

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on: 15.01.2024
Pronounced on: 13.02.2024

**Bail App 170/2023
c/w
Crl R 51/2023**

Mohammad Shafi Dar

... Petitioner/Appellant(s)

Through: Mr. M. Y. Bhat, Sr. Adv. with Mr. Farooq Ahmad Khan, Adv.

V/s

Directorate of Enforcement and another

... Respondent(s)

Through: Mr. T. M. Shamsi, DSGI with
Ms. Zeenat Basharat, Adv. (through virtual mode)

CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

J U D G M E N T
13-02-2024

1. Heard the learned counsel for both sides. Perused the pleadings and the documents therewith.
2. The petitioner is suffering continuing judicial custody on account of his arrest carried out by the Directorate of Enforcement ('ED' in short) Srinagar Zonal Office by reference to a Case No. ECIR/SRZO/04/2021 dated 31.03.2021.
3. The petitioner came to be arrested on 30.11.2023 by the ED in purported exercise of its power to arrest vested under section 19 of the Prevention of Money Laundering Act, 2002.

4. The factual background in which the ED came to emerge on the scene and register an Enforcement Case Information Report ('ECIR' in short) No. ECIR/SRZO/04/2021 dated 31.03.2021 needs to be set out first before coming to deal with the facts and circumstances of the present case in light of which the petitioner is pressing for and seeking bail under section 439 of Criminal Procedure Code, 1973 read with section 44(2) of the Prevention of Money Laundering Act, 2002.
5. The petitioner is claimed to have been elected to be on the Board of Directors of the J&K State Cooperative Bank, Srinagar in December 2018. The tenure of the elected Board of Directors of the J&K State Cooperative Bank, Srinagar was for three (3) years to expire in December 2021.
6. However, the elected Board of Directors of the J&K State Cooperative Bank, Srinagar is said to have been prematurely dislodged on 15.05.2020 when the Government, in purported exercise of its statutory power under the J&K Cooperative Societies Act, 1989, came to nominate a governing body of the J&K State Cooperative Bank, Srinagar. Thus, only from December 2018 to May, 2020, the petitioner purportedly served as Chairman of the J&K State Cooperative Bank, Srinagar.
7. An alleged registered cooperative society in the name of "River Jhelum Cooperative House Building Society", purported to be registered and governed under the J&K State Cooperative Societies Act, 1989 had come to approach the J&K Cooperative

Bank, Srinagar with an application for loan routed through the end of the Registrar Cooperative Societies J&K, for the purpose of availing a loan of rupees three hundred crores (Rs.300/- crores) for the purported purpose of development of a housing colony upon 300 kanals of land situated at Shivpora, Srinagar meant to be a satellite township.

8. The said loan case of the River Jhelum Cooperative House Building Society is reported to have been sanctioned by the governing body/council of the J&K State Cooperative Bank Limited in September, 2018 wherefrom the Board of Directors of the J&K State Cooperative Bank, Srinagar had accorded its approval for the grant of loan in favour of the River Jhelum Cooperative House Building Society by virtue of a decision taken in March, 2019.
9. Thus, as per the statement of facts in the present petition, the process of availing of loan by the River Jhelum Cooperative House Building Society from the J&K State Cooperative Bank, Srinagar had originated from the Registrar Cooperative Societies J&K's end before the petitioner's becoming the Chairman of the Board of Directors of the J&K State Cooperative Bank, Srinagar and further that the approval for grant of loan of rupees 250/- crore was not accorded by the petitioner in his own discretion and authority but by the Board of Directors of the J&K State Cooperative Bank, Srinagar's approval of which the petitioner was one of the directors.

