

17.07.2021

Present: Mohd. Faraz, Ld. SPP for ED through VC.  
Sh. Vinay Kumar AD, PMLA through VC.  
Sh. Amish Aggarwala, Sh. Aditya Jhakkhar, Sh. Kuldeep Jauhari, Sh. Karan Ahuja, Sh. Anubhav Tyagi, Sh. Rajat Bhatia, Sh. Aditya Pathak, Sh. Anubhav Singh and Sh. Sanjeev Choudhary, Ld. Counsel for accused Rajeev Sharma through VC.

Proceedings done through video conferencing.

It is certified that link was working properly and no grievance was agitated by either of the counsel in this regard.

1. Present is an application moved on behalf of applicant/accused Rajeev Sharma for grant of bail. It is submitted that applicant/accused has been falsely implicated in the present case. It is submitted that applicant/accused, aged about 61 years, is a freelance journalist having represented various premier news agencies; he is also suffering from acute case of sinus problems requiring constant treatment from a nebulizer and has also undergone two surgeries for sinus and therefore he is at high risk to Covid-19.

2. It is further submitted by Ld. counsel for applicant/accused that no prima facie case of money laundering is made out and mere allegations of cash deposits does not bring the case under the purview of money laundering. It is submitted that the only allegations against the accused, as levelled by the department, are of cash deposits/transactions but there is nothing on record to prove that the said transactions are proceeds of crime. It is submitted that the records pertaining to the alleged transactions including electronic evidence have already been seized by the department; accused has already been interrogated at length on different

occasions and nothing incriminating has been recovered from the accused to connect him with the alleged offence of money laundering. It is submitted that accused was working as part time journalist and his work was in public domain and in no way he was involved with the national security of our country. It is submitted that after the accused has been granted bail by Hon'ble High Court in case FIR No. 230/2020, he was interrogated by Enforcement Directorate and for the reasons best known to them, present ECIR was registered only on 26.02.2021 i.e. after about six months from the registration of the FIR and after 2 ½ months of grant of bail by Hon'ble High Court, the accused was called by ED only on 25.06.2021 and was arrested in the present case only on 01.07.2021 and during this period, the accused fully cooperated with the investigating agency and has provided each and every document and explanation to each and every entry.

3. It is further argued by Id. defence counsel that the offence under Official Secret Act do not constitute a predicate offence as per the schedule under PMLA. It is contended that the offence contained in Section 120B IPC alleged against the present accused cannot be used as a standalone predicate offence in the absence of any other schedule offence of IPC to make out a case against the accused of money laundering. It is submitted that applicant/accused has no criminal antecedents; investigation qua the applicant/accused is already complete and hence no fruitful purpose would be served by keeping him behind the bars and applicant/accused is ready to abide by any term or condition imposed by this court while granting him bail.

4. In support of his submissions, Ld. counsel for applicant/accused has placed reliance upon the judgments in the matter of *DK Shivakumar v. Directorate of Enforcement Bail Application No. 2484/2019 decided on 23.10.2019*, *Directorate of Enforcement v. C. C. Thampi ECIR HQ/03/2017 order dated 29.01.2020*, *ED v. Robert Vadra and Manoj Arora, ECIR No. HZ/03/2017/4294 orders dated 01.04.2019*, *Deepak Talwar & Ors v. Directorate of Enforcement ECIR/HQ/19/2017 order dated 01.05.2020*, *Deepak Virendra Kochhar v. Directorate of Enforcement & anr Crl. Bail Application no. 1322/2020 decided on 25.03.2021*, Dr

*Shivinder Mohan Singh v. Directorate of Enforcement Bail Application no. 1353/2020 decided on 23.07.2020 and Sai Chandrasekhar v. Directorate of Enforcement Bail application no. 3791/2020 decided on 05.03.2021.*

