

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(Cr.) No. 136 of 2023

Rajeev Jhawar

.....Petitioner

Versus

Assistant Director, Enforcement Directorate, Zonal Office, Government of India, Ist Floor, Chandpura Place, P.O. and P.S. Bankmore, Bank Road, Patna-800001,

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Sumeet Gadodia, Advocate
 Mr. Rajiv Bhatnagar, Advocate
 Mr. Ranjit Kushwaha, Advocate
 Mr. Anshuman Mohit Chaturvedi, Advocate
 For the E.D. : Mr. Amit Kumar Das, Advocate

06/ 02.08.2023 Heard Mr. Sumeet Gadodia, learned counsel for the petitioner and Mr. Amit Kumar Das, learned counsel for the Enforcement Directorate.

2. This petition has been filed for quashing the order dated 28.02.2023 whereby the learned District & Sessions-cum-Special Judge, PMLA and C.B.I. has been pleased to dismiss the Miscellaneous Criminal Application bearing No. 94 of 2023 filed in ECIR/02/2021 for the alleged commission of offence of Money Laundering as defined under section 3 of PMLA Act punishable under section 4 of Prevention of Money Laundering Act, 2002 whereby the application filed under section 205 of Cr.P.C. has been rejected.

3. Mr. Sumeet Gadodia, learned counsel for the petitioner submits that C.B.I. registered an F.I.R. being FIR No. R.C. 220 of 2016 for the offence punishable under section 120B r/w 420 of I.P.C. and under section 13(2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988. He submits that the said F.I.R. was registered against Usha Martin Limited and other unknown persons and the said petitioner was not arrayed as an accused in that F.I.R. He further submits that Enforcement Directorate registered ECIR No. PTZO/03/2017 dated 04.05.2017 for the offence under section 3 of Prevention of Money Laundering Act

punishable under section 4 of PMLA Act against Usha Martin Limited. He further submits that the petitioner was not made an accused. He submits that the statement of the petitioner was recorded by the Enforcement Directorate on 10.06.2019. On 20.05.2021 the prosecution complaint was filed by Enforcement Directorate which was registered as Special Trial No. (PMLA) 02/2021 and Usha Martin Limited along with one Pramod Kumar Fatepuria was impleaded as an accused. He submits that on 20.05.2021 the learned Special Judge has taken cognizance against Usha Martin and the said Pramod Kumar Fatepuria and the said cognizance order was challenged before this Court in Cr.M.P. No. 1334 of 2021 which was dismissed by order dated 03.11.2021. He submits that petitioner's name has been added through supplementary complaint dated 30.11.2021 and he has been arrayed as an accused no. 3. He submits that the order of this Court was challenged before the Hon'ble Supreme Court in Special Leave Petition (Criminal) No. 9352 of 2021 and there was interim protection by order dated 15.12.2021. He submits that however, on the same day the learned court has been pleased to take cognizance against the petitioner and he has not issued summons considering that the stay was granted by the Hon'ble Supreme Court. He submits that by order dated 28.09.2022 the said Special Leave Petition filed by the Usha Martin Ltd was dismissed by observing that are all are subject matter of trial. He submits that on 09.12.2022 the learned Special Judge issued summons against the petitioner for appearance in E.D. Complaint on 06.01.2023 and on 05.01.2023 the petitioner filed application under section 205 r/w section 317 Cr.P.C. being Miscellaneous Criminal Application No. 94 of 2023 for dispensation from personal appearance and permission to be represented through advocate. He submits that the said petition was dismissed by order dated 28.02.2023. He further submits that at present the petitioner is at Singapore to look after his father and mother. He submits that this petitioner is having