10. The loan amount of rupees two hundred and thirty-three crores (Rs.233/- crores) allegedly came to be loaned to the River Jhelum Cooperative House Building Society on 25.4.2019. The mode in which the sanctioned loan amount of rupees 233/- crores stood disbursed by the J&K State Cooperative Bank, Srinagar was in the form of payments to the actual identified landowners/land holders from whom the River Jhelum Cooperative House Building Society was in purported deals to acquire 257.19 kanals of land. For the land so acquired/ purchased in plots' shape from the different named landowners/land holders, a proper lien in the revenue record is said to have been accorded in favor of the J&K State Cooperative Bank, Srinagar as being financing bank.
11. An FIR no. 04/2020 dated 8.3.2020 came to be registered by the Anti-Corruption Bureau (ACB), Srinagar for alleged commission of offences under section 465, 467, 468, 471, 120-B RPC read with section 5(i)(d) and section 5(2) of J&K Prevention of Corruption Act, Samvat 2006 regarding illegalities and irregularities with respect to the entire matter of availing and grant of loan by the River Jhelum Cooperative House Building Society from the J&K State Cooperative Bank, Srinagar. In fact, it was upon registration of this FIR that the elected Board of Directors of the J&K State Cooperative Bank, Srinagar had come to be superseded by the Government as a fall out.
12. The petitioner came to be arrested by the Anti-Corruption Bureau (ACB) in connection with said FIR no. 04/2020 on 03.6.2020

when he is said to have made a voluntary surrender and remained under the police and judicial custody lasting up to 15.12.2020 when the petitioner came to be granted bail by this court in a bail application no. 66/2020 vide a judgment dated 15.12.2020.

13. In furtherance to the investigation of FIR no. 04/2020, the Anti-Corruption Bureau (ACB), Srinagar, came to present a final Police Report dated 11.8.2020 followed by a Supplementary Police Report dated 17.11.2020 before the Court of Special Judge (Anti-Corruption), Srinagar wherein the trial of the case is reportedly going on. The petitioner along with other co-accused is facing trial.

14. The final police report read with supplementary police report under section 173 J&K Cr.P.C, Svt. 1989 has named five persons as accused who being Hilal Ahmad Mir (Chairman, River Jhelum Cooperative House Building Society), Abdul Hamid Hajam (Secretary, River Jhelum Cooperative House Building Society), Mohammad Mujeeb Ur Rehman Ghassi (then Registrar, Cooperative Societies, J&K), Syed Ashiq Hussain (then Deputy Registrar of Cooperative Societies) and the petitioner herein Mohammad Shafi Dar (then Chairman, J&K State Cooperative Bank, Srinagar). All the five persons have been booked for trial for alleged commission of offences under section 120-B/420/467/471 of RPC and section 5(1)(c)(d) read with section 5(2) of the J&K Prevention of Corruption Act, Samvat 2006.

15. The coming into picture of the Enforcement Directorate (ED) is when on 31.03.2021 it came to register ECIR/SRZO/04/2021 dated 31.3.2021 in the course of investigation whereof it led to the arrest of the petitioner on 30.11.2023 purportedly reckoning money laundering angle in the case.
16. As per ED's narrative, the petitioner facilitated documentation with respect to the grant of loan to the tune of rupees 250/- crores to a fictitious society River Jhelum Cooperative House Building Society for which purpose got a back-dated resolution in the minutes of General Body meeting of 08.09.2018 of the J&K State Cooperative Bank, Srinagar which allegedly came to be approved by the Bank's Board of Management in its meeting on 31.3.2019.
17. As per the ED, it was the petitioner who guided the sanction and grant of the big loan without any proper documents, without following any KYC norms, without obtaining any tangible security and also in violation of the credit policy of the bank for grant of loan of this high scale and that constituted a *quid pro quo* for the petitioner to obtain the proceeds of crime under the pretext of loan to a non-existent cooperative society which loan money was then siphoned off in acquisition of land parcels as proceeds of crime from various land owners to the tune of rupees 223/- crores.
18. It is stated, as a fact, by the ED that loan disbursement of rupees 223/- crores came to take place through bank accounts of 18

landowners from whom the land came to be acquired by the River Jhelum Cooperative House Building Society.