5. Ld. SPP has vehemently opposed the bail application arguing that applicant/accused was working with various media houses and new agencies across the globe including Global Times, Ecloud New Services and others in China and South Asian Monitor in Kuala Lumpur; he had been receiving money in his account for the works done by him for various agencies globally but for organizations like South Asian Monitor, in the guise of professional fee, he received all the money in cash through a shell companies MZ Mall Pvt. Ltd, MZ Pharmacy based in Delhi and run by Chinese nationals at the instance of Chinese intelligence officers based in China; he also received money through hawala transactions and Western Union Money transfer. It is submitted that apart from receiving cash, some of his foreign trips and of his wife were also financed by Chinese people. It is submitted that applicant/accused has not received any money from Ecloud New Services but foreign trips of applicant/accused and his wife were financed by Ecloud New Services, China.

6. It is submitted that charge-sheet in the predicate offence has been filed in which it is evident that the applicant/accused has received money for providing confidential information of India to the Chinese Intelligence Agencies. It is submitted that the said money was received in relation to a criminal activity relating to a scheduled offence and is thus proceeds of crime within the meaning of Section 2 (1)(u) of PMLA which is clearly proved by the statement of the witnesses recorded u/s 50 of PMLA. It is submitted that in predicate offences, he was granted statutory bail by Hon'ble Delhi High Court as there was delay in filing the charge-sheet and the bail application was not discussed on merits.

7. It is further submitted that applicant/accused has not cooperated in the investigation while he was in the custody of ED. It is further submitted that applicant/accused was arrested in the present case in terms of Section 19 of PMLA and not under Section 41 CrPC.

It is submitted that ED never interrogated the accused prior to search of his house on 25.06.2021 and so called delay in record of ECIR indisputably supports the case of ED as evidently the prosecution was not launched in haste. It is submitted that Section 120B IPC is a predicate, distinct and standalone offence as mentioned in Schedule to PMLA, 2002.

8. In support of his submissions, Ld. SPP has placed reliance upon *Union of India v. Hassan Ali Khan & Ors* *Crl. Appeal no. 1883/2011 decided on 30.09.2011*, *Sunil Dahiya v. State* *2016 SCC OnLine Del 5566*, *Y. S. Jagan Mohan Reddy v. CBI* *(2013) 7 SCC 439*, *P. Chidambaram v. Directorate of Enforcement* *(2019) 9 SCC 24* and *Sachin Narayan v. Income Tax Department*, *W. P. No. 5299/2019 C/W W. P. No. 5408/2019, 5420-5423/2019, 5824/2019 and 6210/2019*.

9. I have heard and considered the rival submissions made by both the parties and also gone through the material available on record.

10. It has been observed by the Hon'ble Apex Court in **State of Gujarat v. Mohan Lal Jitmalji Porwal & Ors** **(1987) 2 SCC 364** as under :

"..The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest..."

10. In the matter of **Y. S. Jagan Mohan Reddy v. CBI** **(2013) 7 SCC 439**, Hon'ble Apex Court has observed that:

"..15) Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs 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.

16) While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations..."

Therefore, the economic offences are required to be treated as a separate class and bail cannot be granted as a matter of routine.

11. It is submitted by the Ld. counsel for the accused that no predicate offence has been committed in the instant case and at best, Section 120-B IPC can be invoked against him, which is a bailable offence.

Admittedly, Section 3 of Official Secrets Act r.w Section 120-B IPC, interalia, is reported to be invoked in case FIR No. 230/2020 of P.S Special Cell.

Perusal of Schedule annexed with PMLA would reveal that Section 120-B IPC finds a mention in Part A of the Schedule to the PMLA. Section 120-B IPC is a predicate, distinct and standalone offence. Reliance is placed upon the judgment of the Hon'ble Karnataka High Court in the matter of *Sachin Narayan v. Income Tax Department W. P. No. 5299/2019 C/W W. P. No. 5408/2019, 5420-5423/2019, 5824/2019 and 62110/2019*. Section 120-B IPC is admittedly a scheduled offence under the provisions of PMLA. Perusal of section 120-B IPC r.w Section 3 of the Official Secrets Act would reveal that the offence alleged is non-bailable in nature.