hyperlipidemia, hypertension and ischemic heart disease. On these grounds he submits that the learned court without appreciating this fact rejected the petition filed under Section 205 of Cr.P.C which is against the mandate of law. He submits that even rigour of section 45 of PMLA Act is not attracted in the case in hand when the petitioner has cooperated in the investigation. He further submits that this aspect of the matter has been dealt with by the Delhi High Court in the case of "**Rana Kapoor Vs. Directorate of Enforcement & Another**" **2022 Online Del 4065**. He submits that in para 33 and 34 of the said judgment it has been held that in view of **Satender Kumar Antil case** decided by the Hon'ble Supreme Court the rigour of section 45 of PMLA Act is not coming and bail was granted in that case. He submits that identical was the issue before the Allahabad High Court in the case of "**Govind Prakash Pandey Vs. Directorate of Enforcement Govt. of India**" **2023 SCC Online All 58** wherein para 25 and 28 the answer was there and identical was the case before the Delhi High Court. He further submits that anticipatory bail was granted by the Jharkhand High Court in A.B.A. No. 10336/2022 and A.B.A. No. 10337/2022 considering the case of **Satender Kumar Antil Vs. C.B.I.** by order dated 24.04.2022. He further submits that even this Court has allowed the petition under section 205 of Cr.P.C. in the case of **Sunil Shah V. Union of India** in **Cr.M.P. No. 1164 of 2022** by order dated 05.07.2023. He further submits that the case of the petitioner is identical with the case decided by this Court in Sunil Shah and in that view of the matter impugned order may be set aside.

4. On the other hand, Mr. Amit Kumar Das, learned counsel for the Enforcement Directorate submits that for deciding the case arising out of such matters the facts are required to be considered. He submits that law is well settled that the case of such nature wherein proceeds of crime relates to 190 crores such petitions are misconceived one. He

submits that even the petitioner has not cooperated in the investigation and he has left the country and he is residing at Singapore during the Covid-19 period. He further submits that the petitioner is made accused as accused no. 3 in Chargesheet no. 8/2020 dated 27.11.2020 in the case of bribe as he tried to bribe the then S.P., C.B.I. New Delhi for that case has been registered. He submits that this aspect of the matter has been considered in Cr.M.P. No. 1334 of 2021 at para 30 of the said judgment which has been decided on 03.11.2021. He further submits that the judgment relied by the learned counsel for the petitioner of the Delhi High Court, Allahabad High Court and this Court the matter was with regard to the bail application. The petitioner has not filed bail application and is residing at Singapore. On these grounds, he submits that the learned court has rightly rejected the petition under section 205 Cr.P.C.

5. In view of above submissions of the learned counsel for the parties the Court has gone through the contents of writ petition and finds that in the ECIR Case the petitioner has been made accused who is Managing Director of Usha Martin Limited. The allegations are there of siphoning Rs. 190 crores which is proceeds of crime. The learned court while rejecting the petition filed by the petitioner has held that the petitioner has not cooperated in the investigation. He has left the country and he has not appeared for bail and Section 205 of Cr.P.C. petition has been filed. The petitioner has not cooperated in investigation and he is already a flight risk as petitioner is residing at Singapore. The petitioner has been made an accused as accused no. 3 in the case of bribe and he tried to bribe the then S.P., C.B.I. for that chargesheet no. 8/2020 has been filed. This aspect of the matter has been considered by this Court while considering the Cr.M.P. No. 1334 of 2021 wherein para 30 it has been held as under:-

"30. That petitioner and other persons are also made accused for bribing the then S.P., C.B.I., New Delhi for the disposal of case in its favour and for that charge No.8/2020 dated 27.11.2020 the bribery

case has been filed by the C.B.I, New Delhi which has been disclosed in paragraph No.11 of the counter affidavit."

6. The said petition was filed by the Usha Martin Limited and this petitioner is the Managing Director of the said company. In that petition it has also been prayed that the officers of that company may be protected and considering all these aspects Cr.M.P. No. 1334 of 2021 was decided which was dismissed by the judgment dated 03.11.2021. The said order was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court at an initial stage has granted interim protection and by judgment dated 28.09.2022 the said petition was dismissed holding that the High Court has rightly refused to quash the criminal proceeding in exercise of power under section 482 of Cr.P.C and what are the submissions made herein before the Hon'ble Supreme Court all are defence which are required to be considered and dealt with in the trial. Thus, in a case filed by the Usha Martin wherein protection has been sought against all the officers of the company which was rejected by this Court, was finally affirmed by the Hon'ble Supreme Court and thereafter now the petition has been filed under section 205 Cr.P.C. In particular case where the case is made out to grant such relief the Courts are rising to the occasion and passing order even in two cases this Court has also allowed the petition under section 205 of Cr.P.C. and reliance has been made by Mr. Gadodia in the case of ***Sunil Shah Vs. Union of India*** whereby this Court has granted relief to the petitioner of that case under section 205 of Cr.P.C. In that case petitioner has cooperated in the investigation wherein the petitioner of the present case has not cooperated in the investigation. He has availed all the remedies upto the Hon'ble Supreme Court wherein prayer has been made for interim relief. In the case decided by this Court the petitioner of that case was a Chartered Accountant. He has only certified certain documents of the trust and subsequently he has deposited tax liability amount of Rupees