19. In purported exercise of its authority under the Prevention of Money Laundering Act, 2002 the ED came to attach the land parcels so acquired by the River Jhelum Cooperative House Building Society from 18 landowners which is said to be worth value of Rs.193.46 crore and attachment was carried out by way of provisional attachment order no. 01/2023 dated 14.12.2023 issued under section 5 of Prevention of Money Laundering Act, 2002.
20. The tone and tenor of the formative narrative of the ED is as if the entire exercise involving River Jhelum Cooperative House Building Society coming forward with the loan proposal to the J&K State Cooperative Bank, Srinagar with indulgence of the Registrar of Cooperative Societies as being the statutory authority under J&K Cooperative Societies Act, 1989 was a sham exercise to siphon off bank money to become and turn into proceeds of crime in the hands of petitioner and co-actors.
21. It is an admitted case that the ED originally initiated its investigative action against the petitioner and the co-actornamely Hilal Ahmad Mir against whom along with the petitioner the Anti-Corruption Bureau, Srinagar came up with final police report dated 11.8.2020 read with supplementary police report dated 17.11.2020 roping in three more persons as accused.

22. Before coming to deal with the plea of the petitioner, an intervening development of relevance and importance bearing needs to be referred to in examining the plea of the petitioner for grant of bail and the opposing plea of the ED to deny bail in favour of the petitioner.
23. In this regard, it is a matter of fact that the landowners/holders with whom the alleged River Jhelum Cooperative House Building Society came to make land purchase deals and in whose bank accounts the purported sale consideration amount had been put in by the utilization of the loan amount availed by the River Jhelum Cooperative House Building Society from the J&K State Cooperative Bank, Srinagar, had felt aggrieved when their respective bank accounts came to be frozen consequent upon attachment of the land parcels purportedly transferred/sold by them which came to be carried out by the Divisional Commissioner, Kashmir on the recommendations of Anti-Corruption Bureau (ACB), Srinagar and for which grievance redressal purpose the aggrieved landowners/bank account holders had petitioned this court for seeking release of their respective bank accounts so as to operate the same for utilization of the money credited to them on account of purported transfer of their respective land parcels in favor of the River Jhelum Cooperative House Building Society.
24. The petition, CrI.M 739/2020 came to suffer dismissal from this court vide an order dated 28.12.2020, which drove the aggrieved

landowners/account holders to petition the Hon'ble Supreme Court of India in which vide interlocutory orders passed from time to time shaping up in passing of final order dated 10.10.2023.

25. In this regard the first order is dated 08.03.2021 whereby the attachment order in respect of the accounts of the landowners who had approached the Hon'ble Supreme Court of India was lifted in toto without any restrictions on their right to operate their accounts. In terms of an order dated 16.8.2021 the Hon'ble Supreme Court of India made it clear that the banks in which the accounts of the aggrieved landowners were lying are allowed to be operated upon de-freezing.
26. In its next interlocutory order dated 17.8.2022, the Hon'ble Supreme Court of India came up with an observation to the effect that the standpoint of the respondents in matter before the Hon'ble Supreme Court of India was a contradiction in itself by observing that it cannot be said that the petitioners, as Kashmiri Pandit migrants had sold the land at less than market rate.
27. So much so, with respect to some of the concerned landowners who had come to receive inquiry call from the ED's end, the Hon'ble Supreme Court of India came to restrain the ED proceeding against the said landowners with respect to whose lands the deal had been made with the River Jhelum Cooperative House Building Society for the purpose of development of satellite township by use of bank loan from J&K State

Cooperative Bank, Srinagar. Thus complicity of the landowners in the alleged scam was not endorsed by the Hon'ble Supreme Court thereby at least confirming the fact that land deals were actual, whether legal or not, a different matter.

28. The Hon'ble Supreme Court of India, in its order dated 17.08.2022, came to take notice of submissions of the counsel representing the River Jhelum Cooperative House Building Society that it was willing to abide by its arrangement made with the Bank and pay the loan amount with interest except seeking concession with interest for the period when the attachment order was in operation.
29. In its final order dated 10.10.2023, the Hon'ble Supreme Court of India came to observe that in terms of various directions passed from time to time, the issue so far as the owners/sellers of the land are concerned stood closed by lifting the attachment of the bank accounts of the said landowners/sellers.
30. Thus *prima facie* even the Hon'ble Supreme Court of India read the land deals in whatever form between the landowners/sellers with the River Jhelum Cooperative House Building Society *prima facie* having taken place in actuality entitling the landowners/sellers to use of their respective consideration amounts received in their respective bank accounts coming under attachment and further with respect to the intervention of the ED in calling landowners/sellers for the inquiry purpose deserving stay.