12. Ld. counsel for applicant/accused has further attempted to point out certain loopholes/gaps in the charge-sheet filed by the Special Cell in the connected matter bearing FIR No. 230/2020 (pertaining to the predicate offence). However, I am refraining myself from entering into examining the lapses, if any, in the case of P.S Special Cell in FIR No. 230/2020, as the offence of money laundering is an independent, distinct and separate offence. If accused is discharged in the said case, even then, the instant proceedings can continue against him as the proceedings u/s PMLA are independent and separate qua the offence of

money laundering. I am fortified in my opinion by the judgment of Hon'ble Jharkhand High Court in **Sanjay Kumar Choudhary vs Govt. Of India & Anr. W.P.(Cr.) No.419 of 2009 Decided on 02.12.2009** wherein it has been observed as under:

"...Amplitude of the provision as contained in Section 3 appears to be quite wide as anyone who gets himself involved directly or indirectly or assists in the activity connected with the proceeds of crime and projecting it as untainted property shall be guilty for the offence of money-laundering. The provision as contain in Section 3 never does suggest that the offence of money-laundering can be launched only when one is found guilty of a crime, proceeds of which has been projected as untainted property, rather the offence of money-laundering as defined under Section 3 unambiguously prescribes that anyone, who directly or indirectly meddles with the property connected with proceeds of the crime projecting it as untainted property, is liable to be punished for the offence of money-laundering..."

13. Now as far as the merit of the instant case is concerned, I have gone through the statements recorded u/s 50 of PMLA by the investigating agency. I am refraining myself from discussing in detail the contents of the said statements lest it might prejudice the case of either side and may even jeopardize the ongoing investigations. In the matter of **Sai Chandrasekhar vs Directorate of Enforcement (Bail Appln. NO. 3791/2020 Decided on March 5, 2021)** it has been observed that:-

*At the stage of granting bail, detailed examination of evidence and elaborate documentation of the merits of the case should be avoided, so that no party should have the impression that his case has been prejudiced. (Niranjan Singh v. Prabhakar Rajaram Kharote (1980) 2 SCC 559.)*

Suffice, it would be to observe that from the statements recorded, it is evident that the applicant/accused has received lacs of rupees on multiple occasions, invariably in cash, from dubious sources. Co-accused, who was involved in operating/managing MZ Mall Pvt. Ltd and MZ Pharmacy (the said companies are claimed to be dealing in money exchange, tour and travels and medicines respectively with apparently no verifiable legal connection with the accused) is also reflected to be supplying money to the applicant/accused. Now under

such situation, onus shifts upon the applicant/accused u/s 24 of PMLA to explain the receipt of said money from a person, who is apparently having no justifiable connection/relationship with the applicant/accused. Applicant/accused has failed to furnish any palpable explanation regarding the receipt of said money. It is further intriguing to note that annual income of applicant/accused was reported by the accused to be barely Rs.8.6 lacs and yet he is financing his son's education abroad, enjoys multiple foreign trips and he is even lending lacs of rupees to his friends and acquaintances for investment purposes.

16. The allegations against the applicant/accused are serious in nature. The investigation is at a crucial juncture as the complete money trail is yet to be traced and releasing the applicant/accused on bail at this stage would not be salubrious to the cause of justice, as the applicant/accused would definitely attempt to wipe off the foot prints and cover up the traces.

17. Considering the totality of circumstances, I do not find any merits in the application at hand and the same is accordingly dismissed.

18. Application is disposed off accordingly.

19. Copy of the order be given dasti to all the concerned.

20. Instant order be uploaded on the court website immediately.

**DHARMENDER RANA**  
**(Dharmender Rana)**  
**ASJ-02/NDD/PHC/ND**  
**17.07.2021**

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