one crore twenty one lakh and in the case in hand there is allegation of siphoning Rs. 190 crores. The petitioner of that case not filed bail application and at the first instance he has appeared when he received the summon and filed petition under section 205 of Cr.P.C. and the petitioner was not arrested in that case. Further the judgments relied by Mr. Gadodia in the case decided by Delhi High Court, Allahabad High Court and this Court in A.B.A. No. 10336/2022 and A.B.A. No. 10337/2022 where the bail application was being considered wherein that case was dealt with. Here the petitioner who is already a flight risk has not come for bail and filed petition under section 205 of Cr.P.C., in this background judgments relied by Mr. Gagodia are not helping the petitioner.

7. Invoking the powers under Section 205 of the Code of Criminal Procedure is untenable especially in a case of this nature, wherein serious allegations are made against the petitioner (accused). If such a privilege is given to an accused in a case of this nature, people will lose their confidence in the administration of justice.

8. The ordinary rule in criminal cases is that the accused should personally appear before the court and section 205 has left it to the discretion of the learned Magistrate to give a concession to the accused not to appear personally but through his pleader. The accused who wants the benefit of section 205 of Cr.P.C. must make out sufficient grounds for exemption from personal appearance. It would be very dangerous to hold as a general rule, that in every trivial case the personal attendance of the accused should be dispensed with. Nor can it be said that a man is physically unable to attend the court simply because he is 58 or 60 years old. Nor would the mere fact of absence from the place of occurrence furnish sufficient ground for exemption from personal appearance as many conspirators who work behind the scene can very well claim exemption on this ground. Similarly mere ground of social

position is not enough to meet out a differential treatment to a person.

9. In such type of cases where serious allegations are there against the petitioner granting an exemption to the petitioner for the first appearance would send wrong message to the society as well. According to the petitioner he is Managing Director of the Usha Martin Limited and he has cooperated in the investigation and for that he may be exempted and only for that position he would not be entitled for any special privilege when he is brought before a Court of law as an accused. The statutory mandate is over and above all the superiority, the accused possesses or claims to have by virtue of his position. Irrespective of his position, he is just an accused before the court of law, who is not entitled to claim any special privilege and is required to face the proceedings just like any other citizen. The provisions of Cr.P.C. does not distinguish between ordinary citizens and persons holding superior positions in their religious, political, social or other institutions.

10. The petition under section 205 of Cr.P.C. meant for a bonafide person to abide by the law of the country not like this petitioner as he is already a flight risk. Moreover this petitioner is having some heart ailment wherein stunt has been put in his heart. Nowadays that is very common in the entire world and that cannot be ground of exemption under section 205 of Cr.P.C. Further the petitioner is a man of means and even if he is looking after his father, mother, he can make an alternative arrangement and that can not be a ground of 205 Cr.P.C.

11. The conditions as embodied under section 45 of the Act will have to be complied even in respect of application for bail made under section 439 of the Cr.P.C. There are allegations against this petitioner of laundering a huge amount of money which has come in the investigation and it has been elaborately discussed therein. The Hon'ble Supreme Court has considered the economic offence in the case of ***Subrata Chatteraj v. Union of India***, reported in ***(2014) 8 SCC***

768, Y.S. Jagan Mohan Reddy v.C.B.I., reported in **(2013) 7 SCC 439** and **Union of India v. Hassan Ali Khan**, reported in **(2011) 10 SCC 235** and gist of those judgments speak of 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.

12. In view of above facts, reasons and analysis this Court finds that there is no illegality in the impugned order passed by the Special Judge. Accordingly, this petition is dismissed. Pending I.A, if any, stands dismissed.

(Sanjay Kumar Dwivedi, J.)

satyarthi/A.F.R.