31. The petitioner came to approach the court of Special Judge Anti-Corruption (CBI cases) Srinagar with an application on file no. 552 filed on 02.12.2023 followed by Hilal Ahmad Mir, Chairman of River Jhelum Cooperative House Building Society for seeking bail in context of their arrest carried out by the ED in exercise of power under section 19 of the Prevention of Money Laundering Act, 2002.
32. The court of Special Judge Anti-Corruption (CBI cases), Kashmir Srinagar came to reject the bail application of the petitioner herein by an order dated 15.12.2023.
33. The petitioner in his bail application before the Special Judge Anti-Corruption (CBI cases) Srinagar had pressed into service his health related condition for earning bail.
34. The Court of Special Judge Anti-Corruption (CBI cases) Srinagar refers to the gravity of economic offences and in view of the power under section 45 of the Prevention of Money Laundering Act, 2002 came to arrive at a considered view that at the given stage of investigation of the matter by the ED, it was not appropriate to release the petitioner on bail.
35. This rejection of bail application came to take place by virtue of an order dated 15.12.2023 dejected whereof the petitioner has come forward that the present bail application before this court invoking section 439 of Criminal Procedure Code, 1973. In fact, the bail application is entertainable under J&K Criminal Procedure Code, Svt. 1989 given the fact that the scheduled

offences in the case registered against the petitioner and others are under Ranbir Penal Code (RPC) and J&K Prevention of Corruption Act, Svt. 2006, which are triable under J&K Criminal Procedure Code, Svt., 1989 given the time of occurrence/commission of said offences.

36. The ED, in its objection, to the present bail application of the petitioner has registered vehement opposition on the ground that the petitioner is prima facie guilty of commission of offences of money laundering and came to be arrested under section 9(1) of Prevention of Money Laundering Act, 2002 on 30.11.2023 when he was found evasive and non-cooperative in the investigation. By referring to the rejection of his bail application by the court of Special Judge Anti-Corruption (CBI cases) Srinagar, the ED in its objection is stating that the nature and gravity of the accusation against the petitioner is very serious and that the petitioner being an influential person and former chairman of J&K State Cooperative Bank, Srinagar has the potential to make adverse impact not only on the progress of the case but also on the trust of the people in the criminal justice system. The ED reckons the petitioner to be highly influential with the potentiality to tamper with the evidence. The gist of the opposition on the part of the ED to the bail application of the petitioner is that the entire networking of the crime leading to the registration of the FIR no. 04/2020 dated 8.3.2022 by the ACB, Srinagar is centered around the identified individuals and they being Hilal Ahmad Mir

(chairman River Jhelum Cooperative House Building Society), Abdul Hamid Hajam (Secretary of River Jhelum Cooperative House Building Society), Mohammad Mujeeb Ur Rehman Ghassi (the then Registrar of Cooperative Societies, J&K), Syed Ashiq Hussain (the then Deputy Registrar of Cooperative Societies, J&K) and Mohammad Shafi Dar, the petitioner herein.

37. In its objections, the ED attributes the acts of omission and commission to the petitioner as if he single-handedly orchestrated the sanctioning of the loan of rupees 250/- crores in favor of non-existent society, River Jhelum Cooperative House Building Society, Shivpora, Srinagar, for the development of satellite township at Shivpora, Srinagar.
38. The ED refers to the fact that the disbursement of sanctioned loan of rupees 250/- crore was made by the J&K State Cooperative Bank, Kashmir, through its general current account no. 0252010100004077 maintained with the J&K Bank from where an amount of rupees 223 crores in installments on different dates came to be transferred directly to the bank accounts of 18 land sellers on the instructions by way of issuance of cheques by Hilal Ahmad Mir, the Chairman of the River Jhelum Cooperative House Building Society.
39. The petitioner is alleged to have prepared a back-dated resolution proposing grant of loan of rupees 250 crores to the fictitious society of River Jehlum Cooperative House Building Society and consequently managed to include this back-dated resolution in

the minutes of general body meeting dated 8.9.2018 which was approved by the Board of Management in its meeting dated 21.3.2019.

