) Through certain firms of the applicant, commercial properties have been purchased which generated rental income but no other commercial work or business activity has been done from the said firms.

(v) The applicant is said to have done work for M/s Shine City for construction and supply of material but this is highly debatable especially noticing the stand of the Enforcement Directorate who has alleged that the extent of work and supply made by the applicant in context with the money paid by M/s Shine City to the applicant in his firms are not as per prudent business practices.

44. In light of the above, the thrust of the submission of the learned counsel for the applicant that the applicant is a bona fide business man who just had pure business transaction with M/s Shine City and he received money for the work done and supplies made which cannot be taken as a commission of offence or as being involved in money laundering.

45. At this stage, it will be relevant to refer to Section 2(1)(u) which defines the phrase '*proceeds of crime*' and it clearly indicates that any person who derives any property or obtains, directly or indirectly as a result of a criminal activity would be treated as proceeds of crime. The word '*property*' as defined in Section 2(1)(v) includes both movable and immovable property as also tangible or intangible, corporeal or incorporeal and includes deeds and instruments evidencing title or interest indicates that it is a wholesome inclusive definition.

46. The offence of money laundering as per Section 3 not only relates to generation of such proceeds of crime but it also includes any activity directly or indirectly relating to concealment or possession or acquisition or use amongst others. The said definition is very wide and inclusive, thus, the fact that directly or indirectly if any person is in possession or use of such proceeds of crime whether directly or indirectly, knowingly assists or knowingly is a party or actually involved in any activity connected with proceeds of crime relating to concealment possession acquisition or use or projecting the property as untainted property or claiming as untainted property in any manner whatsoever would be liable for any offence under the PMLA.

47. In the instant case from the perusal of the complaint and the material brought on record, it reflects *prima facie* involvement of the applicant. Even though, this Court is conscious of the fact that at this stage a mini trial is not be held nor the court is required to enter into the merits or the depth of the evidence to return a finding of guilt, but

what is required of the Court is to *prima facie* consider the material available on record to enable the court to satisfy itself in order to enable it to form reasonable belief that the applicant is not guilty of the offence and that he is not likely to commit any offence on bail which is one of the condition as enshrined in Section 45 of the PMLA.

48. While forming such satisfaction, the Court is also required to consider the nature and gravity of the accusation, severity of the punishment in the event of conviction, danger of the accused absconding or fleeing, character, behaviour, means, position and standing of the accused and the likelihood of the offence being repeated, reasonable apprehension of the witnesses being influenced and danger, of course, of justice being defeated by grant of bail.

49. It is in the aforesaid backdrop and considering the material available on record including the statements which were given by the applicant and the manner in which the applicant has explained the movement of the funds and how it has come into the account of the applicant, there is *prima facie* material against the applicant to link him with the movement and trail of funds from M/s Shine City into the various accounts of the applicant and his closely held business firm.

50. Even though the applicant was called for recording his statements and the applicant gave his statements on eight dates, this only demonstrates that the applicant on being called had appeared to give his statement but it in no way is an explanation for *prime facie*

lending sufficiency to his statements regarding the movement of funds from M/s Shine City into the accounts of the applicant and his firms.

51. It may be right to say that the amount in the accounts of the applicant and his firm was derived from the business transaction and the business relations of the applicant and his firms with M/s Shine City but despite taking the same at its face value, yet there is no explanation as to how the applicant was engaged to enter into deal with the farmers to procure land for and on behalf of the company M/s Shine City. From the perusal of the letter of engagement, filed as annexure no.2, apparently does not bare any date nor it refers to any resolution by the Board of Directors approving the engagement of the applicant and conferring powers on the applicant to negotiate on behalf of the company M/s Shine City.

52. The company M/s Shine City admittedly has not executed any power of attorney in favour of the applicant nor there is any explanation as to why and for which special services the applicant would receive such high rates of brokerage ranging between 5 to 12%. This assumes significance for the reason that payment of such high percentage of commission is not prevalent in the business of real estate brokerage. The generation of wealth by the applicant and his firms from 2016 on wards in various parts of the country such as a shop and a flat in Mumbai, 19 shops in Surat, number of four wheelers and purchase of a property from M/s Shine City only through business transaction from a select few customers of which

M/s Shine City is the 'prominent golden goose' for the applicant and coupled with the fact that the said statements given to the Enforcement Directorate are at variance with the accounts statements of M/s Shine City. The meteoric rise of the applicant and his firms in business with the business aid, encouragement and boost from mainly M/s Shine City indicates *prima facie* complicity of the applicant.

53. Thus taking an overall view including the gravity of offence including the fact that the witnesses of fact are yet to be examined also keeping in mind the dictum of the Apex Court in *Pavana Dibbur (supra)* and for all the reasons aforesaid, this Court is unable to persuade itself to form a, *prima facie*, satisfaction in terms of Section 45 of the PMLA, at this stage, that the applicant is not guilty or that he may not commit an offence on bail. Thus, for all the aforesaid reasons, the bail application is **rejected**.

54. However, it is also clarified that any observations made by this Court may not be taken as an expression of opinion on merits. The trial court is directed to expedite the trial to complete it as swiftly as possible and the prosecuting agency shall not seek any unnecessary adjournments on the ground of examination of witnesses.

(Justice Jaspreet Singh)

Order Date :- May 25, 2024
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