



ITEM NO.4

COURT NO.4

SECTION II-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s).5890/2024

(Arising out of impugned final judgment and order dated 08-04-2024 in MCRC No. 402/2024 passed by the High Court Of Chhatisgarh At Bilaspur)

SUNIL KUMAR AGRAWAL

Petitioner(s)

VERSUS

DIRECTORATE OF ENFORCEMENT

Respondent(s)

(FOR ADMISSION and IA No.100708/2024-EXEMPTION FROM FILING O.T.)

Date : 17-05-2024 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv.
Mr. Vikas Pahwa, Sr. Adv.
Mr. Nikhil Varshney, Adv.
Mr. Tushar Giri, Adv.
Mr. Sahil Bhalaik, AOR
Mr. Siddharth Anil Khanna, Adv.
Mr. Sriharsh Raj, Adv.
Mr. Kartik Sharma, Adv.
Ms. Namisha Jain, Adv.
Ms. Nancy, Adv.
Mr. Devashish Chauhan, Adv.
Mr. Ritik Arora, Adv.

For Respondent(s) Mr. S.V. Raju, A.S.G.
Mr. Mukesh Kumar Maroria, AOR
Mr. Zoheb Hussain, Adv.
Mr. Annam Venkatesh, Adv.
Mr. Arkaj Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. The issue that arises for consideration in this case is whether the petitioner is entitled to be released on regular bail

in Crime No.ECIR/RPZO/09/2022 dated 29.09.2022, registered at the Directorate of Enforcement, Zonal Office, Raipur, Chhattisgarh for the offences punishable under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (in short, 'PMLA').

2. The relevant facts are briefly noticed. FIR No.129/2022 was registered on 12.07.2022 at Police Station Kadugodi, Whitefield, Bengaluru, Karnataka, under Sections 186, 204, 353 read with Section 120B of the Indian Penal Code, 1860 (in short, 'IPC'), against one Suryakant Tiwari and his associates. The said FIR was registered on a complaint by the Deputy Director of Income Tax Investigation, Foreign Assets Investigation Unit-1, Bengaluru, alleging that during the course of a search by Income Tax Department on 30.06.2022, Suryakant Tiwari obstructed the officials from carrying out their official duties and destroyed crucial incriminating documents and digital evidence about alleged illegal extortion of coal transportation. Pending investigation, offence under Section 384 of IPC was also added on 03.09.2022 in that FIR.

3. It seems that there have been various alleged transactions re: sale and purchase of immovable properties between the above-named Suryakant Tiwari and the petitioner's-Companies.

4. The Central Board and Direct Taxes (CBDT) forwarded the case to the Directorate of Enforcement with respect to the above-mentioned FIR, along with a report of the investigation conducted by the Income Tax Department. This led to the registration of the subject crime case by the Directorate of Enforcement on 29.09.2022.

5. Meanwhile, the petitioner was arrested by Enforcement Directorate on 13.10.2022. Therefore, the Enforcement Directorate

filed a statutory complaint on 09.12.2022.

6. Subsequently, the Karnataka Police filed a chargesheet in FIR No.129/2022 on 08.06.2023, in which the offences under Sections 384 and 120B of IPC were dropped. It seems that the offence under Section 186 of IPC was also dropped. We say so for the reason that the chargesheet was filed only under Sections 204 and 353 of IPC. It is pertinent to note that in the chargesheet dated 08.06.2023, the Karnataka Police made the following remarks:

"Prayer:1) Accused is in judicial custody in ED (Enforcement Directorate) case, so accused is not arrested.

2) Since it has found that accused has committed offence under Section 384 IPC along with his associates in Chhattisgarh State, so report will be submitted in collective way to Chhattisgarh Police for action and has been dropped from charge sheet due to lack of evidence under Section 120 IPC as allegations were not proven. Section 186 IPC has been dropped from charge sheet as per Section 195a(1) CPRC."

(emphasis applied)

7. The Chief Judicial Magistrate, Rural Court, Bengaluru perused the above-mentioned charge-sheet and vide order dated 16.06.2023, took cognizance of the offences punishable under Sections 204, 353 of IPC only. Both these offences admittedly are not scheduled offences under the PMLA. To clarify further, it is undeniable that the offence under Section 384 of IPC was the only scheduled offence i.e., predictable offence, whereupon proceedings under the PMLA can be initiated by the Enforcement Directorate.

8. We have heard Mr. Mukul Rohatgi and Mr. Vikas Pahwa, learned senior counsel for the petitioner and Mr. S.V. Raju, learned Additional Solicitor General of India for the Enforcement

Directorate and perused the record.

9. What it emerges from the undisputed facts that:

(i) As on date there is no predicate offence under Section 384 of IPC or any other provision of IPC against the petitioner.

(ii) The chargesheet has been filed only under Sections 204 and 353 of IPC, and both are not scheduled offences under PMLA.

(iii) As regard to the observations made by the Karnataka Police in the chargesheet, reproduced above, Mr. Raju, learned ASG, fairly states that so far, the Chhattisgarh Police have not registered any offence under Section 384 of IPC, nor has any investigation conducted by them, has been brought to the notice of the Enforcement Directorate.

10. Mr. S.V. Raju, learned ASG, however, seeks time to find out the status of the investigation and its outcome, if any, conducted by the Chhattisgarh Police.

11. In all fairness, we are inclined to grant six weeks' time to the Enforcement Directorate to find out the status of that investigation and place on record the additional affidavit along with the relevant material.

12. We also take notice of the fact that:

(i) The petitioner has already undergone incarceration for about one year and seven months.

(i) The petitioner is not named as accused in FIR No.129/2022 or the chargesheet dated 08.06.2023.

13. Consequently, but without expressing any final opinion with regards the prayer, we find that the petitioner has made out a *prima facie* strong case for his enlargement on interim bail.

Ordered accordingly.

14. The petitioner is directed to be released on interim bail subject to his furnishing bail bonds to the satisfaction of the Special Court, Raipur, Chhattisgarh.

15. Post the matter for further hearing on 07.08.2024.

**(ARJUN BISHT)
ASTT. REGISTRAR-cum-PS**

**(PREETHI T.C.)
COURT MASTER (NSH)**