40. The grant and approval of the loan by the J&K State Cooperative Bank, Kashmir is said to be without any proper documents, without following any KYC norms, without obtaining any tangible security and also in violation of the Credit Policy of the bank for grant of a loan of this high magnitude.
41. The amount obtained through fraudulent practices which are nothing but the “proceeds of crime” under the garb of loan to the non-existing society were utilized in acquisition of land parcels from various sellers to the tune of rupees 223 crores.
42. Towards examining the bail plea of the petitioner in the context of his arrest effected under the Prevention of Money Laundering Act, 2002, this court has to bear in mind that the set of conditions prescribed under section 45 of the Prevention of Money Laundering Act, 2002 in addition to the ones obtaining in the context of section 439 of the Criminal Procedure Code corresponding to section 498 of the J&K Criminal Procedure Code, Svt. 1989 requiring to be there for exercise of discretion. The set of conditions are grant of an opportunity to the ED to oppose the bail application and satisfaction that there are reasonable grounds for believing that the arrestee is not guilty of such offence and that he is not likely to commit any offence while on bail. Proviso to section 45 does provide a scope for

grant of bail free of burden of the aforesaid conditions in case of an arrestee who is under 16 years of age, women or sick or infirm person. In the present case, the ED has come in opposition by availing an opportunity of filing its objections to the bail petition of the petitioner and that serves the very first requirement.

43. Now comes the question whether there are reasonable grounds for pleading before and impressing this court that the petitioner is not guilty of such offence, and he is not likely to commit any offence while on bail.

44. Obviously, the offence in perspective in context of section 45 of the Prevention of Money Laundering Act, 2002 is the offence of money laundering constituted by section 3 of the Prevention of Money Laundering Act, 2002. Section 3 is reproduced as under:

3. Offence of money-laundering. —Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the 1[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.]

45. For the sake of consideration of grant or non-grant of bail, the exercise in the name of application of judicial mind to be done by this court has to be stretched or restricted only to *prima facie* extent and cannot and shall not overextend further as that would mean overstepping to the extent of prejudging a case at a stage when the full display of facts constituting the culpability and criminality of the acts of the accused person is yet to come in its trial form and its end destination thereby risking a prejudice, for or against the prosecution or defense.
46. Bearing in mind the said extent and limitation in evaluating the present case for the purpose of considering the bail plea of the petitioner, this court would say and observe with surety as a fact that the petitioner was the chairman of a cooperative society doing banking business in the name of the J&K State Cooperative Bank Limited, Kashmir and as such it is a matter of routine for a cooperative bank to extend financial assistance in the form of a loan to its members or even to a cooperative society seeking loan. In the present case, it was perhaps not in the domain of the J&K State Cooperative Bank, Srinagar or its functionaries/officials to first get certified the status of the River Jhelum Cooperative House Building Society particularly when the official of govt. department and/or the Registrar Cooperative Societies, State of J&K as being the highest administrative and statutory authority under J&K Cooperative Societies Act, 1989 was/were

recommending the case of the River Jhelum Cooperative House Building Society.

47. Whether or not the decision on the part of J&K State Cooperative Bank, Srinagar, Kashmir headed by the petitioner as its chairman was an act of a prudent banking or not, with due diligence or not is surely a matter which can be looked from the criminal culpability view and that is why the Anti-Corruption Bureau ACB Kashmir has come to present a police challan against the culprits including the petitioner but still the advancement of a bank loan has taken place by disbursement of amount to the bank accounts of the beneficiaries who are said to be, and are not disputed to be, the actual landowners who willingly parted with their respective possession of the respective lands in favor of River Jhelum Cooperative House Building Society and in return received the consideration amount. Thus, the use of the bank loan amount per se cannot be presumed to be meant for the purpose of generation and diversion of the proceeds of crime from the point of perspective of a banker. The transfer of land title on the basis of utilization of loan amount is supposed to be in the name of cooperative society i.e. River Jhelum Cooperative House Building Society and not in the name of any individual. Obviously, upon getting the pool of land at its disposal the River Jhelum Cooperative House Building Society was supposed to carry out the plot allocation/allotment to its members or would-be members against consideration/premium to earn the profit and

repay the loan amount in the transaction and therefore the asset created by utilization of the bank loan from the point of view of J&K State Cooperative Bank with petitioner as its administrative head, not as management head, cannot be said to be with an end objective relatable to diversion of proceeds of crime and amounting to money laundering. Thus, the petitioner is well within his right to say and agitate that so long as the decision to grant loan on behalf of the J&K State Cooperative Bank, Kashmir, Srinagar is to be reckoned as having been taken by the Board of Management then the liability and the responsibility for the said decision cannot be individualized to the petitioner alone and absolving the rest of the board members.

48. The argument by an inference on the part of the learned counsel for the petitioner makes sense and appeal that the petitioner was not having any vetoauthority as chairman of the Board of Management of the Bank as a result whereof the decision to sanction the loan was carried out solely by the petitioner by force of his own discretion and dictate over ruling and making the rest of the Board of Management as non-participant in the decision making and the decision itself.

49. Examining the things from this angle, the petitioner can be said to have a *prima facie* case in his favor just for the sake of earning bail which by no stretch of reasoning and reference is going to earn him any reprieve from facing trial in a criminal case if the ED is able to find out legal basis for his complicity and

culpability in money laundering along with other accused persons whomsoever in the case.

50. The petitioner has ceased to be the chairman of J&K State Cooperative Bank since 2020 and as such that denudes him from any position to influence any aspect relatable to the case. In addition, the sickness of the petitioner is also a ground persuading this court to grant him bail. The court of Special Judge Anti-Corruption (CBI cases) Srinagar, brushed aside the aspect of matter with respect to reported sickness of the petitioner saying that the heart related medical condition of the petitioner can be investigated even when the petitioner is suffering arrest custody. There is no denying the fact that the petitioner is 63 years old person and at this stage of life any health deteriorating condition if neglected that too in a state of custody can cause complications and in the present case. There is a medical reference on record to prima facie establish that the petitioner is having heart related complication which the petitioner in exercise of his fundamental right to personal liberty is well within his right to get it treated to the best of his resources and discretion and in that regard the public exchequer can be absolved from bearing the burden of medically attending the petitioner in custody.
51. In the light of the aforesaid, a case is made out for grant of bail by allowing the bail plea of the petitioner. The petition is thus allowed.

52. The petitioner is hereby granted bail subject to the terms and conditions of furnishing personal bond to the tune of rupees ten lacs to the satisfaction of the Superintendent of Jail concerned and surety bond of two sureties of like amount to the satisfaction of Registrar Judicial, Srinagar of this court. The petitioner shall not leave the territorial jurisdiction of Special Judge Anti-Corruption (CBI cases) Srinagar without due permission from the said court by making an application to the said effect by show of reasons. The petitioner shall not in any manner influence or intermeddle with the investigation/trial of the case as may come to be set up by the ED against him. The petitioner shall be bound to present himself in person as and when called and summoned by the ED or the Special Court /Authority in connection with the case in reference.
53. The observations made herein by the court are only for the purpose of this petition and not beyond its scope and that too only in the context of the petitioner. Disposed of.
55. In view of the adjudication of this bail application, the connected Criminal Revision (Crl R 51/2023) is rendered infructuous and hence disposed of accordingly.

(RAHUL BHARTI)
JUDGE

Srinagar
13-02-2024
N Ahmad

Whether the order is speaking : Yes
Whether the order is reportable : Yes